



HM Government

United Kingdom Labour Market Enforcement Strategy 2023/24 – Annex A:

Emerging issues around Compliance and Enforcement in the UK Labour Market

Summary of Evidence

October 2023



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Presented to Parliament pursuant to Section 5 (1)
of the Immigration Act 2016

October 2023



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Introduction

The UK economy and labour market continue to face significant challenges from a variety of perspectives such as the impact of the Ukraine crisis, technological change (e.g., from the rise in online recruitment) and impacts from changes stemming from government policy (e.g., Brexit; off payroll working). Since the COVID-19 pandemic, there have been some noticeable shifts in how people work, where they go to for help and their interaction with the enforcement bodies.

There are also challenges facing the UK labour market arising from non-compliance with employment legislation as well as with enforcement. These challenges have also affected the labour market and addressing these also means identifying what are the contributory factors.

Supporting compliance and enforcement should underpin the government's strategic goal for a level playing field for compliant businesses at the heart of the growth agenda. Statutory agencies seek to ensure a labour market that respects worker rights and an environment which supports employers' understanding of how they should operate in line with regulatory requirements.

The Labour Market Enforcement (LME) Interim Strategy for 2022/23 identified several emerging issues around compliance and enforcement in the UK labour market. The call for evidence for the subsequent 2023/24 strategy sought information from respondents on a number of these and provided an opportunity to submit evidence that they have of worker exploitation.

The Call for Evidence sought stakeholder views on:

- The evidence of the scale and nature of the labour non-compliance threat.
- The challenges in terms of compliance and enforcement for the three enforcement bodies under my remit (HMRC NMW; GLAA; EAS).
- Their ideas for how some of these challenges may be overcome.

This annex to the 2023/24 strategy summarises the responses to the call for evidence consultation, identifying areas of concern and the general landscape of the labour market.

Conducting the Consultation Exercise

The consultation exercise ran from 13 April to 31 May 2022. In total, there were 57 responses from stakeholders across all sectors.

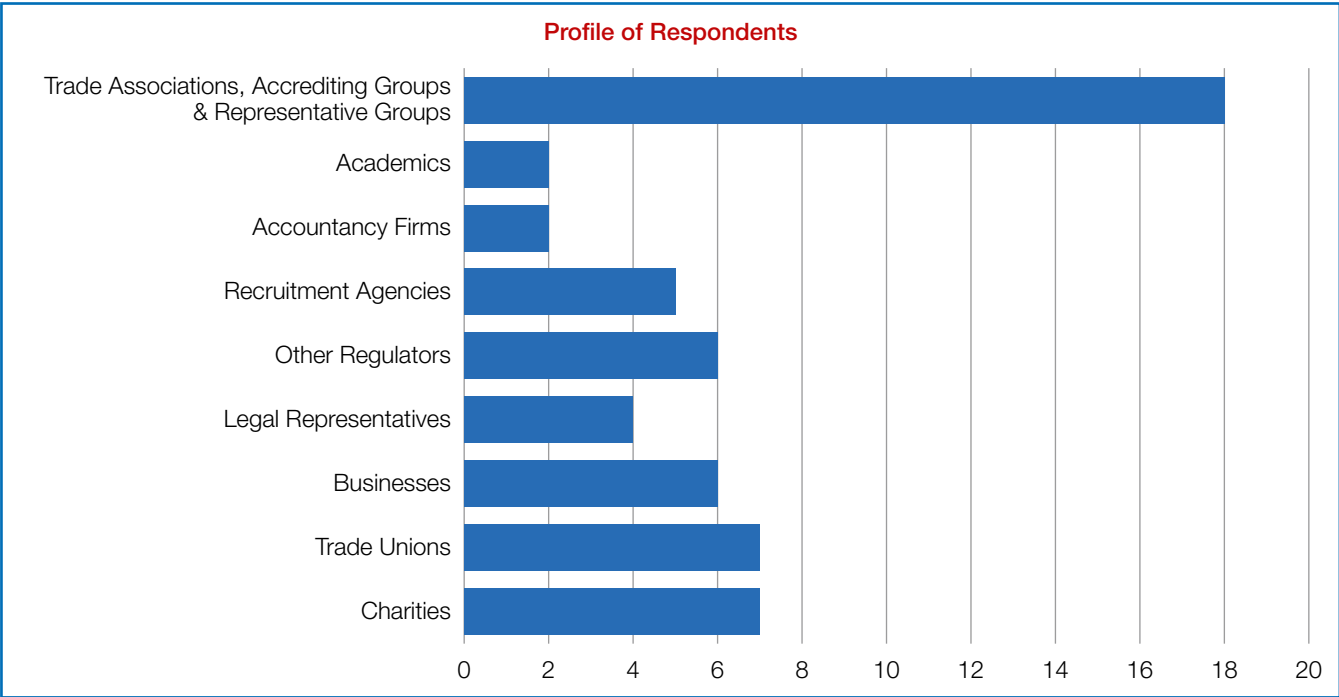
Not everyone responded to all questions. Instead, some focused their responses specifically on particular questions, for instance around issues with umbrella companies /employment models, enforcement of workers' rights and non-compliance of National Minimum wage (NMW).

The original aim had been to submit the 2023/24 Strategy to ministers at the end of September 2022, to allow time both for ministerial consideration and for the three enforcement bodies to reflect the recommendations in their business planning for 2023/24. Significant change in government between July and October 2022, and the deteriorating UK economy (impacted by the war in Ukraine) meant the landscape in which DLME recommendations were being formed was changing quickly.

Accordingly, DLME went back to respondents in December 2022 and requested further evidence on any new emerging risks and trends. DLME received thirteen returns and the issues raised are summarised in Section 9.

Analysis of Responses

Figure 1: Profile of written responses categorised by sector.



Roundtable Sessions

To further discuss and illuminate the evidence from the written submissions, a series of in-person and virtual roundtable meetings was organised to engage stakeholders and the enforcement bodies. Other bilateral meetings with a variety of stakeholders were held on specific issues. Further evidence gathering was carried out via academic networks and ODLME Information Hub contacts.

The Director also visited Leicester to meet a cross-section of stakeholders associated with the community and the garment industry there. Further meetings with devolved administrations in Scotland and Wales and a virtual meeting with Northern Ireland representatives were also held. Additional to this there have been ongoing consultations with the three Enforcement Bodies.

In particular, the focus was on: understanding what changes have emerged in the labour market; the impact of non-compliance on workers; helping workers understand their employment rights; and, how enforcement bodies might better identify these issues. The roundtable meetings focused on:

- **Opportunities and Threats (16th June 2022)** This session examined the evidence associated with the impact of labour shortages; IR35 and its impact on self-employment; migration policy and trends; recruitment patterns; non-compliance risks in new employment models; and the minimum wage uprating. What should be the priorities for the three enforcement bodies (HMRC NMW, GLAA, EAS)? Are there lessons to be learned from the approaches of other enforcement bodies?
- **Amplifying the Worker Voice (20th June 2022)** This session looked at the evidence of the experience of workers arising from changes to the labour market. How could workers best gain a better understanding of, and enforce, their employment rights?
- **Working with Business (22nd June 2022)** This session examined the impact of existing compliance initiatives from both the business and the worker perspective to encourage, influence and support good practice. What initiatives in other sectors/ other countries have been shown to work?
- **Finding Work and Securing Employment Rights (23rd June 2022)** This session examined the evidence of changes in recruitment patterns and practices, the compliance risks associated with finding a job and transparency around the associated pay and benefits. What should be the response of the three enforcement bodies within their existing powers? And what further powers may be needed?

Analysis of responses from written submissions

Following the structure and questions from the DLME Call for Evidence, this section summarises the key points to emerge from the resulting stakeholder responses.

Chapter 1: Recent changes in how the UK labour market is operating

For instance, since the end of the Coronavirus Job Retention Scheme (CJRS), changes in employment status (e.g., the shift away from self-employment following IR35 rules changes), increases in job vacancies.

1a. What changes have you observed or experienced?

1b. How might these changes impact non-compliance and is this likely to grow or subside over the coming year (2022 to 2023)?

1c. What response have you observed by the enforcement bodies to identify and address these issues?

The most common themes identified by respondents related to issues associated with IR35/ umbrella companies, employment status, seasonal workers, complaints, recruitment and the gig economy, and the challenges of operating in such a tight labour market. In terms of sectors, responses highlighted issues in social care and maritime fishing in particular.

The majority of respondents recognised and agreed that the enforcement of employment rights has become more critical, but also more difficult to achieve in the current UK labour market.

COVID-19 Pandemic: Respondents reported that the current challenges of enforcing employment rights have been significantly increased because of the COVID-19 pandemic with employers facing a whole range of complex employment relations issues, such as retaining staff and returning staff safely to the workplace. They stated the COVID-19 pandemic and cost of living crisis were disproportionately affecting those working in the hospitality, seasonal agriculture and care sectors. A number of respondents noted that they had responded to various government calls for evidence over recent years but had not observed progress on the issues raised. They emphasised the need to act.

Employment Status: Respondents raised concerns about the number of employment status complaints they have received, especially during the COVID-19 pandemic. This may be linked to the Supreme Court ruling in the Uber case for drivers of Private Hire Vehicles (PHVs), where drivers often use multiple apps simultaneously, meaning they may have different levels of protection from trip to trip. There is an inconsistent patchwork of overlapping policies which can be confusing and damaging for businesses. Some relate to the shift away from self-employment following IR35 rules changes, but others result from a lack of clarity around working relationships. Other examples that have emerged include the lack of clarity following the end of the Coronavirus Job Retention Scheme (CJRS). On the 29th of July 2022, the Government published its response to its consultation on Employment Status (BEIS/HMRC/HMT 2022). The Government recognises

that the employment status framework for rights works for the majority, but that boundaries between the different statuses can be unclear for some individuals and employers. However, the Government response argued that the benefits of creating a new framework for employment status are currently outweighed by the potential disruption associated with legislative reform. Although such reform could help bring clarity in the long term, it might create cost and uncertainty for businesses in the short term, at a time where they are focusing on recovering from the COVID-19 pandemic.

National Living/Minimum Wage (NLW/NMW): Respondents raised concerns related to the minimum wage upratings, coupled with external cost pressures for employers such as energy bills and sourcing materials. Whilst there is progress for many workers as regards receiving the NMW, employers and manufacturers have noted that this is a further strain on their business and challenges their ability to remain competitive with overseas manufacturers. The fear is that compliance with paying the minimum wage could be compromised. There is further complexity around non-payment of travel time in the social care sector. Poor quality or misleading payslips also act as a burden on employees seeking to understand if they have been paid correctly. Despite the Government introducing legislation requiring employers to list the hours worked to improve transparency, some employers are routinely issuing payslips that mask non-compliance. Many homecare employers already list the hours that they are paying homecare workers for on their payslips, but travel time is often not included. Some employers have subsequently taken the initiative to pay their employees above the NMW to attract workers and are also looking at other ways to develop people support around wellbeing.

Migrant/Domestic Workers: It was reported that due to the nature of domestic work, women in this sector tend to live very isolated lives, often having limited contact with anyone outside of the family they are employed by and this isolation grew worse during the COVID-19 pandemic. Additionally, the impact of the COVID-19 pandemic on migrant workers has been severe, especially those who have no immigration status, forcing them into unregulated, dangerous, and low paid work. It was stated that many of these jobs were frontline jobs during the COVID-19 pandemic, which increased their exposure to COVID-19 and meant they were often under pressure to work long hours or report at work even when they felt unwell. It was suggested to us that migrant workers accepted poor conditions, no formal contracts, or pay below minimum wage in exchange for a job.

Fire and Rehire: Respondents raised concerns that there is a danger that fire and rehire style tactics might become widespread, designed to take advantage of the current vulnerability felt by many workers and their families in the wake of the COVID-19 pandemic and the impact of Brexit.

UK Maritime Fishing: The UK Fishing industry is facing labour shortages following Brexit with fewer European Economic Area (EEA) workers available. Respondents recognise recruitment challenges in a sector perceived as a physically demanding and dangerous with unsocial hours, limited benefits, and low pay. The use of transit visas designed for seafarers create a vulnerable employment and immigration status for migrant workers that mean they may be less protected from labour abuse. In respect of the substantially increased cost of fuel for fishing vessels, it is likely that many operators will continue to seek to reduce operating costs in order to be able to make a profit.

Recruitment: Respondents outlined that the rise in digitisation during the COVID-19 pandemic allowed for changes in recruitment processes, including digital methods of conducting right to work checks on employees, which was an in-person activity pre-pandemic. Conducting right to work checks digitally has opened a number of opportunities for workers in economic blackspots to find work and be onboarded digitally, reducing the impact of the limited work available in their locality. On the other hand, some respondents agreed it has allowed businesses to fully digitise their recruitment and onboarding processes, with a result being that some have offshored their businesses to other countries and are subsequently circumventing certain UK labour laws.

Technology: Respondents recognised too that technology is increasingly being used by employers to undertake their managerial functions. Artificial Intelligence (AI) driven software and other tools are now commonly being used not just to recruit workers, but also to assign tasks, monitor and evaluate work, and trigger dismissal or other disciplinary processes. Such practices have increased since the onset of the COVID-19 pandemic. Algorithmic management systems (AMS) can facilitate business models where an organisation can keep workers at arm's length through the technology, enabling the evasion of liabilities and responsibilities towards the workers and also have an impact on security of work and wages and be used to undermine collective negotiations, suppress union activity and wages. Others argued that the software has a wide range of implications around employment rights such as data protection rights, equality, discrimination, human rights (especially right to privacy), health and safety and employment status.

Seasonal Workers: Respondents thought that the Seasonal Worker Visa scheme is clear evidence that such short-term visa systems significantly increase the risks of exploitation for migrant workers (for example, as many as 150 Nepalese workers each paid thousands in illegal recruitment fees to work on UK farms). It was put to us that the scheme has expanded into a wider range of seasonal roles compared to when it was first launched. However, more data is needed to monitor the impact on the level of non-compliance in this sector. Thus, oversight of the scheme is crucial considering the compounding sector-specific and immigration related risks.

IR35/umbrella companies: Many respondents were of the view that action is needed here. It was put to us that umbrella companies are increasingly involved in low paid agency worker activity, where there may be more vulnerability, less bargaining power, and no or limited choice for the worker as to whether to use a particular umbrella company or not. It was suggested that there are a large proportion of agency workers working for umbrella companies that do not receive the Key Information Documents (KIDs) to which they are entitled and there is dissatisfaction amongst those forced to work via an umbrella company due to IR35. Respondents also stated that off-payroll regulations are leading to non-compliance with tax/employment rights outside of accredited providers. There is evidence of non-compliance with off-payroll rules with some end hirers implementing blanket IR35 determinations and assessing their entire off-payroll workforce as being “inside IR35” without undertaking specific employment status tests against each individual contractor. Additionally, it was alleged that enforcement bodies are not acting on recommendations to improve off-payroll rules. There is some engagement with end hirers, but not enough around supply chain management.

Some respondents stated that the changes made to the immigration rules have eased the process for onboarding independent contractors into compliant umbrella companies. This has helped to level the playing field and remove advantages sought by less/non-compliant providers who have sought to circumvent the immigration rules, which may also offer more tax-advantageous models for workers. Others argued that umbrellas contribute to fragmenting the employment relationships because workers are not sure who to contact when trying to resolve problems and can then be passed between companies when seeking to resolve problems. It was argued that there are widespread breaches of holiday leave and pay entitlement. There was a degree of frustration that low paid workers should be protected through effective state enforcement but due to imbalance of power and the inability to articulate problems, no government action had been taken to get to grips with umbrella companies.

In brief, the majority of respondents believe that umbrella companies can be complicated often changing their business models, so this requires ongoing and repeated checks by recruiters. This increases the difficulty of policing the umbrella market which is why they need regulation and a dedicated enforcement body to do this.

1a. What changes have you observed or experienced?

Respondents said:

- *“Over the last couple of years there has been an increase in the number of intermediaries operating in the recruitment sector. This includes umbrella companies and others that purport to offer tax solutions for temporary workers. The number of such companies has increased since the IR35 rules expanded into the private sector, with many of them offering low tax solutions to employees”.*
- *“While the structure of employment has changed surprisingly little over the last two decades, the growth in employment overall over this period has seen increasing numbers of people working in low-paid, lower-skilled roles and in non-permanent employment. This has meant there is a growing cohort of working people with little bargaining power in the labour market who are most vulnerable to exploitation”.*
- *“Brexit has changed the labour demographics as Eastern European arrivals have slowed. While it will be more difficult for Eastern Europeans to bypass the visa issue, there will always be methods of avoidance. To make up the shortage, there will most likely be a proliferation of workers from other regions, such as Asia”.*
- *“We have seen a mixed bag. Some members are reporting growth in business. Some are concerned about getting back to pre-covid levels of business and struggle to find candidates to fill roles. We have seen a trend towards growth. There remains a lack of knowledge in several compliance areas which have been highlighted by our certification scheme. This spans both new entrants to recruitment and employment businesses and seasoned professionals with established companies”.*

1b. How might these changes impact non-compliance and is this likely to grow or subside over the coming year (2022 to 2023)?

Respondents said:

- *“Off Payroll legislation has led to a significant increase in the number of umbrella employees. If operated correctly this does not lead to non-compliance and is simply an employment model which is an alternative route of supply of a worker’s services. However, due to a lack of regulation beyond industry led standards such as [Freelancer and Contractor Services Association] FCSA, Professional Passport and [The Association of Professional Staffing Companies] APSCo Trusted Partner, there is widespread non-compliance with tax laws and employment rights outside of the accredited providers”.*
- *“Non-compliance on employment status is likely to continue to increase, yet often through ignorance of parties”.*
- *“Tribunals award financial compensation to claimants, it is often as a multiplier of a week’s wage, e.g.: failure to provide a written contract can result in a small amount of compensation (up to four weeks’ pay), therefore this is easier for the business to settle for a low-paid worker than a high-paid worker, as it represents a much smaller % of the business’s budget”.*
- *“Additionally, the government could fund frontline community organisations to provide support and advice to migrant workers in relevant languages. We also encourage labour inspectorates to work more closely with frontline community organisations, trusted by the communities they support, to provide information”.*

1c. What response have you observed by the enforcement bodies to identify and address these issues?

Respondents said:

- *“Many bodies are involved in enforcing the International Labour Organisation Work in Fishing Convention 2007 No.188 (ILO C188) Regulations including MCA [Maritime Coastguard Agency], HMRC NMW, Police, Border Force as well as managing migration routes of workers into the UK. Following the introduction of the new legislation in 2019 it appears that there has not been enough additional resources or training allocated to the agencies responsible and there is a greater need for cross-departmental collaboration”.*
- *“There has been an increase in dubious intermediaries seizing the opportunity to profit from IR35 reforms by maximising contractors’ income. Some of these will be disguising a portion of contractors income as a loan or similar non-taxable income, and some are simply paying their contractors gross with no tax or NICs [National Insurance Contributions] deducted whatsoever. In both of these cases the end-client engaging contractors is usually unaware of the dubious practices taking place”.*
- *“Last year Unite was approached by the HMRC National Minimum Wage Enforcement team with proposals to deliver online training for members earning the minimum wage. The purpose of the training was to increase awareness of NMW/NLW for workers and how they can report underpayment to HMRC NMW. Unite supported and publicised this initiative, however, Unite remains concerned HMRC NMW E24 guidance does not have any enforcement for workers but rather it is a tax concession for employers. Additionally Unite is also concerned this training is not widely available and given the high number of migrant workers who work in low paying sectors Unite believe training and information should be available in other languages”.*
- *“Responses by enforcement bodies are in line with their budgets in terms of the impact they can make. Increased support of channelling their efforts through employer led bodies is the answer to address this”.*

Chapter 2: Workforce

Looking at the experience of people engaged in or available for work, either in a specific geographical location or in a particular firm or industry sector.

2a. What has been the experience of workers arising from changes to the labour market? Please provide specific evidence.

2b. Have changes in the immigration rules in 2021 impacted on workers' experience and has this differed between migrant or domestic workers?

2c. Are these impacts consistent across the board, or do they vary by sector? If the latter, then how?

2d. Is there any evidence to suggest additional threats to workers associated with labour shortages?

The most common themes put to us by respondents related to issues connected with recruitment, non-English speaking workers, digital exclusion, and labour shortages. Changes since the COVID-19 pandemic and the UK's withdrawal from the EU (Brexit) are having a big impact especially on how long it takes to fill roles mainly with people from the EU.

Respondents agreed that this creates difficulties not just for the employer but discourages the recruitment of suitable candidates. Further issues and concerns by respondents include:

Brexit: Respondents put to us that the end of EU Free Movement and the introduction in 2020 of a new 'points based' immigration system has led to an increase in temporary visas, and the reintroduction in the UK of seasonal visa schemes designed to bring in migrants on short-term contracts to undertake work particularly on farms. There is clear evidence that such short-term visa systems significantly increase the risks of exploitation for migrant workers, as well as those in low paid work.

Recruitment: It was put to us that there seems to be issues for businesses operating in certain sectors. Hospitality, for example, has an issue with high vacancy levels. The emergence and growth of the gig economy also seems to pose problems in terms of compliance. Often, there is an educational gap for organisations and workers in this area. Thus, how can businesses be expected to be compliant if they are not aware of certain rules, and if there is no appropriate, tailored education to guide them? In this regard, respondents argued that at present, there is not a level playing field for employment, businesses, or agencies. Out of around 40,000 agencies and employment businesses, respondents felt that only around 1,000 of those are properly regulated and it is felt that regulations do not go far enough to address non-compliance from a huge swathe of the sector.

Other respondents told us that it is important to mention the abundance of “over compliance” in certain areas versus none in other areas of the labour market. It is felt that the setting out of compliance requirements and the subsequent audit process via the use of frameworks can be disproportionate. The high cost of complying, combined with the often low margins that are then in turn eroded by inflation, makes running an employment agency generally an unattractive proposition.

Labour and Skills Shortages: Some respondents particularly in the garment sector told us that from their experience of ongoing conversations with their suppliers and the recruitment process, the main threat to workers in their sector does not stem from labour shortages, but rather the lack of English speakers. In their engagement with NGOs, charities and suppliers, English language capability and adoption amongst the community is low which affects the workers’ level of empowerment and ability to understand, access and mobilise their workplace rights. This can leave workers open to exploitation which is why some respondents are supporting the introduction of free ESOL training.

Other respondents reported a skills shortage across the garment and textile industry. This is a threat to UK manufacturing and therefore to workers in this sector. If the necessary skills base is not available, then there is a risk that the UK garment manufacturing will be left behind. In essence, the answer is to encourage and offer incentives to UK retailers to source more within the UK and therefore increase investment into garment manufacturing hubs such as Leicester.

Parcel Delivery Sector: Respondents told us that the increasing use of self-employed labour in the parcel delivery sector (and other areas in the gig-economy) is a loophole that institutionalises the exploitation of these workers. Although employment status is outside the scope of the enforcement bodies, respondents told us that there is still a misclassification of employees who miss out on basic employment rights and protections. Respondents told us the vast majority of parcel delivery operators outside of Royal Mail use self-employed labour. Not only does this deprive these workers of their rights to the minimum wage, sick pay, and holiday pay, it places undue pressure on Royal Mail and encourages a race to the bottom in working conditions. Respondents added that the evidence that these self-employed workers are routinely exploited (relating to rates of pay, terms and conditions, long and unpredictable hours, punitive management practices) is overwhelming and there is an obvious need for better data on the conditions of the self-employed.

Digital Exclusion: Following the implementation of the EU Settlement Scheme, respondents put to us that they have received complaints and requests for advice from users with dual nationality especially from women who were unable to work because there were issues with digital checks, lack of understanding of how the system works, lack of access to technology or issues with the portal itself. Furthermore, for migrant communities – as well as for older women and those with disabilities – online status is problematic from the start because of lack of access to technology or insufficient digital literacy. For example, in the cleaning and hospitality sector, where migrant workers make up the majority of the workforce and which are already plagued with irregularities, abuse of worker rights and exploitation will be more affected by these changes, and migrant workers will be further excluded from the system.

Employment Tribunal (ET) System: Respondents argued that the use of more restrictive, short-term visas for low-skilled workers may expose those workers to unscrupulous employers, who may be aware of the delays in the ET system and the knock-on impact on the likelihood of such workers taking steps to enforce their rights before the ET in the short period for which their visa is valid. Whilst it remains possible, in principle, to pursue claims in the ET from abroad, there are significant legal and practical hurdles to doing so, further reducing the likelihood that those engaged on such visas will pursue enforcement of their employment rights. The broad impact of the use of short-term visas is not sector-specific, although their use is of course more prevalent in some sectors than others.

2a. What has been the experience of workers arising from changes to the labour market? Please provide specific evidence.

Respondents said:

- *“Some workers are suspicious of umbrella companies and others challenge their IR35 status. There is clearly a lot of confusion in terms of the right route to take to be compliant”.*
- *“Our experience is that SMEs across all sectors are finding it difficult to recruit, especially in the hospitality sector”.*
- *“[The Joint Council for the Welfare of Immigrants] JCWI is concerned that the government used the restrictive seasonal visa programme as a valve to relieve pressures of labour shortages in key industries in the winter of 2021-22, without any appropriate safeguards or planning to ensure that the risks of exploitation that these schemes are evidenced to produced could be mitigated”.*
- *“Workers are being classed as self-employed for roles that are straight-forward employed roles”.*

2b. Have changes in the immigration rules in 2021 impacted on workers’ experience and has this differed between migrant or domestic workers?

Respondents said:

- *“Our research shows there are differences but also there is confusion and a lack of clarity from employers”.*
- *“Our latest investigation into the seasonal worker visa scheme found that as many as 150 Nepalese workers each paid thousands in illegal recruitment fees to work on UK farms. Modern slavery experts say that the risk of workers facing these sorts of charges is higher since the end of free movement and the expansion of the seasonal worker scheme”.*
- *“Changes in immigration rules have impacted in the hospitality sector, cleaning and social care sectors, especially in the environment of full employment with limitations on migrant workers”.*
- *“Temporary workers increased by 9.3% for the three months from September to November 2021 compared to the same period one year prior. This is a significant jump and shows that temps are effectively powering the economy as businesses struggle to recruit permanent staff”.*

2c. Are these impacts consistent across the board, or do they vary by sector? If the latter, then how?

Respondents said:

- *“Greater impact is felt in sectors with harder to recruit skill sets and has supported recruitment agencies by widening their field of talent”.*
- *“The impact of IR35 was most seen in high paying skilled jobs such as IT contracting, finance and consultancy. These professions would previously have frequently operated outside of IR35. Other sectors were also affected, and the problem of umbrellas offering alternative low tax solutions to former contractors applies across all sectors”.*
- *“Reed have observed instances of fraudulent imitation of companies to obtain payment of workers that have never worked as well as the use of social media sites that have mimicked our organisations in order to charge work seekers to register. This practice is normally targeted at overseas work seekers”.*
- *“There seems to be particular issues for businesses operating in certain sectors. Hospitality, for example, seems to have an issue with high vacancy levels at the moment. The emergence and growth of the gig economy also seems to pose problems in terms of compliance. Often, there is an educational gap for organisations and workers in this area”.*

2d. Is there any evidence to suggest additional threats to workers associated with labour shortages?

Respondents said:

- *“Minimum wage remains a threat due to unintentional non-compliance”.*
- *“Yes – risk and vulnerability of migrant workers being subjected to labour abuse and exploitation, as well as physical and sexual violence. This is due to widespread use of transit visas to employ migrant workers. Please see previously cited ITF and University of Nottingham reports”.*
- *“Furthermore, there is an obvious need for better data on the conditions of the self-employed. There is very little government data on the earnings of the self-employed, especially at a sectoral level. This is a particular problem as research shows that the self-employed labour market is extremely polarised between high and low earners. The respondent is calling for a government consultation into the size, scope and use of bogus self-employment in the UK labour market”.*
- *Labour shortages and the high demand for labour poses a risk of increased demand to schemes/services that are unscrupulous”.*

Chapter 3: Workforce Engagement

Looking at evidence of how workers gain understanding and enforce their employment rights.

What examples can you share of initiatives that have assisted workers to understand and enforce their rights – particularly as regards harder to reach workers?

It was emphasised that employers play an important role in informing their workers about their employment rights, giving them a more effective voice in challenging unfair work practices. This is particularly necessary for low-paid jobs where union membership is less prevalent. Adequate provision of information is crucial for ensuring low-paid workers have an effective voice at work. The key themes that came out from this question include communication, collaboration, training and induction, whistleblowing, and union access to workplaces.

Respondents reported taking more of an initiative to engage with their workers, providing useful guides to their rights. They also acknowledged that the importance of the minimum wage as a tool to meet that goal, as well as the Taylor Review of Modern Working Practices to significantly support workers in the temporary engagement sector. However, other respondents added that strict penalties must be imposed on the employer if it is found that workers have been wrongfully charged unlawful recruitment fees at any point within the enrolment process.

Collaboration: Respondents highlighted that they have been working with the trade unions, local council, and local charities to develop a workplace arbitration model for use by the garment sector. They work with different organisations at regular intervals to raise awareness especially around the national minimum wage and they have partnered with bodies such as HMRC NMW to run joint webinars with the support and inclusion of other employers. Other initiatives shared have been targeted outreach programmes with workers, and engaging in one-to-one dialogue with workers at local community centres where workers can speak freely without any pressures of the workplace. It was argued that this has created an environment where workers feel empowered enough to seek the help and advice they need. Some examples of engagement with workers include, but are not limited to, the Employment Specialist Forum, Inverness Badenoch and Strathspey CAB, Fair Work in Action Project, Regional Equality Forum, and their work at conferences, organising fringe meetings and visiting workplaces, all of which allow them to raise awareness of rights at work.

Communication/Languages: It was highlighted that communicating with workers in their own languages is effective in providing clear and comprehensive information about their rights and employment contracts. Some respondents reported using forms in different languages where workers can report labour abuse. Others reported having core guidance for workers in different languages: for example, one respondent produces one on 'Workers Rights', which is available

in 20 different languages. We were told HMRC NMW used to provide a short introductory guide to the UK tax system '*Coming to work in the UK- We'll show you the way to pay your taxes.*' in Bulgarian, Czech, English, Hungarian, Latvian, Lithuanian, Polish, Portuguese, Romanian, Russian and Slovakian, but the multi-lingual leaflet was withdrawn on the basis that English speaking should be encouraged to help people to integrate. This was viewed as short sighted. Some employers have developed basic employment rights guidance and had this translated into French, Bulgarian, Italian, Romanian, Polish, Portuguese and Spanish.

Training/Education: Respondents confirmed they hold regular education and rights training seminars with workers. Leadership training has been instrumental in building the confidence of branch officials who have gone on to teach other hospitality workers about their rights at work and how to enforce them. The training offered to workers by some respondents focus on digital skills, reflecting their members increasing difficulty in accessing and verifying information regarding how their wages have been calculated following a move to electronic payslips. However, others argued that clarity around employment status is the way in which members can enforce their rights as individuals and improve conditions collectively. Also, practical training sessions/webinars including domestic violence is a workplace issue.

In addition, Unite has delivered training carried out with Spanish, Portuguese and Polish interpreters which has allowed them to equip migrant housekeepers with the knowledge, skills and confidence to challenge non-compliance. This is building on their 10-year United Migrant Workers Education Project (UMWEP) program which offers free ESOL, ICT and arts lessons to migrant and vulnerable workers, helping to build a community and empower workers to understand and challenge their employment rights. The English they teach as part of the ESOL program is designed around the language used in the workplace to equip learners to communicate better. The GMB union have recently negotiated collective agreements with several gig employers, putting in place important safeguards and improved terms and conditions for a largely migrant workforce.

Enforcement Bodies: It was suggested that there are several areas where the enforcement bodies could work together to make information and guidance more accessible for vulnerable workers such as easy read versions of basic guides around what to do if they need help or if they don't understand their pay. For example, for migrants who speak little or no English it is unlikely they will be able to navigate the automated voice recognition system on "HMRC NMW helplines"¹. The purpose of the automated 'voice recognition' system on HMRC NMW helplines attempts to cut calls going through to their advisers and reduce waiting times by asking the caller what their call is about. It may then direct the caller to online guidance so that they can read up on the answer for themselves, or it may ask the caller some security questions and eventually put them through to an adviser. Respondents felt this initiative lacked the provision of foreign language information. It was emphasised that enforcement bodies must see first language support provision as a crucial factor to ensure there is better understanding of their work and how they support workers via engaging with migrant communities and informing workers of their rights in the community.

That said, respondents highlighted that following a recent National Minimum Wage publicity campaign by HMRC NMW in the hotels sector in East Anglia they had an influx of calls to their helpline from individuals inspired to check on their employment rights. This is encouraging feedback. Respondents recognised work underway at present relating to improving awareness of the minimum wage including advertising in targeted sectors or via coverage on TV and radio consumer shows. HMRC NMW recently joined with Martin Lewis for the Money Saving Expert Newsletter which drew attention to sources of advice and assistance on the NMW including Acas

¹ The Government funded helpline for workers on HMRC NMW matters is provided by Acas.

sources of help. Respondents recognised the most effective recent worker engagement has been with pension auto-enrolment, where there was extensive media advertising to make workers aware of their rights.

Key Information Document (KID): The introduction of the Key Information Document was viewed as a good development in helping workers understand their pay and deductions. This can be of particular use to workers who are engaged through umbrella companies as it should give a much clearer breakdown of who is responsible for making deductions or guard against the umbrella company taking their holiday pay. Respondents agreed that the KID should bring more transparency to the labour market. However, there were concerns about whether all workers entitled to a KID were being supplied as widely as they should and a view that the issuing of KIDs and their accuracy was not enforced to ensure a much wider take-up.

Whistleblowing: Some respondents have made it mandatory for all their suppliers to advertise and educate their workers on whistleblowing processes and clearly encourage workers to speak up, should they witness or experience non-compliance or abuse. For example, a new in-house whistleblowing platform called “Speak Up”- (a policy for suppliers, contractors, subcontractors, and their employees for the reporting of potential malpractice, health and safety issues and unethical practices) and a constant dialogue between retailers who source for them. Furthermore, respondents expressed interest to support initiatives that could use their expertise in other ways. For example, one respondent put to us that they have been involved in a local project to help ensure young people nearing school leaving age are aware of their employment rights. This was centred around information sessions at local high schools on minimum wages and rights at work. Due to the COVID-19 pandemic the initiative did not progress, but the respondent is keen to expand this work to help make young people at school, colleges, and universities aware of their basic rights in the world of work.

Unions: Trade unions were recognised as playing a crucial role in workforce engagement, and they do a great deal of work to ensure workers understand their rights. Union respondents argued that collective bargaining is the most effective method to ensure workers get fair terms and conditions and that it provides an effective, prompt mechanism for enforcing workers’ rights. Ensuring that unions have access to workplaces would infinitely improve workers’ understanding, and subsequent enforcement, of their own rights. Respondents also informed us that away from their central training offer, their Union Learning Representatives and Union Health and Safety officials do important grassroots work in assisting workers in understanding and enforcing their rights. They have also worked with employers to establish Union Learning Hubs in workplaces.

Other respondents emphasised that the Responsible Car Wash Scheme (RCWS) has helpful resources to ensure legal compliance with employment regulations where there have been higher levels of risk in the past at hand car washes. For example, RCWS visits and audits provide an attempt to inform workers of their rights. Interventions such as this can potentially be effective in reducing the risk of labour exploitation in the hand car wash sector, though it is also argued that this effectiveness is limited due to that fact that interventions so far have been voluntary.

Respondents are working closely with enforcement bodies such as the GLAA to focus on labour exploitation and the East European Resource Centre to improve understanding of the complexity of labour exploitation in the cleaning sector and to foster collaboration between supporting organisations and labour market enforcement. As part of this initiative, they produced an information campaign via digital platforms tailored to their workers. Although much work remains to be done, they encourage this collaborative approach to help tackle exploitation. In the hospitality sector, respondents have and continue to work with HMRC NMW, the GLAA, and others on webinars and materials to promote best practice.

Chapter 4: Business Engagement

Various mechanisms initiated or supported by the enforcement bodies encourage, influence and embed good practice, e.g., Responsible Car Wash Scheme, Construction Protocol and the Apparel and General Merchandise Public/Private Protocol, The National Minimal Wage Naming Scheme and the Good Business Charter.

4a. What impact do you think these interventions have had? i.e., are they effective?

4b. Why? What would make them more effective?

4c. Are there any other examples of good practice? These can be drawn from across the regulatory landscape.

The Government seeks to support employers to ensure the minimum wage is paid correctly and there are several state enforcement bodies actively working, often collaboratively, to encourage good practice, compliance and improve awareness of worker's right across all sectors.

Respondents told us that the importance of this collaboration cannot be underestimated. The constant and open dialogue allows employers and workers to be aware of trends and instances of different types of non-compliance. Both parties can acquire the necessary information to further their work and it allows employers to constantly adapt and improve due diligence processes so that any new forms of non-compliance can be identified. One respondent told us that collaboration with the GLAA had enabled it to have a greater insight into their experiences in their supply chain, many of which will have relevance to their work across the entire sector. Another respondent told us that they engage directly with the Low Pay Commission alongside the GLAA by introducing them to a handful of their suppliers, so they too can benefit from dialogue with the enforcement agencies.

Unions pointed to their constructive engagement with employers where they are recognised across many areas of employment rights to ensure they take a proactive lead on enforcement and go beyond the regulatory minima. For example, during the COVID-19 pandemic they worked closely with the British Retail Consortium and many retailers on health and safety standards. They have regular and detailed discussions with employers on topics such as holiday pay, statutory leave rights and enhancements, the minimum wage and salary sacrifice schemes.

Responsible Car Wash Scheme (RCWS): Respondents believe that the RCWS in the current format is not achieving its full potential as the scheme is voluntary to join. Instead, they believe participation should be mandatory. The view is that voluntary compliance schemes lack the required stick that accompanies the small carrot of enhanced business due to a perceived improvement in quality by a customer. The limited scale and reach of the RCWS scheme mean

it does not have the same brand awareness as the food hygiene certification, for instance, and therefore it is not a viable quality assurance tool at present. Further work undertaken by the RCWS working with the GLAA in 2021 provides additional evidence on the limitations of a voluntary scheme operating in an environment of regulatory non-enforcement. Others have pledged their support for the scheme explaining that it promotes employment regulations given the relatively high risks of non-compliance. This involves working with several UK car wash franchise partners to mitigate risks. One example here has been to help franchisees transfer from paper-based records to an online platform to record working hours and right to work checks.

Ultimately, respondents told us that they support Matthew Taylor's recommendation, made while he was interim Director, that mandatory licensing should be introduced to the hand car wash sector, especially where non-compliance is seen as endemic. They told us that to ensure meaningful accountability, the UK must move beyond a voluntarist model towards binding obligations. It was argued mandatory licensing would drive up conditions in the hand car wash sector.

Construction Protocol: The GLAA Construction Protocol is a joint agreement with some of the biggest names in the UK construction industry aimed at working collaboratively with the GLAA to share information that will help eradicate slavery and labour exploitation in the industry. According to one respondent, the Construction Protocol has been very successful in raising awareness of modern slavery risks, and in particular the posters on construction sites being produced in multiple different languages have been effective. The construction sector is one where modern slavery is at higher risk of happening unnoticed. Respondents felt that progress towards reducing the risk has been made, as there is now a greater understanding of the signs of potential modern slavery and of action to take to address any concerns.

Good Business Charter: Some respondents told us that they support the Good Business Charter and have partnered with the Good Business Foundation to create a small business friendly version for businesses with fewer than 50 employees. They argue small businesses are embedded in their community and often do good things for their employees, supply chains and the planet. But this is not often recognised or celebrated. The Good Business Charter provides a way to do this, and members are enthusiastic about participating. The Charter is an industry-led initiative that is seen to have been successful. Other respondents told us that small employers find the approach taken by the Pensions Regulator to achieve compliance with auto-enrolment requirements to be more helpful and proportionate than the approach generally taken by HMRC NMW. These respondents urge all relevant regulators to consider the perspective of the small business owner, who will usually lack the kind of legal and HR support available to larger businesses.

Apparel and General Merchandise Public/Private Protocol (AGM-PPP): The AGM-PPP was launched in December 2018 and commits signatories to work together to eradicate slavery and exploitation in textile supply chains. Signatories include labour market and other enforcement bodies and government departments, industry bodies and retailers. Since October 2020 NGOs, Leicester City Council, the TUC and others have joined the AGM PPP. Respondents in this sector told us that they are still negotiating the creation of a binding agreement between brands, suppliers and trade unions – the Joint Responsibility Initiative (JRI) which could have a major impact on purchasing practices, transparency and accountability.

Two important initiatives have emerged in the Leicester garment sector. Firstly, the creation of the Fashion workers Advice Bureau – Leicester (FAB L) - hosted at the Highfields Community centre in Leicester. This is working to support garment workers and the local community. Secondly, the discussion between trade unions and several brands have resulted in workplace access agreements where unions are allowed to enter workplaces. This was seen as ground-breaking considering that not a single garment factory in the UK is unionised due to years of anti-union legislation and the refusal of brands to countenance active support for freedom of expression.

Respondents highlighted that the difficult situation in which garment workers may find themselves. On the one hand they may be hired to work a set number of hours per week but are asked to work for longer. At the same time, employers encourage workers to also sign onto benefits, which they are entitled to do if working 16 or fewer hours per week. While this enables workers to survive on their combined wages and benefits, it also allows employers to continue paying low wages and risks making workers complicit in criminal activity, thereby increasing workers' vulnerability and reluctance to speak out.

Respondents told us that most businesses do not know how to communicate effectively with government. For example, an employer takes workers on and promise them the minimum wage for a set number of hours (e.g., 15) but ask them to work for longer. At the same time, employers encourage workers to also sign onto benefits. This enables workers to survive on their combined wages and benefits, allows the employees to continue paying low wages and makes workers complicit in criminal activity which increases the workers vulnerability and reluctance to speak out.

One respondent's view was that despite some official's reluctance to engage in meaningful discussion on collaboration and addressing challenges to obtaining actionable information and addressing causes of exploitation, the AGM-PPP will continue to work within their capacity.

NMW Naming Scheme: The Naming Scheme which is run by the Department for Business and Trade (DBT – formerly BEIS) is aimed at increasing awareness of NMW legislation and to act as a deterrent to the minority of employers who may be tempted to, or unintentionally, underpay their workers. HMRC NMW refers the employer to DBT to be considered for naming after the HMRC NMW case closure letter has been issued to the employer.

Respondents told us that the Naming Scheme has been disproportionate in some cases and particularly unfair on small employers given the complexity of the legislation and the possibility of inadvertent breaches. Respondents were concerned that the scheme targets businesses that are trying to do the right thing, penalising those who unintentionally breach rules. They told us that the Naming Scheme has become less impactful over time, especially after respected household names have been included for "technical" breaches of the rules or where it is known that employers realised there was an issue and disclosed voluntarily. Some respondents reported that the scheme is ineffective in encouraging compliance, and yet is detrimental to employers included in the list for a small error. While the recent increase of the threshold from £100 to £500 was a step in the right direction, removing the smallest errors from the list, this still inflicts reputational damage on small businesses who have made genuine errors.

Other respondents argued that whilst changes have been made to the scheme recently (for example, by removing the word "Shaming" although by implication this is still the intention), it feels that an opportunity has been missed to ensure the scheme has the intended effects. Unfortunately, in their view, the system still seems heavily weighted towards penalising employers who have unintentionally failed to meet their obligations due to the complexity of the rules. The impact of appearing on the list is somewhat diluted for businesses that are not high profile. For instance, in the most recent Naming Round, a fish and chip shop whose name appeared further down the very long list, underpaid one worker by over £17,000.

Some respondents though recognise that the scheme has had some impact in that it publicises which companies are breaching NMW regulations and improves transparency for workers. However, it was felt the current scheme is something of a blunt weapon because respondents believe that all levels of non-compliance are treated the same way and there is no distinction between intentional and accidental non-compliance. Whilst respondents supported the intention of publicly naming unscrupulous employers, who knowingly pay staff less than they are entitled to, there are some organisations who are just not aware of the rules or are making genuine mistakes. This approach can sometimes mean that organisations with the right intentions are penalised.

Respondents argued that there should be stiffer penalties for breaches with a clear strategy for prosecution in the worst cases of non-compliance. The low number of criminal prosecutions may well be motivated by pragmatic reasons (for instance the speed of receiving arrears, and providing value for taxpayers' money), but it does not send out the right message to employers. Where there has been a clear and deliberate failure to pay a minimum wage increase on time, respondents believed that the employer should face a fine, even if they have self-corrected before the investigation begins. While self-correction could be considered as mitigation, it should not automatically preclude imposing any fine.

Other respondents told us that the Naming Scheme is a positive development, and that Naming Rounds should be more frequent. In addition, it is important that naming and shaming is not the limit of the ambition to deal with minimum wage breaches and effectively “a fig-leaf” for a lack of significant further action. Although respondents accepted that, where breaches are deliberate or repeated, there is a public interest in naming those responsible, it was recognised that small businesses can suffer significant reputational damage from being named, even when a breach was not deliberate.

Respondents recommended to us that it would be more effective to engage with those employers who have breached the law inadvertently, and to reserve naming for those who have deliberately breached the law and/or those who have done so repeatedly. To encourage compliance, government, and enforcement bodies, including HMRC NMW and a future Single Enforcement Body, should create a culture of openness, where small businesses feel able to approach enforcement bodies for help without fear of penalties – a ‘safe harbour’ approach where small businesses are helped and then put on the right course. Clear and digestible guidance can play a role in this. Also, respondents suggested to us that regulatory interventions aiming to engage businesses should be designed and implemented in a way that takes into account the emerging good practice around non-regulatory interventions, including those initiated by businesses. Lastly, respondents suggested that a decision to take enforcement action or to name firms should be based on the degree to which any breach was deliberate and/or the amount of detriment caused to employees.

4a. What impact do you think these interventions have had? i.e., are they effective?

Respondents said:

- *“They have minimal impact as they can be ignored and don't have large marketing budgets”.*
- *“Evidence demonstrates a correlation between the seriousness of the legal breaches and the branch of authorities involved. The more serious the crime, the more likely the NCA [National Crime Agency] and police forces are to be involved rather than other agencies. The effectiveness of this multi-agency approach is stifled by the lack of a coordination and information sharing mechanisms. As areas of jurisdiction for the agencies inevitably overlap, there are times when gaps appear between the enforcement efforts of these agencies. This sometimes results in confusion regarding responsibility for enforcement, which combined with often poor inter-agency communication and intelligence-sharing causes delays that inevitably benefit the targeted criminals”.*
- *“Most interventions target low paid sectors and cash-ready sectors (e.g., car washes), they rarely directly impact the higher-end of the recruitment sector”.*
- *“The NMW name and shame scheme has had some impact in that it makes information around which companies are breaching NMW regulations public and improves transparency for workers. If companies know that their breaches of the regulations will be publicly available this will encourage them to take the necessary precautions to avoid breaches in the future”.*

4b. Why? What would make them more effective?

Respondents said:

- *“This question assumes you are already aware they are not effective. They don’t have the backing of employer led bodies per sector. This type of action should be coordinated by employer led bodies. Just like the ESFA [Education, Skills and Funding Agency] and IfATE [Institute for Apprenticeships and Technical Education], the SEB needs to have an employer directory of employer led bodies to support its objectives with a small budget for these non-profit organisations”.*
- *“Targeting the recruitment sector specifically would help to raise the profile of enforcement and influence good behaviours”.*
- *“The problem boils down to the fact that, for breaches of employment law, it is still cheaper to disregard the law, than it is to comply with it – a paradox that is systemically mitigated for in other parts of the justice system (e.g., sentencing guidelines for careless driving state that “The fine should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence; it should not be cheaper to offend than to comply with the law)”.*
- *“We therefore recommend that a power of collection and management, similar to that for tax, needs to be introduced into NMW law as a matter of urgency. Section 1 Taxes Management Act 1970, governing income tax, capital gains tax and corporation tax, and section 5 Customs & Revenue Commissioners Act 2005 could be used as a model”.*

4c. Are there any other examples of good practice? These can be drawn from across the regulatory landscape.

Respondents said:

- *“The ESFA and IfATE, the SEB needs to have an employer directory of employer led bodies to support its objectives with a small budget for these non-profit organisations”.*
- *“The FCSA provides a gold standard of practice in the umbrella, CIS and PSC accountancy market and further engagement with this particular trade association would be encouraged”.*
- *“Time and again in workshops the roll out of alcohol premises licensing and HMO/Selective housing licensing are discussed as powerful and impactful schemes that could be adapted. Our concern is the deeply embedded nature of unlawful and illegal practices will take significant time to be eradicated using this approach – and that the quality of any such licensing schemes are as dependent upon the enforcement capacity and inclination of agencies as they are on the robustness of the licenses per se”.*
- *“We believe the Financial Services Sector provides a framework as a starting point with Compliance Networks”.*

Chapter 5: Recruitment

5a. What changes have you observed to recruitment patterns and practices. For example, online recruitment and offshore recruitment.

5b. Do any of these trends you observe raise concerns about compliance?

5c. Do you have any evidence to share in respect of recruitment fraud?

Respondents highlighted a number of key trends and challenges indicating the changing landscape with recruitment practices. Respondents said it is now more difficult to recruit employees as a consequence of leaving the EU: according to one respondent, they have lost two fifths of their EU employees. Another respondent told us that they have reduced their recruitment of EU staff by a fifth (22 per cent) while others told us that they have increased virtual working by 12 per cent to combat border problems. Respondents also told us that they are reducing their use of contractors due to IR35 legislation. Fewer than half (46 per cent) of businesses have a workforce planning strategy based on a robust understanding of current and future workforce needs and 43 per cent tend to take an ad hoc approach to recruitment. Respondents agreed that businesses vary considerably in how far ahead they look when planning and acting on current and future workforce requirements, explaining that 28 per cent don't look beyond six months, while only 13 per cent are planning for over three years into the future.

Despite these factors and growing unemployment², respondents said to us that almost half (45 per cent) of employers believe that competition for well-qualified talent has increased, and a similar number of employers who attempted to recruit had difficulties attracting suitable candidates. Respondents agree that the labour market has changed dramatically in recent months, and respondents have reported seeing a growing crisis in hiring, with very significant skills and talent gaps across many roles. Respondents added that the CIPD Good Work Index 2022 shows a deteriorating level of confidence about career opportunities among a significant proportion of the workforce with more (49 per cent) disagreeing than agreeing (31 per cent) with the statement (CIPD 2022).

Remote/Hybrid Working: The COVID-19 pandemic and Brexit have driven the demand in remote working, and respondents report seeing a growing crisis in hiring, with very significant skills and talent gaps across many roles. Respondents across all sectors and sizes have reported an increase in requests from contractors working outside the UK or delivering services to non-UK clients. The complexity of operating these arrangements is underestimated and technically complex even for large businesses. As stated by one respondent, the change in working practices has meant that interviews can be held remotely which has also significantly widened the talent

² However, the Office for National Statistics (ONS 2023) state that for October to December 2022 that the UK unemployment rate was estimated at 3.7%, 0.1 percentage points higher than the previous quarter, but 0.2 percentage points below pre-coronavirus levels.

pool organisations can pick from. A focus still needs to be placed on ensuring sufficient right to work checks are carried out, and these processes should not suffer as a result of the changes to the way people are now working.

Off Payroll Working: In addition to the increase in umbrella companies, off payroll working is having other impacts on the labour market. One respondent reported to us that professional service organisations (PSO), similar to umbrella companies, allow clients to have a flexible workforce for specialist tasks, but they can pose cyber risks with workers left without pay after criminals diverted payments. We were told that tax fraud and underpayment remain common. Workers are not always aware of their rights and are made to pay excessive umbrella fees.

There is increased interest in sub-contracting driven by what is still a relatively tight labour market. Some workers fraudulently re-subcontract work and confusion about IR35 poses recruiter risks where HMRC NMW decides the hiring business is an employer with associated obligations. IR35 reforms mean workers end up being forced to work for umbrella companies. Additionally, some workers remain in precarious employment until they find another job instead of reporting non-compliance for fear of reputational damage to themselves. Businesses that need rapid expansion often use umbrella companies. This is a risk factor for non-compliance and there is an inconsistent application of rights in the rideshare sector between how drivers (other than Uber) are treated following the Supreme Court judgement.

Online Recruitment and intermediaries: Evidence from respondents indicates that online recruitment is increasing, providing greater opportunity for fraud. It is increasingly common for workers to only have contact over WhatsApp with few avenues to raise complaints or clarify work conditions. This is apparently more common with zero-hours contracts and workers hired via LinkedIn. Social media opportunities are less scrutinised by workers because candidates now expect shorter processes and online recruitment can fill vacancies more quickly. 26 per cent of businesses report a significant increase in digital recruitment. International recruitment also needs more regulation. For example, a report from a respondent noted that farm workers were recruited from 58 countries in 2021; in this instance, it is difficult to ensure recruitment is fair, (e.g., workers forced to pay recruitment fees). Respondents argued that the addition of low wage roles to the shortage occupations list increases the risk of non-compliance when hiring from overseas.

The labour market is increasing its use of intermediaries, especially in knowledge industries but not all options are compliant. The trend for agencies to receive incentives per worker recruited to umbrella companies is also increasing the risks of employment by non-compliant firms. Lastly, it was suggested that algorithmic recruitment methods increase the risk of biased hiring.

Non-payment of National Minimum Wage (NMW): Respondents put to us that local authority procurement practices in the care sector need to improve to ensure contractors are clear on their obligations. Travel time and breaks in social care are not routinely compensated and there is a trend towards a lower risk of NMW compliance. One respondent outlined the issue of a “clawback contract”, where repayment clauses and the punitive way they are being used has raised multiple concerns around compliance with ethical recruitment, exploitative treatment and worsening conditions of service and care in the health and social care sector. Respondents also told us that they are concerned at reports of migrant workers having to pay extortionate fees to recruitment agencies for jobs in the agricultural sector in the UK. This is in addition to existing concerning reports about conditions experienced by workers in the Seasonal Worker Visa scheme.

Temporary Contracts: During the pandemic in particular, workers, including furloughed workers, were being hired on temporary contracts in supermarkets and food retail and were sometimes seeing their temporary contracts extended for long periods, or that temporary contracts were effectively being used as a probationary period, providing little job security.

5a. What changes have you observed to recruitment patterns and practices. For example, online recruitment and offshore recruitment.

Respondents said:

- *“The recruitment practices in the sector have remained broadly stable. Recruitment is predominately focused on people living in close proximity to stores. In 2021 64% of colleagues were recruited through in-store advertisement and 15% online. In 2022 65% of colleagues were recruited through in-store advertisement and 19% online”.*
- *“Online recruitment has risen. The formation of new agencies has slowed. Nice agencies are doing well. Recruiters are struggling to fill roles. Candidates are less interested in long recruitment processes”.*
- *“The Pub companies make the self-employed manager responsible for recruiting staff under their own micro limited company which they set up for the sole purpose. In terms of recruiting the “self-employed manager” they simply dress up an employed role as a “franchise”.*
- *“The most significant issue is speed. Selection decisions have to be made much more quickly: managers know that applicants will receive other offers within hours. Greater use is made of social media/LinkedIn for job advertising. Larger companies have account managers with the DWP and use the Jobcentre plus network extensively”.*

5b. Do any of these trends you observe raise concerns about compliance?

Respondents said:

- *“Compliance remains a challenge until the attitude toward regulation changes. Regulators need to work on using employer bodies to give them USPs to encourage membership and compliance. Most non-compliance is unintentional, and this can be minimized though strategic sector engagement”.*
- *“The increase in the number of countries that farm workers are being recruited from – 58 countries in 2021 – without an increase in the resourcing of the Gangmasters and Labour Abuse authority raises concerns about the ability to ensure fair recruitment is taking place in all these countries, and that people aren’t being charged fees”.*
- *“Crewing agents are not being properly regulated in the labour sending countries. It is a requirement of ILO C188 that labour supply countries have ratified this convention. However, the Philippines has not ratified the country and uses a seafarer’s transit visa to supply workers to the UK fishing industry. See ITF Briefing”.*
- *“A focus still needs to be placed on ensuring sufficient right to work checks are carried out, and these processes shouldn’t suffer as a result of the changes to the way people are now working”.*

5c. Do you have any evidence to share in respect of recruitment fraud?

Respondents said:

- *“This investigation goes into depth on workers being charged thousands of pounds for jobs and visas on the seasonal worker visa scheme”.*
- *“In many cases recruitment fraud can come from employment businesses and agencies. Umbrella tax fraud is common. Charging candidates can still be seen. Paying under minimum way is common. Not giving workers their due rights is common”.*

Chapter 6: Employment Models

What evidence can you present as regards compliance of newer models of employment – for example gig economy workers, employment through umbrella companies*, joint employment models**

6a. Do you have evidence of these being associated with worker exploitation?

6b. Do you have evidence of other employment models that might give rise to compliance concerns?

***Umbrella company is a term used for a company that employs a temporary worker (an agency worker or contractor), often on behalf of an employment agency. The agency will then provide the services of the worker to their clients. Umbrella companies do not find work for the workers they employ.**

****Joint employment model: An example of this is an employee formally employed by one employer the (primary employer) may be deemed constructively employed by another employer (secondary employer) for example an employer and a contractor or subcontractor performing services for the employer or a staffing agency providing employees to the employer.**

Respondents put to us that there has been considerable focus on supply chains in the UK in recent years, largely due to the risks of abuse for lower skilled and lower paid workers. However, legislative changes also tend to impact the professional end of the recruitment market, adding unnecessary complexity and administration in some cases. An agile, productive, and independent professional workforce remains critical to the UK.

Based on respondents' experience, so far as employment models go, there are practices across the sector of casual and insecure employment. Even though there has been great demand for formal contracted work, with structured working patterns and the enforcement of regular breaks, respondents understand that this may not be the common practice in many factories outside of their supply chain. Additionally, irregular, and unstructured working patterns may give rise to non-compliance that is harder to detect. Therefore, it is imperative that workers understand their rights in the workplace and can identify worker exploitation. This is where modern slavery training for employers and employees has tremendous value. Comprehensive training will allow workers to recognise where casual and flexible working can cross the line into illegal and poor practices. A recent survey conducted by one respondent made the point that it is important to note that for many families a degree of flexibility is welcome to enable them to manage childcare around their work.

Zero-hour, gig work, other irregular work: Respondents in the garment sector told us that there is a trend toward casual or zero-hour employment, irregular and unstructured employment and this makes non-compliance harder to detect even though zero-hours employment brings benefits in terms of flexibility. For example, one respondent told us that their investigation suggested 41 per cent of workers earned less than the National Living Wage and many zero-hours employees found it difficult to access government services (e.g., furlough schemes during the pandemic). Employment through gig work platforms often leaves employment status and rights ambiguous. One respondent told us there are around 900,000 zero-hours workers in the UK and 800,000 in other insecure work. The new employment models allow workers to register for individual shifts but some gig workers informally sub-contract app requests, often paying below the National Minimum Wage. Other concerns were raised around temporary agency workers being employed for long periods of time when they should be brought in on a permanent contract.

International Recruitment: Respondents told us that in maritime fishing EEA and non-EEA nationals are often paid at different rates. Serious labour non-compliance risks were also identified for workers on the seasonal workers visa, including survey evidence showing that many workers feared losing employment if they complained about their treatment.

6a. Do you have evidence of these being associated with worker exploitation?

Respondents said:

- *“Newer models of employment often give rise to non-compliance with tax payments, rights and pay. We report cases to the EAS on some occasions. We also refer complainants to the EAS”.*
- *“Our investigation into Deliveroo was the first time that an independent and reliable dataset was created on gig economy pay. Rather than using survey data, we relied on thousands of invoices shared with us by more than 300 riders. The invoices clearly detailed the hours on the job and how much riders were paid, which allowed us to calculate riders’ hourly pay. We found 41% of riders were earning below the then minimum wage for those over 25. As part of our investigation into Amazon agency work, we spoke to 16 agency workers that worked at Amazon warehouses who told us they received fewer shifts than they were promised, were left with too few hours to make the job viable, and in some cases had wages that went unpaid”.*
- *“Rent a Chair’ models, often encouraged by accountants and bank managers for hair or beauty salon owners to rent chairs in their salons is a compliance issue for many in the way they operate Reforming Employment Status”.*
- *“The current system of self-employed share fishers and employed migrant workers creates a two-tier remuneration model and employment based on nationality. Non-EEA fishers are on fixed wages and the rest of the crew are on shares of catch – thereby receiving greater reward incentive and reward for working excessive hours”.*

6b. Do you have evidence of other employment models that might give rise to compliance concerns?

Respondents said:

- *“All new models of employment are rife for non-compliance as there is too little engagement with employers and no embedded engagement through employer bodies”.*
- *“As referenced above we are concerned about the continued proliferation of disguised remuneration schemes and the recent increase in untested joint employment models seeking to obtain tax benefits”.*
- *“Even high-profile litigation is insufficient to incentivise widespread compliance, as can be seen by cases against CitySprint UK Ltd, Stuart Delivery and AddisonLee, both of whom are leaders in their sectors, and still refuse to engage their fleets of cars and couriers on Limb B worker contracts, despite losing multiple cases at Tribunal”.*
- *“The worry is that new employment models bring with them new risks. There has been much coverage in the news regarding mini umbrella fraud, and there’s real concern over how individuals working for these unscrupulous companies may be impacted. It’s important to note, however, that this is the exception rather than the rule, and the majority of umbrella companies operate in a responsible manner”.*

Chapter 7: Enforcement Resourcing

All 3 enforcement bodies engage in educational activity, promotion of compliance, enforcement and support to workers.

7a. What assessment do you make of how these 3 bodies operate?

7b. Provide evidence and examples of best practice to address labour market non-compliance that you would like to highlight to the Director?

Respondents provided a detailed response to us in respect of the above questions. Though there appear to be mixed views, a common theme was around the lack of resources, particularly for the Employment Agency Standards (EAS) Inspectorate. Some respondents were more critical of HMRC NMW, mainly around treating all cases the same, and that they should focus on ‘deliberate’ non-compliance, and not where mistakes are made (this has been repeated over the last few years). Respondents also highlighted how complex NMW regulations are, and that minimum wage guidance is not always helpful.

Some respondents are encouraged by the work of the three enforcement bodies, and they see many examples of what the bodies are doing to improve education and standards for workers and address non-compliance in the labour market. It was noted that the challenges faced by the enforcement bodies appear to be around the scale and scope of the threats to the labour market compared to resources available. While the three enforcement bodies actively engage with third sector and industry bodies that are working to improve standards for workers, respondents see further opportunity for industry and the third sector to support the enforcement and regulation of the labour market collaboratively. This includes the involvement of other government areas such as the Department of Digital, Culture, Media and Sport (DCMS), the Home Office and HMRC Tax.

Respondents were generally supportive of the three enforcement bodies’ approach and, in general, guidance makes it easier for most employers that want to comply with the law to do so. But respondents did also advocate using the full force of the law for the most serious and deliberate offenders, with civil action and penalties used to deter employers that fall in the middle of this spectrum. However, the existence of three separate bodies does add complexity. For example, retailers have introduced ‘ethical audits’ for suppliers in part due to a lack of confidence in the enforcement of labour market regulations. Suppliers want to end labour abuse and do comply with these audits but having to comply with multiple audits from multiple retailers – despite them all trying to achieve largely the same goal – can place additional burdens on suppliers already facing pressures on their time and resource because of ongoing labour shortage, ultimately adding further costs. Instead, it was argued the focus should be on improving

consistency, having regular communication with all relevant parties (retailers, suppliers and workers etc) and coordination across the three enforcement bodies and ensuring effective and proportionate enforcement.

Many respondents told us that the Government's announcement to establish a Single Enforcement Body (SEB) would result in a better outcome for workers and employers, which they believe could play a critical role in strengthening enforcement of worker protections across all sectors including the gig economy. Respondents wanted the Government to explore all avenues to creating such a body through alternative legislative vehicles, while also facilitating more joined-up enforcement via existing powers. As an immediate step respondents believe that publishing non-statutory guidance on employment status as soon as possible is crucial³. This would provide much needed certainty for businesses and individuals around the protections to which the workforce is entitled. The fact that there is still no timetable for setting up the SEB, or any sign of extra funding is extremely disappointing.

One respondent put to us that according to the Chartered Institute of Taxation, almost half a million workers are engaged through the umbrella company model, that contractor umbrella company cloning is getting worst, and that no framework of laws yet exist for umbrella companies. There is limited resource within the EAS and GLAA and limited evidence that reactive enforcement measures are effective. Prevention will be key, and two options prevail, firstly, to ban chain-leasing (i.e., to outlaw any horizontal or vertical intermediary or third party, contractual or otherwise between the employment business and the worker), and, secondly, to facilitate a licensing scheme of umbrellas and other such models. The licensing scheme requirements should be agreed between key players such as EAS, GLAA and others.

The Employment Agency Standards (EAS) Inspectorate: EAS is considered approachable and supportive by respondents who said the enforcement body was very helpful as an information conduit and promoter of the industry during the COVID-19 pandemic. It was recognised that the recruitment sector needs an effective, specialist and properly resourced regulator. EAS is seen as doing good work, but it needs further resources to be able to effectively regulate a large recruitment sector. Retaining the specialism and targeted enforcement of the recruitment sector in the new SEB will be essential. But agency workers also need protection from those parts of the umbrella company sector that subject them to exploitation such as wage theft, or embroil them in tax avoidance schemes, often with devastating consequences to unsuspecting workers. Compliant recruitment businesses also need the assurance that exploitative companies, that flout the rules and exploit workers, will be properly investigated and sanctioned. If not, non-compliant companies will operate with impunity and undercut the businesses that play by the rules. Given the current cost of living crisis some umbrella companies will no doubt be looking to prey upon workers who need every extra penny. All of this pointed towards a need for an Employment Bill without delay.

The Taylor Review of Modern Working Practices highlighted that umbrella companies needed to be regulated (Taylor 2017). Recruiters and workers alike have responded to the Government's call for evidence on umbrella companies with the good faith that action is imminent. Respondents felt it was time for the Government to make good on this promise to protect hard-working businesses and workers in the recruitment sector. It was recommended that the DLME should work with EAS to develop appropriate output and impact based key performance indicators aligned with the Regulators' Code, against which to measure EAS performance. Respondents wanted DLME to have greater influence to progress the Single Enforcement Body legislation and to influence the enacting of legislation that outlaws chain-leasing or limits the ability of unscrupulous recruitment intermediaries.

3 This was done in July 2022 (BEIS 2022).

However, other respondents have argued that currently it is hard to draw any conclusions as to whether the three enforcement bodies are operating effectively as there is not much detailed, granular information published about how they use their enforcement powers in actual cases. The closest thing to openness and transparency is probably the GLAA's press releases where respondents say they can see some real-life, positive examples of them exercising their functions. This helps create the impression that they are fully focused on mission priorities in terms of stamping out vicious and bad working practices. Respondents are unsure whether the same can be said for the other two bodies, where they felt no 'inside' information was issued at all. The perception of respondents was that progress is probably being made, but maybe at a slower rate.

HMRC National Minimum Wage Enforcement: Whilst HMRC's NMW enforcement activity is an important pillar of ensuring NMW compliance, concerns have been raised by respondents regarding the technical interpretation of aspects of the NMW. Furthermore, HMRC's NMW regulations are extremely complex. Some respondents take the view that certain aspects of its compliance activity seem designed not to address deliberate or even careless breaches, but to seek to identify technical issues which those without the benefit of expert advice are unlikely to spot, and which therefore provide "easy prey" for enforcement activity against large brands whose naming and shaming is more likely to generate headlines. It was put to us that there is an uneven playing field, where smaller, less well-known companies are less likely to be subjected to regulatory scrutiny, whilst larger companies which typically have a stronger desire to be compliant are penalised for minor breaches. HMRC NMW have told us that they work ten times as many small and medium size cases and pass significantly more for the Naming scheme.

It was noted that HMRC NMW capacity to enforce NMW has grown in recent years with its budget increasing from £13.2m in 2015/16, to £27.5m in 2020/21. Reports by the Low Pay Commission (LPC) reveal that 420,000 workers were paid less than the NLW/NMW. Due to pandemic distortions, the April 2021 estimate that approximately 228,000 workers were paid below the relevant minimum wage recognises that this may be an underestimate and it is likely that the true figure for underpayment is somewhat higher. There is also a lack of independently verified key performance indicators to judge acceptable performance levels or value for money. Clearer communication would help to set out the strategic approach HMRC NMW is taking to address the most exploitative forms of minimum wage underpayment and how effective they are in achieving this.

Non-compliance and enforcement of the NMW is perceived as the main threat to the continued success of minimum wage policy. The DLME and appropriate experts should work with HMRC NMW to develop relevant output and impact based key performance indicators such as those set out in the Regulator's code. HMRC NMW performance should be measured and reported against these. Secondly, it was proposed that the DLME and appropriate experts should work with the HMRC NMW Enforcement Team to evolve the strategic approach towards an intelligence and risk-based model addressing the most egregious sectoral abuses of NMW recognising that lack of English and worker collusion models restrict complaints in at-risk sectors.

Thirdly, it was argued that changes to the BEIS (now DBT) guidance calculating the Minimum Wage have made it less accessible. Respondents felt these were inadequate in supporting industry, along with HMRC NMW Enforcement officers' inconsistent application of the law. Lastly, trade associations representing businesses operating in low pay sectors should be invited to meet formally and regularly with appropriate DBT and HMRC NMW representatives to raise and address policy matters, the output of which should result in updates to guidance.

In the view of respondents, resources should focus on developing an effective system which seeks to educate, enable, and enforce regulatory measures for smaller firms. HMRC NMW should continue to work with key stakeholders to co-ordinate their approach around education and guidance. HMRC NMW should consider investing in its prevention activities around labour market enforcement, to reduce worker harms and overall non-compliance. It was argued that the scale of

non-compliance with the minimum wage in the care sector is so vast that HMRC NMW must go beyond carrying out a small number of inspections to help root out the endemic levels of non-compliance that grip the sector.

Gangmasters and Labour Abuse Authority (GLAA): Respondents also raised concerns about the Gangmasters and Labour Abuse Authority (GLAA) not delivering value for money in the operation of its licensing regime. It was highlighted that in September 2021 GLAA launched a new Compliance Strategy which commits GLAA to inspect every licence holder in a rolling programme over the next five years (GLAA 2021). Whilst seen as broadly positive, respondents wanted to see more detail on the specifics and timetable for implementation. In the first five months of 2022, only seven compliance inspections were completed, around one tenth of what the GLAA needs to conduct to meet its commitment. Concern was expressed that a credible licensing scheme requires much-improved performance as regards GLAA's compliance function.

Meanwhile, the number of overseas recruiters seeking GLAA licences is increasing as food businesses incorporate the Skilled Worker visa route into their core recruitment models. The length of time for an overseas based labour provider to obtain a GLAA licence was seen as excessive and acting as a barrier to the food industry effectively and responsibly recruiting through the Skilled Worker visa route. Following concerns raised regarding the legality of recruitment from Nepal, GLAA has assured respondents that, when they carry out the application inspection, they check the in-country requirements and confirm with the business that they are meeting these requirements. Respondents requested that the GLAA makes public the legal in-country requirements that it checks by country.

Some Union respondents were concerned that there is a serious disconnect between the perceptions of exploitation in the garment and textile sector amongst different stakeholders. They put to us that it is concerning that enforcement bodies with investigative powers are failing to uncover the instances of employment rights abuse that are being reported to unions and other organisations. Other Unions also express concern that despite consistently submitting evidence of non-compliance from their respective sectors, in response to previous strategy consultations, enforcement work is not being targeted at these areas and non-compliance levels remain unchanged. Unions feel that the regular cycle of strategy consultations is not followed up by the required improvement to on the ground enforcement. Unions would welcome greater transparency and an explanation about the risk assessment/intelligence matrix that is used to determine whether non-compliance in a certain sector is addressed, and made a priority, in DLME strategies.

Respondents also voiced concerns that some offences, such as failing to provide a Key Information Document to agency workers, are viewed as 'lower-level offences' and are not considered a priority for the enforcement bodies. It was suggested that a discussion and explanation about how the DLME determines the priorities in its labour market enforcement strategies, and how it monitors the work of the enforcement agencies, would be useful. Furthermore, the harm and severity of a breach should be considered not just in terms of the number of offences or workers affected – or the amount of money involved – but in terms of impact on individuals and the knock-on effects of illegally low wages and other malpractice on living standards and health. Without safe reporting mechanisms in place, especially for undocumented workers, fear of immigration consequences will continue to act as a major barrier to reporting exploitation and to seeking help. Collaboration with Immigration Enforcement thus affects the agencies' ability to support workers and identify non-compliant employers.

7a. What assessment do you make of how these 3 bodies operate?

Respondents said:

- *“They do what they can on limited budgets. It’s not joined up and the employer bodies have little or no involvement”.*
- *“We remain frustrated that EAS receives such little government funding, particularly given the size of their regulatory task, and this under-resourcing surely prevents them being as visible as they should be”.*
- *“The Employment Agency Standards Inspectorate, GLAA and HMRC NMW have not taken action on labour exploitation in the UK fishing industry because those working in fishing were previously assessed to be low risk of exploitation, but this is clearly not correct. The 3 enforcement bodies listed in this consultation should be supported to broaden their remit from land-based activities and bolster the resources available to the existing regulatory authorities able to enforce maritime law and to demonstrate post Brexit improvements and increase standards and respect for the UK Ship Register”.*
- *“We have only tried to engage with HMRC NMW and they take no action”.*

7b. Provide evidence and examples of best practice to address labour market non-compliance that you would like to highlight to the Director?

Respondents said:

- *“Best practice should be achieved in a similar way as the Education and Skills Funding Agency (ESFA) did with the cyber essentials scheme. Produce an annual certification scheme, empower employment bodies to issue it and give that credibility through marketing to employers”.*
- *“There is no best practice, the HMRC NMW are allowing the pub models to proliferate yet have acted in other sectors to stamp it out”.*
- *“GLAA have demonstrated expertise and resources capable of tackling labour exploitation, modern slavery and trafficking on land and could be supported to expand their remit to deal with exploitation of workers on sea going vessels in the future”.*
- *“Organisations may be trying to do the right thing and may require guidance on the topic. Education before enforcement is really important in this particular area”.*

Chapter 8: Other issues

Over and above the issues raised above, are there any other relevant issues you would like to bring to my attention for this strategy? For instance, effectiveness of labour market enforcement and how this could be improved, allocation of resources and good practice that can be drawn from across the regulatory landscape.

Minimum wage issues in the hospitality sector: Within the hospitality sector, Unions are aware there is widespread underpayment of the national living wage/national minimum wage which not only impacts hourly paid workers but also workers on salaried contracts who end up being paid less than the minimum wage. There is a lack of protection from tips theft, and a growing trend of online training and training apps in which workers are expected to participate and complete in their personal time without being paid. Unions remain concerned about the lack of legislation to monitor Tronc (tips) compliance, they have received complaints from hospitality workers in the food and beverage sector who have been formally asked by their employers to accept a pay cut. They are concerned some unscrupulous employers are saving themselves millions of pounds by taking advantage of a national insurance tax exemption on tips paid via a tronc. It is troubling that many of these companies with offshore structures are profiting from this unfair tax break at the expense of their lowest paid workers and HM Treasury. The Tronc system should be completely independent from the employer as tips are earned by waiting staff through hard work in often stressful working conditions; it is a reward given freely by customers. There is evidence of non-receipt of payslips with impact on migrant workers to access other services. Accommodation offset, training cost deductions and enforcement of Employment Tribunal awards are also areas to be addressed. The HMRC NMW regulations are seen as too detailed and complex especially for smaller businesses. Unions agreed there is a need for a clearer distinction between deliberate and inadvertent breaches with enforcement focus on the former.

Union Access to Workplaces: In addition to the above, Unions have recommended a reform of statutory recognition law to give trades unions right of access to workplaces. This would result in greater collective bargaining coverage and primary means of raising and maintaining workplace standards. Unions would like access to freeport sites with authorities and employers signing up to minimum standards arrangements and auditing for labour exploitation, especially in warehousing and logistics.

Migrant Domestic Workers: Unions believes migrant domestic workers should have the right to leave their employer – not permitted by current immigration policies. Unions have called for the removal of Section 57(3) from the NMW Regulations Act 2015 which they believe wrongfully is used to exempt migrant domestic workers from NMW regulations. Migrant domestic workers

should not be classed as non-family members as the Overseas Domestic Workers Visa makes clear. Unions also call on this Government to ratify ILO Convention 189, for decent work for domestic workers.

Joint Responsibility: Any proposals to introduce joint responsibility for labour market compliance in supply chains require scrutiny and must balance additional burdens on business and ‘last resort regulation’ with clear enforcement benefits. Wherever labour market breaches occur, primary responsibility must remain with the direct employer⁴.

Zero Hours Contracts (ZHC): Some respondents proposed a ban on zero hours contracts plus evidence of precarity for ZHC workers (workers paying to guarantee shifts or be at risk of being replaced if time taken off). Respondents explained that workers on ZHCs are more than twice as likely to work night shifts and are paid a third less an hour than other workers. It was argued that the proliferation of ZHCs, bad jobs and economic insecurity has left a large segment of hospitality workers struggling, living hand to mouth and not knowing if they will have enough money to pay their rent and utilities or even have food to eat. This has particularly intensified with the current cost of living crisis. Thus, unions are repeating their call for an end to the one-sided flexibility of ZHCs. All workers should have an employment contract that reflects an individual’s normal hours of work, a statutory minimum contract of at least 16 hours, and a day-one right to a written statement setting out pay and conditions. There should also be a right to reasonable notice of shifts, and payment if shifts are cancelled. This would make flexible working arrangements fairer and protect workers from one-sided and exploitative practices.

DLME Recommendations: Respondents put to us that they strongly believe that HMRC Tax are a large and important part of the labour market enforcement landscape – they hold the key to several priority areas requiring action. Ideally, some respondents would like to see the DLME’s statutory role in relation to non-compliance in the labour market expanded to include tax. They suggested one way of achieving this would be to add non-compliance with PAYE regulations to Section 3 Immigration Act 2016. This would give the DLME an opportunity to assess HMRC’s tax compliance and enforcement function efforts in this area as part of DLME’s assessment of the scale and nature of non-compliance in the labour market. It would also allow DLME to include proposals for tackling any non-compliance issues identified in the Labour Market Enforcement Strategy. It was suggested in cases such as the mass sacking of P&O workers, DLME should have a greater role and voice. Section 9 of the Immigration Act 2016 which prohibits the DLME from commenting on individual matters, should be revoked.

Other areas of recommendations highlighted by Unions for DMLE intervention are as follows:

- DLME to investigate exploitation in the seasonal worker pilot, with transparency vital to provide reassurance that action is being taken against non-compliant businesses, and money owed is paid back.
- DLME to hold a workshop on how DLME deals with evidence on labour exploitation and how these feed into risk assessment.
- DLME to review third-party complaints and how information can be shared with unions.
- DLME to recommend an increase in EB resourcing to ILO benchmarks.
- DLME’s Strategy to target non-compliance with payslip transparency.
- It is vital that the Maritime and Coastguard Agency (MCA), DLME, HMRC and any future Single Enforcement Body have the access and powers to make sure enforcement activity is effective. They should be given full compliance and enforcement roles under statutory

⁴ In its Response to the Consultation on creating a Single Enforcement body in June 2021 Government decided not to take forward proposals to introduce joint responsibility in supply chains (BEIS 2021).

agreements with port authorities. This would likely involve HMRC having the right of entry to ports and HMRC will undoubtedly require a significant increase in its staff of inspectors. The DLME should have a role in overseeing and evaluating the new regulatory regime.

- DLME to explore the gap in perceptions between enforcement bodies and other stakeholders as to the non-compliance in the garment sector.
- DLME to facilitate cross-regulator discussions to consider impact of AI, AMS and enforcement of employment rights.

In summary regarding broader LME Enforcement, respondents put to us the following:

- A central regulator for umbrella companies to which workers can report infringements.
- Respondents want to see the National Minimum Wage underpayment resulting from hidden pay deductions to be monitored.
- Non-receipt of payslips is common, which impacts on ability of migrant workers to access other services.
- Respondents are disappointed about the lack of Single Enforcement Body (SEB) as well as concerns around how modern slavery statements will be enforced. A Modern Slavery Bill was announced in the Queen's Speech in May 2022 to enforce the publication of modern slavery statements and determine what must be included within a statement. Respondents are interested to engage on how this is enforced across government as part of overall labour market enforcement. Some respondents are already publishing annual statements covering all areas recommended by statutory guidance. These respondents also go further by including key performance indicators and additional metrics which are reported on annually alongside a broader modern slavery strategy.
- Respondents believe that there is a need for the labour inspectorate to protect those who are directly employed in food processing factories.
- Respondents want to see a better resourced and stronger state-led enforcement with regular monitoring, more inspections and prosecutions. Low EAS resourcing is a particular concern given the size of the industry.
- Respondents suggested labour market enforcement should be consistent across the four nations of the UK. For example, Northern Ireland employment related legislation (including on rights such as statutory leave and payments) is separate from that which applies to Great Britain and is not necessarily consistent.
- The regulatory and enforcement bodies, including MCA, HMRC NMW, Police, Border Force, Home Office should aim to work collaboratively together for both intelligence sharing (detection and prevention) and for enforcement of the regulations.
- A large majority of respondents said the EAS Inspectorate, GLAA and HMRC NMW have not taken action on labour exploitation in the UK fishing industry and should widen their future remit to bolster the resources available to the existing regulatory authorities to be able to enforce maritime law. The remit and powers of the GLAA should be widened to include commercial fishing vessels because they have expertise in trafficking and labour exploitation of migrant fishermen (transit visa issue). The UK fishing industry was previously assessed to be low risk for modern slavery, but evidence suggests this is not the case now in 2022. There should be close working between EBs, MCA, Police, Border Force, HMRC NMW in this area.
- To explore the extension of licensing to other sectors such as cleaning service providers, logistics, private hire, hospitality, and construction.

Chapter 9: Updates to Stakeholder Evidence (December 2022)

As noted above the DLME Call for Evidence for the 2023/24 Strategy was published in April 2022, but due to the changing economic landscape over the following six months, in December 2022 DLME invited respondents to provide updates to their evidence, particularly on any new emerging risks. DLME received thirteen returns and the key issues are set out below.

Single Enforcement Body (SEB): Respondents expressed significant disappointment at the lack of progress with the creation of a Single Enforcement Body. The SEB was originally proposed in the government's Good Work Plan in December 2018 (BEIS 2018). A consultation followed in 2019 with the Government response, backing the SEB, published in June 2021 (BEIS 2021). The SEB was intended to be a one stop shop for all compliance and enforcement issues within the Director's current remit, as well as extending enforcement to new areas such as holiday pay and umbrella companies. Respondents stated they felt the SEB had fallen down the Government's agenda, given the absence of the proposed Employment Bill which would have included the necessary provisions for a SEB. Respondents were keen to work with the DLME to ensure the creation of a SEB gets the attention, focus and funding it needs from the Government.

Umbrella Companies: Respondents reported the umbrella market continues to be a source of concern. They argued that the Government should be ambitious and seek to futureproof the legislation. They favoured licensing of the umbrella market, the mandatory use of client accounts as well as the introduction of statutory compliance codes. They argued that tackling rogue umbrella companies needed to be a priority for HMRC NMW and BEIS (now DBT) to ensure the recruitment landscape is fair and works for all. They pointed to several areas of risk involving umbrella companies, including accusations of 'salary skimming' (see below). Respondents reported that they have made clear to the Government that the sector should be regulated. However, they saw no visible progress but continue to think the Government must act to address the risks and impact on workers.

Salary Skimming: According to respondents, there have been multiple cases of seemingly reputable umbrella companies skimming small amounts of money away from workers' income, which is not immediately noticeable. The practice of skimming is not illegal, but umbrella companies are allowed to do this because the funds they receive to pay workers contractually belongs to the umbrella company, and the terms and conditions of their contract with the end user do not usually prescribe how much should be passed on to workers. This gives umbrella companies freedom to process the monies however they wish, including skimming money from workers' income. Although HMRC have issued guidance to help workers navigate umbrella companies, respondents wanted the content to be clearer. Respondents urged the DLME to

carefully consider if there is anything more they or the three enforcement bodies can do to help fill this guidance gap or to at least influence other stakeholders to make improvements to their content.

Umbrella Accreditations: On the question of whether statutory regulation was required or whether voluntary accreditation schemes would sufficiently promote compliance some respondents argued that most umbrella ‘accreditation’ companies do not properly scrutinise the financial processes of their members, despite the technology being available to do so. This is a very significant problem because many recruitment firms, end clients and procurement frameworks rely on such ‘accreditations’ and wrongly assume them to be more robust than the reality.

Financial Incentives: Respondents told us that financial incentives paid to recruitment businesses by umbrella companies are common, and they suggested that they are only affordable by umbrella companies who cut corners and/or operate tax avoidance schemes in order to feature on Preferred Supplier List (PSLs). Respondents stated that urgent action is needed to ban recruitment firms and their employees from receiving any sort of financial incentive or other reward from umbrella firms. It was suggested that this could be achieved by amending the Agency Conduct Regulations.

Joint Employment Models: While the joint employment model is a relatively new phenomenon, respondents reported seeing a continued rise in its use. The joint employment models can lead to exploitation due to the lack of transparency for the employee around accountability for their employment status. This confusion can then be exploited to undermine worker rights. Joint employment models can also involve umbrella companies. Where a worker is not receiving their entitlements, there is recourse to employment agency protections if they work for recruitment companies, but not for umbrella companies. Unscrupulous umbrella companies could use the joint employment model to exploit workers with very little risk of accountability due to the lack of regulatory framework affecting them. Respondents argued that these gaps could have been addressed through an Employment Bill and recommended that the DLME should work with the government to take action to reduce the risk of exploitation.

Hand Car Washes (HCW): The hand car wash sector continues to be flagged as a sector of concern with allegations that a significant proportion of operators appear to disregard the law without fear of sanctions, and suggestions that some workers do not have the right to work in the UK and may be working under forced circumstances. While joint working between different agencies was welcomed, respondents indicated that fragmentation of perspectives and differing focus between enforcement bodies limited the ability to take concerted action. Respondents recommended that it is crucial that the Government fulfils its commitment to a SEB to create an efficient regulation and enforcement mechanism that will finally be able to address the issue of modern slavery in the UK. It was suggested the DLME should continue to explore and promote the use of local or regional licensing for this sector with government helping to produce a sector that is fair for all businesses.

Small Businesses: Respondents highlighted that the availability of appropriately skilled staff is the third most cited barrier to business growth. Worker representatives stated that they seek to work constructively with small employers on an individual basis. Concerns were raised over the treatment of shopworkers, for instance when they are seeking to enforce statutory requirements by asking for identification during the sale of alcohol. The way in which retail roles have increasingly expanded to include such duties have put retail workers at increased risk. One union spoke about their relationship with industry organisations such as the British Retail Consortium (BRC) and the Association of Convenience Stores. They continue to work closely with employers and the BRC on the Freedom from Fear campaign against abuse, threats and violence against shopworkers and with the Retail Sector Council on a strategy for the retail sector.

Retail Sector: Respondents informed us that the retail sector continues to experience significant difficulties. Many retailers are struggling to balance significant cost pressures, squeezed margins and falling consumer demand, as a result of the cost-of-living crisis. Additionally, the continuation of the pattern of the loss of frontline retail roles, with limited job replacement within warehouse and ‘hidden’ retail roles, in line with the growth of online retail, has intensified concerns over labour market enforcement. Respondents added that the rejection of an Online Sales Tax means that these underlying trends in the retail sector are even more likely to accelerate in the coming years. It was suggested that online retailers are significantly less likely to recognise trade unions and allow access to trade unions to their warehouses, unlike their frontline retailer counterparts. It was argued that reforming statutory trade union recognition laws and giving unions a right to access such workplaces would raise standards, ensure compliance, and give workers a clearer understanding of their core employment rights and how to enforce them.

Seafarers: Respondents reported significant turmoil in the economy which has in turn affected the labour market in this sector. The fallout has continued from P&O Ferries’ dismissal of nearly 800 UK resident seafarers covered by collective bargaining agreements. Respondents told us that they have repeatedly raised the impact that these structural problems in the seafarer labour market have on jobs and terms and conditions in the shipping industry. Government policies such as the Seafarers Wages Act 2023 forms part of the nine-point plan in response to P&P Ferries’ actions. However, some respondents had serious concerns over the lack of action taken by the Government against P&O Ferries, including the absence of any proposals to strengthen the laws which P&O broke.

Migrant Workers: Respondents outlined the urgency for a safe reporting mechanism or ‘firewalls’, to protect migrant workers. To achieve this, respondents recommended:

- The Government must separate all labour market and immigration enforcement activity.
- The Government must adequately resource the work of labour inspectorates.
- Local authorities must end the practice of sharing workers’ personal data with Immigration Enforcement and conducting joint raids.
- Agencies must commit to addressing the issues raised by the workers and not enquiring about workers’ immigration status.

Respondents argued that the new Seasonal Workers Visa scheme should provide routes to permanent settlement, as opposed to increasing the number of precarious and temporary visas, which have been found to put migrant workers at increased risk of exploitation, including debt bondage, and in some cases forcing people to become undocumented. Respondents flagged to us that a further new development is the effect on migrant workers of longer waiting times for visa renewals to be processed. Another problem flagged was the inability of workers to switch employers often leaving them trapped in exploitative situations.

In regard to migrant workers, respondents are calling for:

- The Government to repeal the Illegal Working Offence and end ‘right to work’ checks.
- Prioritising decent conditions over immigration enforcement.
- Scrapping the ‘No Recourse to Public Funds’ condition and increasing sick pay for all.
- Ensuring all visas include pathways to permanent settlement within a reasonable timeframe.

Unions in particular are calling for:

- An end to temporary visa schemes and instead calling for visas with stability.
- A separation between immigration enforcement and labour inspectorates when dealing with employment non-compliance issues.
- Employers not to assist the Home Office with immigration raids.

Social Care: Evidence suggested increasing concern in personalised care provision throughout the sector – where workers deliver care within the homes of individuals. This is a part of the adult social care workforce for whom working conditions are particularly difficult to monitor. Reports from several local authorities suggest that local audits of the social care labour market are increasingly unstable, leading to concerns about safe staff recruitment practices even among regulated providers and agencies. A diversified range of employment practices are reshaping the commissioning landscape, alongside unrelenting pressure associated with record levels of vacancies in the sector and the new post-Brexit immigration system. Respondents fear that this may lead to new sources of labour supply chain risk.

Specific concerns highlighted relating to the care sector include:

- The urgent need to fill labour shortages may lead to further instability and risk.
- Without robust due diligence processes, questionable and even illegal employment practices may only be identified when concerns are raised related to safeguarding and care quality.
- Greater attention needed in the home care services if the signs of modern slavery are to be spotted.

Seasonal Workers: The outbreak of war in Ukraine in February 2022 had a sudden and major impact on Seasonal Worker Visa scheme operators being able to source sufficient labour, leading to a rapid switch to sourcing labour from new countries. This in turn posed challenges to ensure compliance with labour rights and scheme rules. Following stakeholder interviews about the Seasonal Workers scheme, some key themes arising included:

- Operators struggling to meet requirements due to late-notice changes in Home-Office guidelines.
- Workers were unsure where to turn to for support with employment rights.
- Welcoming more effective engagement with Home Office to support a better relationship.

Respondents identified significant welfare issues in which workers reported that they were treated poorly, discriminated against on the basis of nationality, had received incorrect pay, were living in damp, poor-quality and unsafe accommodation, or had been obstructed from accessing healthcare. Respondents felt that the Home Office was not doing enough to prevent exploitation in this sector. Another concern is the ability, in practice, for seasonal workers to switch employers although the terms of the Seasonal Workers scheme allow them to do so. This risks leaving them trapped in exploitative situations.

False self-employment: Respondents highlighted issues around false self-employment which have spread to the care sector, carrying inherent risks for both the worker and the engager – and not just in terms of tax non-compliance. Respondents are concerned that we will soon reach a stage where this problem has been allowed to drift for such a long time, that simply enforcing the law would be very difficult. They argued that DLME should think creatively about the practical steps that can be taken by the enforcement bodies, but also in conjunction with other

Government bodies like HMRC NMW and the Department for Health and Social Care (DHSC) to get a grip on the situation – perhaps by focussing ‘upstream’ on the role of the introductory agencies, for example.

Retained EU Law: Respondents raised concerns that the Retained EU Law Bill risks damaging workers’ rights if measures such as the Working Time Regulations, agency worker rights, data protection rights and holiday pay are not incorporated into UK law in time. Some however saw this as an opportunity to review whether the law is fit for purpose for the modern, flexible labour market and to put more appropriate regulation in place. Respondents are keen to be involved in reviewing alternative approaches.

Concluding Comments

Stakeholder responses suggest the labour market has become more critical in terms of protecting workers' rights, but also more difficult to enforce these rights. The work of the Enforcement Bodies and the Director of Labour Market Enforcement therefore has become ever more important. There are cases of bad practice amongst a minority of businesses, but this also needs to be seen against the large number of employers who take their responsibilities seriously and who work hard to provide a compliant working environment.

The Office of the Director of Labour Market Enforcement remains committed to improving the latter while tackling the former. We will continue to work closely with the three enforcement bodies to seek to achieve this. The continued engagement and contribution from stakeholders plays an invaluable part in this.

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