# Consultation on enforcement of employment rights recommendations

Young Women's Trust response



#### Introduction

Young Women's Trust supports and represents women aged 16-30 struggling to live on low or no pay in England and Wales and who are at risk of being trapped in poverty. We offer free coaching and personalised advice on job applications through our Work It Out service. We also conduct research, run campaigns and work with young women to build confidence and advocate for fair financial futures.

Young Women's Trust welcomes the Government's response. We have previously expressed serious concerns about the ability of the existing enforcement mechanisms and the recommendations contained in the consultation documents are a positive step to securing better protections for employees.

However, we remain concerned that young workers, particularly those in low paid, insecure work continue to be excluded from protections due to a lack of awareness about their rights and a power imbalance that prevents them from reporting breaches due to a fear of adverse consequences.

# Nature and extent of insecure work

When giving evidence to the 'Review of Modern Work Practices' we welcomed the renewed focus on the rights of casual and agency workers. Enforcement of existing rights is important in this context, as is extending further rights to casual workers. However, the power imbalances that are inherent in these employment scenarios limit the effectiveness of enforcement mechanisms which are never triggered by a fearful workforce.

We remain concerned that the changing nature of work is having a negative effect in particular on the ability of young women to secure adequate rights at work. The Resolution Foundation published research about agency workers finding that women now make up about half of agency workers and accounted for 85% of the growth in temporary agency work between 2011 and 2015.<sup>1</sup>

Young Women's Trust also know that wider issues of pay and job security are growing concerns for young women. Our poll of over 4,000 young people aged 16-30, conducted in June and July 2017, showed that:

• 30% of young people have been offered a zero hours contract (33% of young women and 28% of young men).

<sup>&</sup>lt;sup>1</sup> L. Judge and D. Tomlinson (2016) Secret agents: Agency workers in the new world of work. Resolution Foundation. 2 ONS, (2015) User requested data, ref 004933: Employment status by age, 2001 to 2015

- Over a quarter of young people in work (28%) are worried about not having enough paid hours (30% of young women, 26% of young men).
- Almost four in ten young women and one in three young men in are worried about job security.
- Young people in work from the lowest socioeconomic group DE and from BAME groups are more likely than others to be worried about their job security (43% DE, 44% BAME) and not having enough paid hours (47% DE, 39% BAME).
- 23% of young women have been paid below the minimum wage for their age

Additionally, the most recent apprenticeship pay survey showed almost 1 in 5 (18%) of apprentices are paid below the National Minimum Wage for which they are entitled. The situation was worse in female-dominated sectors such Hairdressing in which almost half (47%) of apprentices were paid below the legal rates. It is striking that sectors like hairdressing are most affected by employers paying under the minimum wage. More than 9 in 10 hairdressing apprentices are women and this once again shows how little employers value so called "women's work".

This insecurity creates work environments in which a denial of workers' rights can flourish. For example, our survey showed that one in six young people (17% of young women and 16% of young men) have been paid less than the minimum wage to which they were entitled. Previous work with young women to provide evidence to the Low Pay commission highlighted stark examples in which pay was being withheld. In such cases, young women often tell us that they raising complaints is futile as they are not believed.

"There have been times when I have been scheduled in for 35 hours work, worked for 48 hours in a week and only been paid for 35. When I asked about this, because I opened my pay slip after leaving the hotel they said they couldn't do anything because I 'could have tampered with it'."

Cat, hospitality worker, North-West England

In these cases, young women tell us that they fear to take complaints further because they worry that their employers have the power to dismiss them.

#### Gender discrimination, harassment and abuse

Worryingly it is not just the ability to secure fair pay and the legal right to a minimum wage which is impacted by this insecurity. A significant number of young women face gender discrimination and, in some cases, sexual harassment and abuse with women in insecure work finding it harder to raise complaints or get adequate redress.

6% of women aged 18-30 said they were treated less well than others by employers or prospective employers after they turned down sexual advances. If that figure were extrapolated, it would represent 300,000 young women. Additionally, three in ten young women said they had experienced sex discrimination when working or looking for work.

Our 2016 report, *No Country for Young Women* showed that women were twice as likely to feel worried for their personal safety in public than men.<sup>2</sup> 41% of young women and 20% men shared this concern. Whilst this the question did not relate specifically to sexual harassment and abuse, the gender divide and recent increased public awareness of women's experiences suggests that this is likely to play a significant role.

