

Focus on Labour Exploitation

Consultation on agency workers recommendations

FLEX response to questions put by the Department for Business, Energy and Industrial Strategy

Contact: Linn Aakvik, FLEX Programme Manager, linnaakvik@labourexploitation.org
Focus on Labour Exploitation (FLEX), The Foundry, 17 Oval Way, London SE11 5RR

Summary

1. Focus on Labour Exploitation (FLEX) welcomes the opportunity to contribute to the Department for Business, Energy and Industrial Strategy's consultation on agency worker recommendations made by the Taylor Review of Modern Working Practices. FLEX is a UK-based charity working to end human trafficking for labour exploitation. To achieve this, FLEX works to prevent labour abuses, protect the rights of trafficked persons and promote best practice responses to human trafficking for labour exploitation by undertaking research, advocacy and by building awareness in this field.

2. In this submission FLEX draws upon its research and expertise on labour abuse and exploitation of agency workers. FLEX has conducted research on labour exploitation in high-risk sectors of the UK labour market including construction, bakeries and fisheries and has produced a guide to tackling exploitation in the UK labour market.¹

3. Further information on FLEX's work and all of our research publications and policy briefings can be found on our website at www.labourexploitation.org.

Key points:

- I. Improving transparency of information provided to work seekers is critical to enable them to understand and enforce their rights, and protect against labour exploitation.
- II. Bringing umbrella companies under the remit of the Employment Agency Standards Inspectorate (EAS) would improve oversight and accountability for abuse. In order to be effective any such extension must be accompanied by an additional resource commitment to the EAS proportional to its increased remit

Consultation questions

Section I. Improving the transparency of information provided to work seekers

¹ FLEX, *Risky Business: Tackling Exploitation in the UK Labour Market*, 2017, p.20. Available at http://www.labourexploitation.org/sites/default/files/publications/Risky%20Business_Tackling%20Exploitation%20in%20the%20UK%20Labour%20Market.pdf

1) To what extent would you agree that a ‘key facts’ page would support work seekers in making decisions about work?

4. FLEX supports the proposal to require employment businesses to provide a ‘key facts’ page to all work seekers to ensure clarity on rates of pay and deductions to be made. Clear information about the nature of the employment arrangement and rates of pay, including take-home rate after deductions, would support work seekers to make decisions about whether or not to accept a contract.

5. However, decisions about work do not end with the acceptance of a contract. Problems regarding lack of clarity also arise when an agency worker is mistreated, for example when they are underpaid, and do not know who is responsible for addressing the issue. In order to enable workers to understand and enforce their rights, and continue to make decisions about their employment, information about who is responsible for their employment rights, and how to access further information and raise complaints should also be included on the ‘key facts’ page.

6. Migrant workers face particular barriers to understanding their rights and accessing help and advice to enforce those rights, including language barriers, lack of understanding of routes to advice and assistance, and lack of accessibility of existing advice gateways. For example, FLEX research has identified barriers to at-risk migrant workers seeking advice through the Acas helpline, as the opening hours make it challenging for those who work long hours to call, workers experience difficulty accessing advice in languages other than English.² The usefulness of the ‘key facts’ page in helping work seekers to understand and access their rights will also depend on the availability and accessibility of gateways to advice that can assist the most at-risk workers to understand and use the information provided to make decisions about their employment and enforce their rights.

2) What information would be important to include in a ‘key facts’ page?

7. The ‘key facts’ page should include, at a minimum:

- a) Who will be responsible for the employment of the work seeker;
- b) The work seeker’s employment status;
- c) How much the work seeker will be paid by the umbrella company or intermediary (both gross and net pay);
- d) What fees are payable to the umbrella or intermediary by the work seeker (amount and what they are for);
- e) What statutory deductions will be made;
- f) What additional benefits there are e.g. access to a benefit in kind scheme, childcare vouchers, group insurance policies;
- g) What routes are available to information or assistance in case of complaints.

