



**Labour Market Enforcement Strategy
Call for evidence 2019/20
Response from the Low Incomes Tax Reform Group (LITRG)**

1 Executive Summary

- 1.1 As tax specialists with an interest and expertise in problems facing the low paid, we are pleased to be able to continue to input into the Director's work. We feel able to comment on the broad issues raised in this consultation, given the extent to which problems with tax feature in worker exploitation, and the way that tax (and HM Revenue & Customs (HMRC)) are inextricably linked with the wider issues of information provision, worker rights and effective enforcement.
- 1.2 Despite the fact that tax is not formally part of the Director's remit, we very much welcome the highlighting of the gap in enforcement around non-compliant intermediaries, both for protecting worker rights and around tax avoidance, in his 2018/19 strategy document.
- 1.3 We hope that this will provide a catalyst for more action by HMRC in this area. Not least because we think that problems for agency workers (who often work through intermediaries, like umbrella companies) are one of the reasons that the sectors of hotels, restaurants and warehousing – renowned for their need for a flexible workforce – have been flagged to the Director as requiring a 'deeper dive'.
- 1.4 We cross refer the Director to our recent response to the Government's 'Good work' consultation on agency workers/umbrella companies in which we set out some of our main

concerns and put forward some ideas for change.¹ We also suggest that the Director looks at how far the cavalier behaviour displayed by some intermediaries is driven by the fact that the insolvency regime is there to act as the ultimate backstop.

- 1.5 All of the enforcement bodies have received increased resources recently, however there are many different way of measuring 'effectiveness' and it is, as yet, hard to draw any conclusions as to whether they are becoming more effective as a result.
- 1.6 In order to use their respective resources most effectively, we think it is important that the enforcement bodies devote the time, effort and resources necessary into becoming as 'streetwise' as possible as to the inner workings of the labour market. Keeping track of emerging trends and evolving experiences (particularly in the temporary worker industry), will help them understand the true nature and extent of non-compliance, and to prioritise risk areas more effectively.
- 1.7 We also think more should be done to support employers who want to be compliant – particularly with regards to information and guidance provision, as this would free up resources to deal with engagers at the other (deliberately non-compliant) end of the spectrum.
- 1.8 It should be recognised that the National Minimum Wage (NMW) regulations are not always easy to understand and apply by employers, especially small and micro employers. Problems are then compounded by poor advice and assistance from 'advisory' bodies like ACAS/HMRC and the fact that official guidance does not really cover areas that are grey or nuanced. We share a case study of an employer who (prior to our intervention) looked set to find himself stuck in a loop between HMRC and ACAS on a (straightforward) minimum wage query, and also look at the unhelpful GOV.UK guidance on 'salaried workers' to illustrate the points we make.
- 1.9 We also take the opportunity to highlight the fact that tax law and minimum wage rules interact/diverge somewhat on key issues, which may be causing employer confusion. For example, under minimum wage rules, if a worker has to pay for any type of uniform – even if it is just a pair of black trousers, black shoes and a white shirt – the cost incurred must be deducted from their pay to establish whether at least the minimum wage is being paid. However, under tax law, the rules are harsher – disallowing a deduction for tax purposes on such standard attire.²
- 1.10 When it comes to enforcement 'best practice', the three enforcements bodies should see if they can learn anything from The Pensions Regulator (TPR) who are widely regarded as

¹ <https://www.litrg.org.uk/latest-news/submissions/180508-good-work-taylor-review-modern-working-practices-%E2%80%93-agency-worker>

² <https://www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim32475>

successful and effective at enforcing the auto enrolment programme. Not only do they seem to actually *use* the powers they have, but they are also not afraid to divulge details of how they have used them. This sends out a strong message and helps to act as a disincentive to employers considering ignoring their obligations.