Indeed, HR bosses were acutely aware of such issues when we surveyed them last year. In relation to sexual harassment in the workplace, a survey of HR decision makers by YouGov on behalf of Young Women's Trust in 2017 was instructive, showing significant numbers of employers with recruitment responsibilities were aware of sexual harassment in their workplaces.<sup>3</sup>

## The survey showed that:

- One in 14 HR decision-makers (7%) have been aware of formal reports of sexual harassment in their workplace in the last 12 months. This increases to one in ten HR decision-makers (10%) in large organisations.
- One in 12 HR decision-makers (8%) have been aware of sexual harassment in their workplace that has gone unreported in the last 12 months. This increases to one in eight decision-makers (12%) in large organisations.

A poll of young women carried out by Young Women's Trust ahead of the Women and Equalities Committee inquiry into sexual harassment at work highlighted that women in insecure employment were particularly likely to report a both a fear of reporting cases of sexual harassment and a negative experience of their complaints being adequately addressed:

- "Sexual harassment is an issue that affects everyone at some point. [For example] being asked to lift your shirt by a manager when you're on a zero-hour contract and he's in charge of the rota."
- "In my old workplace, despite the fact 90% of the staff are female, when a colleague brought a sexual harassment tribunal against her boss, the organization still chose to support him at the tribunal instead of her."
- "I went to my boss about sexual harassment but the management were all men and thought I was making a mountain out of a mole hill 5 women left the business because of the sexual harassment of one man in the space of 1 year."

The power dynamics and fear of losing a job or facing negative consequences, including further discrimination and were particularly apparent. These factors suggest a need for a broader strengthening of existing rights and independent, confidential reporting processes to protect victims.

<sup>&</sup>lt;sup>2</sup> Young Women's Trust (2016), *No Country for Young Women,* https://www.youngwomenstrust.org/assets/0000/4258/No\_country\_for\_young\_women\_\_final\_report.pdf

<sup>&</sup>lt;sup>3</sup> Young Women's Trust (2017), Working for women? Young Women's Trust HR decision-makers survey 2017: summary of findings https://www.youngwomenstrust.org/assets/0000/8316/HR\_decison\_makers\_report\_updated.pdf

### **Ensuring protection of rights**

Young Women's Trust welcomes the recommendations contained in the consultation document to facilitate individuals' ability to claim their rights through removal of tribunal fees and reversing the burden of proof to allow clarification of an employee's status quickly. The promise to back these individual claims by state-led enforcement is an important one but musty be properly resourced.

We remain concerned however that the tribunal system requires an individual to bring a claim, something that they are often reluctant to do for fear of reprisals and adverse impacts on their treatment at work or future employment prospects. This is particularly relevant to the growing number of young women on casual and insecure contracts where the power lies disproportionately with the employer. We have heard about cases where young women have had pay withheld or not been scheduled for shifts after raising a complaint.

Similarly, state-led mechanisms often rely on some degree of reporting from individuals. We have expressed concern in the past that the resources available, for example, to the Low Pay Commission to properly inspect employers meaning issues regularly go unreported, rendering enforcement mechanisms ineffective.

#### Restructuring employment to increase protections

Building additional security into employment contracts would go some way to giving young people the confidence to report infringements. In many cases, young women tell us that the power for flexibility in the contract arrangement lies with the employer. Young women feel they are being treated as "pay as you go" employees with no guarantee of when they will be expected to work. With managers holding power whether to offer shifts to workers, many incidents, including those of sexual harassment and abuse remain unreported. Young Women's Trust have previously argued that guarantees for both a minimum number of hours and a minimum level of pay should be included in contracts. Whilst this is not a total solution it would help to address the current imbalance in power which creates a culture of fear for significant numbers of workers.

#### Lack of knowledge about rights

In the course of our work Young Women's Trust have found that young women often have a limited knowledge of their employment rights or channels of redress. In this situation the balance of power lies firmly with the employer and young women we speak to have been unfairly treated or exploited.

It is our view that with this existing imbalance in power and knowledge about employment rights, the Government must take a more proactive role by providing clearly signposted resources and advice to inform young people of their rights. This should include considering building education about rights into the school curriculum through existing PSHE provision.

# Increasing resources for enforcement

Young women have also told us that they have felt unable to challenge unfair pay decisions and that power over pay lies with employers. When giving evidence to the Low Pay Commission, Young Women's Trust heard that resources were limited to inspect employers who may be in contravention of minimum wage legislation. We are concerned that a similar scenario will be evident for other employment rights. The Government set out a new code of practice for employers specifying steps employers should take to secure workers' rights. This should include guidance on developing confidential and independent procedures for reporting and investigating allegations of rights infringements. This should be backed by a properly funded inspection regime so that enforcement does not rely on an individual to bring a claim.

For further information, please contact: