

**Good Work: the Taylor Review of Modern Working Practices  
*Consultation on agency workers recommendations***

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Submission to the Department of Business, Energy, and Industrial  
Strategy

**Chartered Institute of Personnel and Development (CIPD)**

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## **Background**

The CIPD is the professional body for HR and people development. The not-for-profit organisation champions better work and working lives and has been setting the benchmark for excellence in people and organisation development for more than 100 years. It has over 145,000 members across the world, provides thought leadership through independent research on the world of work, and offers professional training and accreditation for those working in HR and learning and development.

Our membership base is wide, with 60% of our members working in private sector services and manufacturing, 33% working in the public sector and 7% in the not-for-profit sector. In addition, 76% of the FTSE 100 companies have CIPD members at director level.

Public policy at the CIPD draws on our extensive research and thought leadership, practical advice and guidance, along with the experience and expertise of our diverse membership, to inform and shape debate, government policy and legislation for the benefit of employees and employers, to improve best practice in the workplace, to promote high standards of work and to represent the interests of our members at the highest level.

## Our response

### Section 1: Improving the transparency of information provided to work seekers

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

1. We strongly agree that providing a key facts page would help work seekers in making decisions about work. It would provide more clarity about the terms and conditions of employment they are to be engaged on, any statutory deductions that will be made and their core employment rights.

**(a) If slightly or strongly agree, what key facts should be made prominent?**

2. The key facts page should make clear which organisation is responsible for paying the worker, the worker's intended employment status, as well as the relationship between the employment business, umbrella company or intermediary, and the third party the worker is engaged by.
3. The key facts page should also provide details of the worker's pay, holiday pay/leave, as well as any benefits. It should also set out details of any statutory deductions.
4. In addition, it should also outline the grievance or complaints procedure in place to address issues or problems that arise during the course of the worker's engagement either with the employment business, umbrella company, or a third party employer.

**(c) Thinking about what seekers and employers in the recruitment sector, would ensuring work seekers are provided with a key facts page have a positive or negative impact on either individual work seekers or employers in the recruitment sector?**

5. CIPD believes that the provision of a key facts page would have a positive impact on individual work seekers as it would help ensure they are much better informed about their employment rights and have greater clarity about their terms and conditions of employment. The provision of greater clarity on these issues is important as many workers and some employers are not always confident on issues of employment status and rights. For example, CIPD research has shown a lack of awareness among both employers and zero-hour contract workers of the

employment rights zero-hour contract workers are entitled to (CIPD)<sup>1</sup>, with some being categorised as employees and some as workers.

6. A key facts page would encourage employers in the recruitment sector to think more deliberately about the terms and conditions that workers using their services are to be engaged on and their employment rights.
7. The provision of a key facts page may add some marginal additional costs in terms of administration time however it would also help improve the reputation of the recruitment sector by indicating that the industry is concerned about the employment rights of agency workers.

**2. What information would be important to include in a 'key facts' page?**

8. Key information would be included on:
  - the hourly rate of pay, as well as when and how often the worker will be paid
  - other benefits
  - statutory deductions
  - holiday pay/leave entitlement and rest breaks
  - sick leave and pay
  - notice period for either party to terminate the agreement
9. The key facts page should also set out what to do if these entitlements are not being met by explaining what the complaint or grievance procedure is available through the employment business or umbrella company.

**(a) What conditions should be in place to ensure the 'key facts page' is provided and understood by the work seeker before any contractual engagement?**

10. Employers in the recruitment sector should be under an obligation to verbally explain the information in the key facts page once an engagement with a third party to provide work has been agreed, highlighting the arrangements for individuals to raise issues or complaints.

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

11. The only requirement on the employment business to ensure that the work seeker understands the information given to them should be to provide a verbal summary of the information in the key facts page and to respond to any questions arising.

<sup>1</sup> <https://www.cipd.co.uk/knowledge/fundamentals/emp-law/terms-conditions/zero-hours-reality-report>

**(a) If yes, how do you think this should be achieved?**

12. Employment businesses should be required to verbally explain the key facts page and what it means for a worker's employment rights, as well as how to raise an issue or a complaint if there is a problem either with the employment business, umbrella company or a third party employer.

**4. Do you feel an hour is an accurate estimate of time it would take to produce an information document for a work seeker?**

13. The CIPD believes that it is likely to take about 30 minutes to produce a key facts page if the Government produced a standard template for this purpose. Data from a CIPD member survey finds that 65% of members think creating a principle written statement of particulars takes less than 30 minutes, while 28% believe it takes between 30 minutes and one hour. Creating a key facts page should take no longer and with the use of a standard template to present the information, it would seem reasonable to assume it would take about 30 minutes to complete the key facts page.