² FLEX, *Risky Business: Tackling Exploitation in the UK Labour Market*, 2017, p.26.

2) (a) What conditions should be in place to ensure the ‘key facts’ page is provided and understood by the workseeker before any contractual engagement?

8. In order to ensure a ‘key facts’ page is provided, an effective monitoring system should be in place. Penalties should apply to employment businesses that fail to provide a ‘key facts’ sheet. FLEX supports the suggestion that the government should provide a standard template ‘key facts’ page including safeguards to ensure that core information fields could not be deleted.

9. A licensing system for all employment agencies and employment businesses would provide an effective system for monitoring and enforcing workers’ and work seekers’ rights including the provision of a ‘key facts’ page. The provision of a ‘key facts’ page should be a requirement for obtaining a license as an employment agency or business. This licensing system should be controlled and enforced by the Employment Agency Standards Inspectorate.

Case study: Example of licensing scheme, Norway

The Norwegian Labour Inspection Authority operates a licensing system for the cleaning industry. All companies offering cleaning services must be licensed. A list of licensed cleaning companies divided by region is available on the Inspectorate’s website.⁴⁹ It is illegal to purchase cleaning services from providers that are not included in the register or that have the status ‘not approved’. Companies offering cleaning services must apply for authorisation online.⁵⁰ They must meet the following criteria:

1. The company must be registered with an authorised occupational health service (these are licensed by the Inspectorate and a list is available);
2. Have an appointed safety representative and a working environment committee;
3. Written employment contracts must be in place for all workers;
4. Minimum wage requirements must be met; and
5. An insurance scheme must be in place. Documentary evidence is required for each criterion and is evaluated by the Inspectorate.

Cleaning service providers can be licensed without inspection, but should the company be inspected at a later stage and breaches found, the license may be withdrawn.⁵¹ The Labour Inspection Authority has noted that the health and safety procedures of several licensed companies are found to be insufficient upon inspection, leaving some to question the impact of the system of licensing without inspection on occupational health and safety.³

³ Norwegian Labour Inspector Authority, *Annual Report 2016*, available at <http://www.arbeidstilsynet.no/rapport.html?tid=90119>

10. The 'key facts' page can only be effective if it is accessible to the most at-risk work seekers including migrant workers. In order to ensure the 'key facts' page is understood by the work seeker, in cases where the work seeker's first language is not English, the 'key facts' page should be provided to the work seeker both in English and in the work seeker's native language.

3) Should an employment business be required to ensure that the work seeker understands fully the information being given to them?

11. Yes. The business should also be required to provide information about available routes for information and advice if worker has questions or experiences problems at a later date.

Section 2. Extending the remit of the Employment Agency Standards Inspectorate to cover umbrella companies and intermediaries in the supply chain

6) Do you know of any examples of the benefits and/or problems for agency workers of using an umbrella company or intermediary?

12. FLEX supports the proposal that the remit of the Employment Agency Standards Inspectorate (EAS) be extended to cover umbrella companies. This extended remit should be accompanied by an additional resource commitment to the EAS.

13. FLEX research into exploitation in the construction sector has found several problems for agency workers using umbrella companies, including:

Unclear deductions: In a survey of migrant construction workers in London, FLEX found that over a third of all workers surveyed did not understand the deductions on their payslips.⁴ One worker told FLEX "My income isn't explained properly. The payslip is quite vague, it doesn't list concrete charges and sums of money. You'll see things like 'LESS £50' or 'ADD £50'. Not everyone understands the jargon they use."⁵

In-work poverty: One industry expert interviewed during the research described umbrella companies as a 'scourge on construction', explaining that some workers he had come across were being paid below National Minimum and Living Wage and far below industry agreed rates, because the living wage hourly rate was effectively being reduced by the high administration fees charged for receiving wages.

⁴ FLEX, *Shaky Foundations: Labour Exploitation in London's Construction Sector*, 2018, p.8. Available at <http://www.labourexploitation.org/sites/default/files/publications/Shaky%20Foundations.pdf>

⁵ FLEX interview with construction worker

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Lack of choice: One former construction worker explained that when the scheme was introduced, workers were given no choice but to accept these conditions, or lose their jobs: “All of my friends were working for different companies on sites, mostly eastern Europeans, and they were just told ‘You have to move to this. If you don’t move, find another job.’”⁶ This lack of choice over whether or not to become employed under the umbrella scheme combined with some confusion over the employment status of workers under this system makes it very difficult to challenge the negative consequences for workers and ensure that rights are understood and upheld.

Lack of accountability: FLEX research found agency workers employed through payroll companies who reported being sent back and forth between agency and umbrella company over pay disputes, with each denying responsibility for underpayment. The confusion over workers’ employment status, their employment protections, and who is responsible for upholding protections in practice, results in a lack of accountability and recourse to justice which leaves workers less able to address abuse. Bringing umbrella companies under the remit of the EAS would go some way to addressing this gap in monitoring and oversight and improve accountability for treatment of workers.

14. Combined with the sometimes extremely low wages received as a result of deductions, increased dependency on work stemming from poverty, and the lack of choice for many but to work under umbrella schemes, the widespread use of umbrella companies can in some circumstances create or exacerbate worker poverty and insecurity, which can leave workers at risk of exploitation.

15. The Department for Business, Energy and Industrial Strategy is right to highlight in its consultation document the ‘increased scope for poor practice’ arising through increased use of umbrella companies. Its recognition ‘that work seekers have no redress or formalised complaints procedure outside of an Employment Tribunal or by using Acas’s mediation services’ is key; even if workers are aware of their rights, such rights cannot be effective if they are difficult to enforce. FLEX therefore supports the suggestion that umbrella companies be required, through legislation, to meet a set of minimum standards in line with the minimum requirements currently in place for employment businesses. This should provide the avenue to make a complaint if an issue could not be resolved directly with the umbrella company or intermediary, without having to go to an Employment Tribunal. These minimum standards should be proactively enforced by the EAS.

7) Should the extension of the remit of the Employment Agency Standards inspectorate to cover the regulation of certain activities of umbrella companies and intermediaries in the supply of work seekers to a hirer:

i. Be limited to the regulation of the key facts page and provision of

⁶ FLEX interview with construction worker

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information relevant to those facts as part of a work offer by the hirer or employer?

ii. Be aligned to the regulation of the types of employment rights already regulated by EAS under the current legislative framework such as non-payment of wages, deductions from wages which the work seeker has not agreed to, and failure to provide written terms and conditions before the assignment starts?

Please provide reasons for your response.

17. The extension of the remit of the Employment Agency Standards Inspectorate (EAS) to cover the regulation of certain activities of umbrella companies and intermediaries in the supply of work seekers to a hirer should be aligned to the regulation of the types of employment rights already regulated by EAS under the current legislative framework such as non-payment of wages, deductions from wages which the work seeker has not agreed to, and failure to provide written terms and conditions before the assignment starts.

18. Regulation and enforcement of employment rights is key to the prevention of labour exploitation. Workers must be able to enforce their rights regardless of who their employer is. Aligning the regulation of umbrella companies to the regulation of employment rights already regulated by the EAS would ensure more effective oversight, greater accountability for abuse, and help to prevent labour exploitation.

19. The extension of the remit of the Employment Agency Standards Inspectorate to cover activities of umbrella companies can only be effective if it is accompanied by a proportional additional resource commitment for the EAS to carry out these duties. As a result of budget cuts over the past five years, resourcing for enforcement by the Employment Agency Standards Inspectorate is already critically low, at just one inspector per 100,000 workers – far below the ILO recommended standard of one inspector per 10,000 workers. Without significantly increased resources the EAS would be unable to proactively monitor or enforce employment rights of workers and work seekers using umbrella companies, rendering this remit extension meaningless in practice.