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## **Labour Market Enforcement Strategy 2020 to 2021: call for evidence**

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Submission to Department for Business, Energy and Industrial  
Strategy and Home Office

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

## **January 2020**

### **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 150,000 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

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 3: Non-compliance in other sectors**

#### **The small business sector**

Our consultation response highlights in particular the challenges small firms face across all sectors in terms of awareness and compliance with employment regulation. This has considerable implications for the development of the UK's labour market enforcement strategy.

Our input is informed by consultation with a panel of expert stakeholders (including employer bodies, senior HR professionals, trade unions, professional bodies and policy organisations, academics and researchers and employment lawyers) as part of a wider CIPD research project on enforcement (to be published soon). There was widespread acceptance among our interviewees of the current weaknesses and shortcomings of labour market enforcement in the UK and a unanimously recognised need for action to address this. The near-unanimous view was that low skilled/low paid/non-unionised workers, on the edges of the labour market, and a **high proportion of smaller firms are among those most at risk** of breaches of many aspects of employment legislation.

The insights from our panel of experts are also supported by previous research by Acas ([Small firms and workplace disputes resolution, 2008](#)) which found that SMEs find compliance with employment regulation more challenging than larger firms which have more resources and in-house HR teams and support.

More recently, CIPD's 2017 research ([Employment regulation in the UK: burden or benefit?](#)) into how employers view employment regulation provides further evidence that small firms in particular (employing less than 50 people) struggle with awareness and understanding of employment law.

The study, based on a survey of 1,000 employers, found that a quarter (24%) of small firms reported they don't inform the workforce about employment regulation, in contrast with 9% of medium-sized firms, employing between 50 and 249 staff and just 3% of large firms with 250 and above employees.

In addition, small firms are more likely than larger firms to cite a number of obstacles to the successful implementation of employment regulation. For example, 49% cite a lack of resources as an obstacle compared to 44% of medium-sized firms and 41% of large companies. Similarly, 41% of small firms cite a lack of awareness of changes to legislation



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as a barrier to implementation, while just 32% of medium-sized companies and 27% of large organisations report this as a problem.

CIPD's research into building HR capability in small firms highlights the typically low level of people management capability among small firms with less than 50 employees ([Building HR capability and ambition in small firms, 2017](#)). It found many small firm owner-managers needed support to enable them to comply with employment rights and get the very basics of people management in place such as written employment contracts, terms and conditions and job descriptions. CIPD has developed a successful model for delivering basic HR support to owner managers in small firms employing between 1 and 50 employees, which was initially funded by JP Morgan foundation. The funding was used to run three HR business support pilots in Glasgow, Stoke and Hackney, East London over the course of 12 months, via partnerships such as chambers of commerce, Local Enterprise Partnerships and local authorities. In each area, small firm owner-managers were able to access up to two days' worth of free face to face and telephone information, advice and guidance via local CIPD qualified and experienced HR consultants. However, while the typical type of support delivered to SMEs through the People Skills service was fairly transactional, the evaluation found evidence that the initiative added significant value to participant organisations. For example, the data from the pilots suggest that owner-managers were more likely to report that their organisation were better or much better than similar organisations in their sector on measures of workplace relations, labour productivity and financial performance after using the People Skills.

We believe there is a need for a much closer relationship between enforcement and the availability of good quality business support on people management (the carrot and stick) so that we can start to reach and engage the hard-to-reach – mostly small – firms that are not talking to Acas or a member of any form of business network, membership body or supply chain. There is a need to improve the quality of business support to small firms on HR/people management at a local level delivered via key stakeholders such as Local Enterprise Partnerships and Growth Hubs and through providing additional resources to Acas. CIPD believes there should be consideration of the feasibility of rolling out a 'People Skills' HR support service to small firms across the UK. In our view, the cost of doing so would not be prohibitive and would be the most effective way of helping owner managers of small firms to improve their people management capability, at the same time considerably boosting compliance with employment rights.

Acas research ([Small firms and workplace disputes resolution](#)) which was based on interviews and focus groups with owners and managers of small firms, provides further

evidence of the appetite and need for enhanced business support for small firms on people management and associated employment regulation issues.

The research report concluded: “What employers said they wanted was more practical problem-solving advice, expressed in non-legalistic language, which addressed a particular issue and took account of the small business context. The need for advice tailored to the needs of smaller organisations and, ideally, provided from a personal adviser familiar with the business was a recurrent theme. It was widely felt that any advice and support services should be publicly funded support for small businesses. The rationale was that as the government introduced the employment legislation, it had a responsibility to help SMEs lacking internal expertise and HR resources to make sure they had the support needed to keep within the law.”

**1. *What three changes would have the most important impact on labour market enforcement?***

We welcome the opportunity to give feedback on wider, cross-cutting issues affecting the quality of enforcement in the UK.

We believe a more progressive enforcement system should be part of a greater ambition to create more good work and raise employment and people management standards across the economy - and at the heart of efforts to boost productivity. This should be called out in the Government’s industrial strategy: improvements to productivity through infrastructure investment take decades but improvements in workplace productivity could potentially start to happen within two or three years.

The ONS 2017 Management practices survey adds to the evidence base on the strong link between certain people management practices and higher productivity firms. In particular it found that among the four broad management practices categories, people management practices relating to continuous improvement and employment management – such as those relating to promotions, performance reviews, training and managing underperformance – were most correlated with productivity.

CIPD research from our forthcoming report on the UK’s enforcement system and our People Skills HR support pilots also indicate that the quality of managers’ people management capability is associated with lower levels of tribunal claims and improvements in workplace relations, labour productivity and financial outcomes for small firms.

The creation of a more progressive enforcement system which places as much emphasis on providing support to employer, particularly small firms, to help them improve their people management capability would both help boost compliance and the creation of more productive workplaces.

It would also help address some of the deeper issues that need to be addressed if compliance with employment rights is to be improved, not only for workers in the highest-risk sectors but across the labour market. These include:

1. Much greater awareness of employment rights on the part of employers and workers
2. A better balance between individual and state enforcement which is currently too heavily weighted on individuals having to seek redress
3. More proactive, risk-based enforcement across the labour market

**1. Much greater awareness of employment rights on the part of employers and workers**

Lack of information, knowledge and advice about employment rights, and where to go for information and support in the event of breaches to them, is a major issue for employees, workers and contractors, particularly for non-unionised workers. Many employers, and smaller employers in particular, also need better access to information, advice and guidance (IAG) about their employment rights obligations. A key underlying cause of unpaid wages such as SSP and holiday pay, for example, is lack of awareness on the part of both employers (in some cases) and workers in relation to their employment rights, which is also a major barrier for people seeking redress. We believe there should be more investment and focus by Government, and in the Labour Market Enforcement Strategy going forward, to raise awareness of employers' compliance obligations and workers' rights, particularly in sections of the labour market that are high risk in terms of non-compliance for the most vulnerable workers.

More focus on guidance/support to aid compliance by employers with employment rights in the first place would hopefully free up more resources for the state to focus on the more hardened cases of non-compliance.

We have consistently urged Government, working with organisations such as Acas, Citizens Advice, trade unions and professional bodies, to run a high-profile 'know your rights' campaign (similar to the successful one run previously by Government to promote

pensions auto-enrolment), which would set out information on the employment rights people should expect in relation to basic employment rights, as well as where to go if they have concerns or want to make a complaint. We believe that Acas plays a key role in providing IAG for workers and employers, and also in referring potential breaches of employment rights to the enforcement bodies; adequate resourcing should be made available so that it can continue and enhance its role in promoting good practice.

We believe there needs to be much greater focus on raising workers' awareness of enforcement mechanisms and how to seek redress. This view is reflected in the comments of the Director of Labour Market Enforcement in his [Labour Market Enforcement Strategy 2019 to 2020](#) who points out that his recommendations to bolster awareness of workers' rights have yet to be implemented and that '*awareness-raising remains an area of concern for stakeholders.*'

There are also deeper-seated issues affecting the awareness and confidence of workers to make a complaint that need to be addressed. Aside from lack of awareness of their rights, these include those who may be in fear of losing their jobs and/or being unsure of their right to work in the UK. We also pointed out that the number and diversity of different channels whereby workers can raise a complaint can be confusing; hopefully this is one area for improvement if the new single body is created and acts as a high-profile and accessible point of contact to raise complaints across the range of employment rights breaches.

Another barrier contributing to effective compliance across the labour market more widely is the lack of knowledge about employment rights on the part of many line managers: in March/April 2019 the CIPD surveyed 2,104 senior UK HR professionals and decision-makers as part of our regular Labour Market Outlook and asked them 'how would you rate managers' knowledge of people's employment rights?' and nearly 3 respondents in 10 (29%) said it was 'poor' or 'fair' while 23% said 'very good' or 'excellent' and 32% said 'good'.

## **2. A better balance between individual and state enforcement which is currently too heavily weighted on individuals having to seek redress**

We believe that reform is needed to achieve a better balance between individual and state enforcement which is currently too heavily weighted on individuals having to seek redress. Stronger state enforcement could help to overcome the barriers that vulnerable workers experience in enforcing their rights via an employment tribunal. An unacceptably high proportion of individuals who pursue their rights via an Employment Tribunal do not even receive the award to which they are entitled. Stronger state enforcement should help to

address weaknesses in the individual enforcement of employment rights, for example, by the relevant enforcement body taking responsibility for monitoring and ensuring that employers pay tribunal awards.

A further benefit of stronger state enforcement would be to help level the playing field for businesses, particularly those operating within tight profit margins – companies that diligently comply with employment regulation should not be undercut when competing for business by unscrupulous companies that are able to offer more competitive prices because, for example, they are not paying workers the statutory payments to which they are entitled. We believe there is a case for stronger enforcement by the state in a number of areas, and we welcome the Government's commitment to expanding state enforcement relating to umbrella companies and holiday pay.

### **3. More proactive, risk-based enforcement across the labour market**

However, we recognise the progress being made in relation to existing state enforcement, including the appointment of the Director of Labour Market Enforcement, as evidenced in the [Labour Market Enforcement Strategy 2019 to 2020](#). As an example, we highlight the HMRC's national minimum wage activity, which shows the benefits of a better resourced and more proactive enforcement approach, which doesn't rely on individual employees raising cases with tribunals supported by the threat of 'naming and shaming' and increased chances of detection by a larger force of inspectors acting now as a strong deterrent. We also highlight the HSE's risk-based, targeted and proactive approach aimed at raising general standards, and not just enforcing compliance with minimum standards.

As part of a more proactive, risk-based approach to enforcement across the labour market, we believe there also needs to be better visibility of the enforcement bodies to aid compliance. In March/April 2019 we surveyed 2,104 senior UK HR professionals and decision-makers on their views about some aspects of enforcement as part of our regular Labour Market Outlook. The findings show that employers' awareness of the enforcement bodies and interaction with them, including the likelihood of facing any type of enforcement, is very low. We understand of course that visibility of some bodies, such as the GLAA, would only be expected in certain sectors.

For example, we asked organisations, '*Has your organisation been visited by or had formal contact with any of the following enforcement bodies on employment-related compliance issues in the last two years?*' and the findings are:

HMRC – 9% said 'yes' (56% 'no', 33% didn't know, 2% prefer not to say)



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GLAA – 3% said ‘yes’ (64% said no, 31% didn’t know, 2% prefer not to say)

EAS – 4% said ‘yes’ (61% said no, 33% didn’t know, 2% prefer not to say)

HSE – 16% said ‘yes’ (52% said no, 30% didn’t know, 2% prefer not to say)

EHRC – 5% said ‘yes’ (62% said no, 32% didn’t know, 2% prefer not to say)

We also asked employers, ‘*Has your organisation been subject to any formal enforcement action by any of the following bodies in the last two years on employment-related issues?*’ and the findings are:

HMRC – 4% said ‘yes’ (67% ‘no’, 26% didn’t know, 2% prefer not to say)

GLAA – 2% said ‘yes’ (69% said no, 26% didn’t know, 2% prefer not to say)

EAS – 3% said ‘yes’ (69% said no, 27% didn’t know, 2% prefer not to say)

HSE – 6% said ‘yes’ (66% said no, 26% didn’t know, 2% prefer not to say)

EHRC – 5% said ‘yes’ (62% said no, 32% didn’t know, 2% prefer not to say)

**CIPD**

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