## **Section 2: Extending the remit of the Employment Agency Standards inspectorate to cover umbrella companies and intermediaries in the supply chain**

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

14. The extension of the EAS to the regulation of certain activities of umbrella companies and intermediaries in the supply of work seekers to a hirer should include but not be limited to the provision of a key facts page associated information. This information would provide useful transparency to the work seeker on their employment status and rights but without effective regulation, individual agency workers may not have an obvious means of seeking redress where there is a breach of their rights. This is particular problem currently given the severe back log in cases being dealt with by the Employment Tribunal Service.

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

15. It is a logical step to extend the remit of the EAS to cover umbrella bodies and intermediaries and to align regulation to the types of employment rights already regulated under the current legislative framework such as non-payment of wages, deductions from wages which the worker has not agreed to and failure to provide written terms and conditions before the start of an assignment. This would ensure there is greater consistency in regulation across the recruitment sector and would ensure that umbrella companies and intermediaries are aware that they could face inspection and enforcement action where they are in breach of their obligations.

***7(a) Thinking about work seekers and employers in the recruitment sector, would ensuring umbrella companies provide work seekers with a key facts page have a positive/negative impact on:***

***i) Individual work seekers***

16. It would have small positive impact as it would be a further means of helping to ensure that agency workers are aware of their employment rights.

***ii) Employers in the recruitment sector***

17. This change would have small positive impact on employers in the recruitment sector as it would provide a further reminder to umbrella companies and other intermediaries in the recruitment sector of their responsibilities to ensure work seekers are aware of the nature of the employment relationship they are to be engaged on and their minimum rights.

***7 (b) Thinking about work seekers and employers in the recruitment sector, would extending the regulations of the Employment Agency Standards inspectorate to cover umbrella companies have a positive/negative impact on:***

***i) Individual work seekers***

18. Extending the remit of the EAS to cover umbrella bodies and intermediaries and to align regulation to the types of employment rights already regulated under the current legislative framework would have a significantly positive impact on work

seekers. As the consultation notes, this would provide the worker with an 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. It would also ensure greater consistency in the regulation of the recruitment sector as a whole.

## **ii) Employers in the recruitment sector**

19. This change would have a significantly positive impact on employers in the recruitment sector over time, as it would ensure greater consistency in the regulation of the recruitment sector as a whole, raise standards and help improve the image of this section of the labour market. It would send a powerful signal to all parts of the recruitment sector that they are at risk from inspection and enforcement by a statutory body if they fail to provide transparency to workers they engage on their terms and conditions or if they breach the rules around payment of wages of deductions from wages.

## **Section 3: Ensuring the Swedish Derogation is used appropriately**

### **9. In your experience, what are the benefits and any associated problems on working on a PBA contract basis?**

20. There is a positive rationale behind PBAs in that in theory they mean that agency workers have greater earnings security because they continue to get paid by the employment agency if another assignment cannot be found. In addition, agency workers on pay between assignment contracts are employees of the agency and have full employment rights.

21. PBAs may suit some individuals who may be happy to sacrifice their right to equal pay and conditions as permanent staff on the basis they have greater security.

22. However there are a number of potential loop holes which mean that the principle behind PBAs can be abused. For example, agencies can provide a minimum of one hour's work each week pay to avoid paying between jobs

### **10. In your experience, how effective do you think pay between assignments contracts are in supporting workers and work seekers when they are not working?**

23. There is little available evidence on this issue. According to edition 8 (page 5) of the Recruitment and Employment Confederation's report *AWR Monitor in 2012*, the number of people who thought they were paid by agencies between

assignments, increased from 12 per cent before the introduction of the agency worker regulations (when such models did not yet exist) to 17%. However there is no published data on the extent agency workers actively choose these contracts and their level of satisfaction with these arrangements. Consequently it is challenging to assess the extent these arrangements are valued by agency workers or if there is significant abuse in their operation.

**11. Do you have evidence that there are wider issues (beyond equal pay ) with PBA contracts, for example agency workers not being able to access facilities, rest break, annual leave or job vacancies?**

24. As stated above, there is a lack of information about the extent of these issues, which may suggest that either agency workers are broadly satisfied with pay between contract arrangements, or that they are unaware what their rights are under these contracts or when they are being breached.

25. It is important that changes to policy are not informed by simply anecdotal evidence as this risks having unintended consequences where workers who are benefiting from these arrangements are penalised

**(a) Do you believe that the above issues would justify wider state enforcement?**

26. Yes. The Employment Agency Standards Authority could use its inspection powers to investigate any reported abuses of pay between assignment contracts and ensure that workers on these contracts understand the pros and the cons of this type of arrangement.

**12. To what extent do you agree that enforcement of the Agency Workers Regulations 2010 should come within the remit of the Employment Standards Inspectorate?**

27. We agree that enforcement of the Agency Workers Regulations 2010 should come within the remit of the Employment Standards Inspectorate. It would ensure that agency workers' employment rights are effectively enforced instead of the onus being placed on individual workers.

28. Enforcement of the regulations by the EAS could also cover pay between assignment contracts and ensure that workers are opting to choose these arrangements out of genuine choice and that employment businesses are not using the Swedish derogation to simply reduce costs.