- 1.11 Unsurprisingly, the need for the three enforcement bodies to work closely with HMRC tax is a theme that runs through our submission, particularly on the ‘cross cutting’ issues of umbrella companies, false self-employment and non-provision of pay documents. We provide evidence of these issues in the form of queries to our website, to back up our call that they are tackled as a matter of priority.
- 1.12 In terms of ensuring that the three enforcement bodies work better together (and with other regulatory bodies), while joint working and intelligence sharing seem to be built into the DNA of the Gangmasters and Labour Abuse Authority (GLAA), we are not convinced that the same can be said for the other two bodies. This is based on what we have gleaned about HMRC in terms of their organisational culture, during the last 20 years or so of being a ‘critical friend’. Hopefully our insight will help the Director understand some of the underlying behaviours, norms and ways of interacting he may be seeing from their minimum wage unit.
- 1.13 Finally, when it comes to intelligence gaps, we are concerned about those working in the gig economy – particularly delivery drivers – where there seems to be a significant level of financial pressure and disenfranchisement. These people are usually treated as self-employed for employment law and tax law purposes (although with little of the autonomy that this status usually brings) therefore they are largely invisible to the enforcement bodies.
- 1.14 Third party engagement could help here and we would like to stress the importance of the enforcement bodies building contacts and relationships with charities, who are often the first port of call for such people who are having problems at work or who are worried about their taxes (such as Citizens Advice and TaxAid). We would also like to see the facility for members of the public to contact the GLAA about worker exploitation, better explained and publicised.

2 About Us

- 2.1 The LITRG is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HMRC and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.

2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

2.4 We are happy to discuss any of the points raised in this paper in more detail.

3 Introductory comments

3.1 It has long been our view that the low-paid require their positions to be protected through effective state enforcement (due to the imbalance of power/their inability to articulate problems etc.) and this must include HMRC's tax enforcement function.

3.2 Even though the Director's remit does not cover tax enforcement, one of the recommendations in his 2018/19 strategy¹ was that the GLAA, EAS and HMRC NMW/NLW team should work closely with the relevant HMRC tax enforcement teams to share information about non-compliant intermediaries that they identify through their enforcement work. The Director went on to say that the relevant teams in HMRC should take effective action against such organisations, ensuring that successes are widely publicised to demonstrate that the enforcement environment is changing.

3.3 The Director's seeming endorsement of our feeling that HMRC are not currently doing enough to protect the positions of the low-paid who are exploited by non-compliant intermediaries, is a hugely important step and we would like to thank the Director for highlighting this issue. It also cements in our mind the extent to which our work and the Director's work is inextricably linked and on this basis, we are pleased to be able to continue to input into the Director's strategy.

3.4 In view of the above, it will come as no surprise that a lack of visible and effective enforcement by HMRC at the lower end of the labour market is also a recurring theme in our responses to the Government's 'Good work' consultations. Throughout this submission, we refer to elements of these responses where relevant. Links are provided so the Director can refer to them in full for further information if he wishes.

3.5 In some parts of our response we have used our own research and information from workers who write into our website to inform our comments. In other places we draw on some of what we know about HMRC the organisation (through being a 'critical friend' for the last 20 years) in order to answer questions (e.g. on allocating resources effectively and collaborative working). Our experiences to date have mainly been with HMRC tax areas, however there will no doubt be overlap with HMRC minimum wage team, so we trust our input will be meaningful in this context.

¹ <https://www.gov.uk/government/publications/labour-market-enforcement-strategy-2018-to-2019>

3.6 We are happy to discuss any of the points raised in this paper in more detail as required.

4 Sector-Specific focus – Hotels, Restaurants and Warehousing

4.1 The Director has identified the priority sectors of hotels (including services involved in the day-to-day running of this sector such as cleaning, catering and security), restaurants and food service sector, and warehousing (specifically picking and packing in distribution centres and storage) as being at high risk of non-compliance with labour market regulations.

4.2 We tend to agree with the Director’s assessment and we think we can make the best contribution here by making some broad comments as to why (rather than answer each of the questions individually).

4.3 Firstly, it seems to us that these sectors will be amongst the most prevalent for using agency workers and other types of flexible workers – who will no doubt be a core part of their business model for managing uncertain or seasonal demand.¹

4.4 Yet agency workers can very often find themselves caught up in certain arrangements designed to exploit weaknesses in the system, which can have devastating consequences for them. This is often down to the ubiquitous presence of unregulated umbrella companies in supply chains.

4.5 As no one has really managed to get a handle on umbrella companies, over time, bad practices have largely driven out good and we have seen more umbrella company models based on increasingly degraded terms.²

4.6 We set out some of our main areas of concern and what we think could be done to help workers better navigate and protect themselves in the agency worker industry in our recent response to the Government’s ‘Good work’ consultation on agency workers.³

4.7 For example, we point out that there is a lack of official information for workers explaining or even acknowledging the presence of umbrella companies in most agency supply chains.

¹ Indeed, in the case of Sports Direct, they were using them instead of directly hired staff to make up the bulk of the workforce.

² For example, the elective deductions model under which an individual is treated as an employee for tax purposes so that Pay As You Earn (PAYE) is operated as is required under law but treated as self-employed for all other purposes, meaning that they are not paid the minimum wage, not given paid annual leave, etc. This means that as far as HMRC are concerned, everything appears to be in order.

³ <https://www.litrg.org.uk/latest-news/submissions/180508-good-work-taylor-review-modern-working-practices—agency-worker>

This often results in workers trying to use and apply information (on GOV.UK, for example¹) that is just not relevant to them. We also note that there seem to be huge incentives but few consequences for agencies if they push workers towards non-compliant/high return models, causing further distortions within the sector.²

- 4.8 We also take the opportunity to flag the problem of the insolvency regime being used by employment intermediaries to avoid or evade tax liabilities. While HMRC are in the process of dealing with this,³ we think it probably spills over into the avoidance or evasion of arrears/awards in relation to employment law matters and we suggest the Director looks at this further.
- 4.9 Alternatively, workers for hotels, restaurants and warehouses may be working for a business directly, but under a zero-hours contract (or similar) in order to give the business the flexibility it needs. There are well-known issues around rights and protections for such workers⁴ (not least, because they fall under the confusing status of ‘worker’ for employment law purposes).
- 4.10 In our view, there is still a dire need for basic information about what low-income workers on such contracts should expect in relation to holiday pay, sick pay, etc. coupled with a more accessible means for them to complain and secure payment if things go wrong.
- 4.11 Such steps could help cut down on problems for zero-hours workers over time. A relevant cross reference here is to our submission to the Government’s ‘Good work’ consultation on the enforcement of employment rights⁵ in which we welcomed the idea of a state body having responsibility for enforcing a basic set of core rights for workers – including those on zero-hours contracts. We did however question whether HMRC are, in fact, the right state body to take on the role, e.g. because some workers will ‘fear’ HMRC, particularly if they have had problems with them before over tax or tax credits issues.

¹ This guidance is based on the assumption that agency workers work through a tripartite arrangement, which is now largely incorrect: <https://www.gov.uk/agency-workers-your-rights>

² This may change under the Criminal Finance Act 2017 as penalties can arise for agencies where a worker evades tax and the commissioning of that offence is facilitated by a third party (e.g. an umbrella company) who is ‘associated’ with the agency. Agencies are required (if they want to have a defence) to have reasonable procedures in place to prevent the facilitation of tax evasion.

³ <https://www.gov.uk/government/consultations/tax-abuse-and-insolvency>

⁴ For example, this Citizens Advice statement says that half of people on zero-hours contracts wrongly believe they are not entitled to paid holidays: <https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/media/pressreleases/sharp-practices-paid-holiday1/>

⁵ <https://www.litrg.org.uk/sites/default/files/180516-LITRG-response-Enforcement-rights-FINAL.pdf>

5 Cross cutting issues

5.1 **8. What assessment do you make of the use and effectiveness of the resource increases received by each of the three enforcement bodies?**

5.1.1 It seems to us that we are either at too early a stage (of significantly increased resources), or there is not really enough transparency and/or data, to draw any firm conclusions at this stage.

5.1.2 For example, the EAS's budget was increased from £500,000 to £725,000 for 2017/18¹ but this increase was specifically to procure a case management system to drive efficiencies and to purchase a new information management system to support EAS's operational capacity. We suppose it will take a while to see if the EAS are realising the benefits of its new IT infrastructure.

5.1.3 With regards to HMRC's minimum wage team, although on the face of it, the 2017/18 year seems to have been a 'record' year all round, the information released publicly does not really allow us to do any proper analysis and evaluation as to their *effectiveness*.

5.1.4 For example, it is not clear if the increased figures are because HMRC are getting better at catching employers or because there are more non-compliant employers. We are also not able to tell how far the figures comprise rogue employers vs accidental non-compliance or what the team's deterrent effect might be. Similarly, it would be good to understand if HMRC were still largely focused on 'low-hanging fruit' within an employment setting or whether they have turned their attention to the arguably more complex and serious breaches of minimum wage rules that tend to go hand-in-hand with false self-employment? There are lots of different ways of measuring effectiveness, and in our view, all of these elements are key.

5.2 **9. How, if at all, could enforcement resources be allocated and deployed more effectively?**

5.2.1 There are a couple of points that we would like to make:

1) It is vital that staff in the three enforcement bodies ensure that they really have their finger on the pulse of what is going on at the bottom end of the labour market. They should not presume they have the measure of non-compliance or know where problems are, as things can move very quickly – particularly in the temporary worker industry – where there are a lot of creative thinkers and where models of engagement evolve constantly. If they are not being 'streetwise' or savvy, they could be wasting time and money trying to chase down problems and issues that are simply no longer relevant.²

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/736160/eas-inspectorate-annual-report-2017-18.pdf

² This may seem like an obvious point but we wanted to raise it because it sometimes seems to us that the Government are often a few steps behind in terms of their understanding of the inner workings of the labour market – see the point we make in para 4.7.

2) There are a lot of employers out there who want to do the right thing but who make genuine mistakes. If the enforcement bodies could prevent problems for such employers from developing in the first place, they would free up resources to deal with employers that have shown a complete disregard for the rules.

5.3 **10. How can the enforcement bodies better support employer compliance?**

11. In your experience, which areas of the labour market enforcement regulations have been the most challenging to implement/enforce?

12. What assessment do you make of the support and guidance currently offered by the enforcement bodies?

13. How, if at all, can the available support and guidance resources be improved?

5.3.1 We agree that most employer non-compliance does not stem from deliberate and flagrant disregard for the law, but is rather the result of ‘ignorance or incompetence’ – although even incompetence is probably too strong a word in the majority of minimum wage cases, as we will go on to see below.

5.3.2 It should be remembered that the NMW regulations are complex and sometimes difficult for employers to apply (borne out somewhat, by the ongoing saga over sleep-ins). The burden of trying to understand the minimum wage rules around things like salaried workers, travel time and costs, uniforms and equipment, tips, salary sacrifice, etc. can be disproportionate – certainly for small and micro employers¹ – and it is not surprising to us that there can sometimes be administrative errors or technical failures.

5.3.3 Yet there is an overall lack of guidance and support to help them understand and comply with their responsibilities in these areas. We think that the challenges employers face are best illustrated by looking at this case study.

5.3.4 *A trustee of a homecare-providing charity has recently been in touch with us. He evidently takes the welfare of his staff seriously and, having read our website section on issues for paid care workers,² wanted to clarify the rules around ‘costs’ of travelling between clients (he was*

¹ We know that many small and micro employers find the ever-increasing costs and responsibilities of being an employer overwhelming. They may be fully occupied in developing their fledgling business in a difficult economic environment or may be an elderly or disabled person who has been given money by the local authority to take on their own carer, totally lost as to what is required of them. Either way, they probably do not have the wherewithal or energy required to enable them to get to grips with all their obligations and also do not have the money to buy in specialist advice and assistance.

² <https://www.litrg.org.uk/tax-guides/disabled-people-and-carers/caring-someone/issues-facing-paid-care-workers>

*unaware that there was a minimum wage implication until he read our material – itself quite worrying).*¹

He first looked for some official guidance on the matter, however could not find any with sufficient clarity to reassure him as to what was required. (Note, neither the GOV.UK² nor the more detailed BEIS guidance³ flags that unreimbursed travel expenses reduce pay for minimum wage purposes, let alone how to quantify them e.g. if using one's own vehicle, is it just the cost of the fuel or can some account be taken of wear and tear or other running costs?)

He then rang ACAS who said that they didn't think the minimum wage legislation covered travel expenses but that "HMRC "owns" NMW so you had better ask them". The trustee then phoned HMRC who said, "we only deal with tax so here's a number to call for minimum wage guidance" ... the number was ACAS.

5.3.5 We also want to highlight the fact that tax and minimum wage rules interact and diverge somewhat on key issues, and this may be causing employers confusion. For example:

- Costs incurred in connection with employment are often not reimbursed by employers. This means they reduce employees' pay for minimum wage purposes. But employees can often claim tax relief on such costs to help restore their out-of-pocket position. Are employers counting potential tax refunds as 'reimbursements'?
- Under minimum wage rules, if a worker has to pay for any type of uniform – even if it is just a pair of black trousers, black shoes and a white shirt – the cost incurred must be deducted from their pay to establish whether the minimum wage is being paid. However, under tax law, the rules are harsher – disallowing a deduction for tax purposes on such standard attire from the worker's earnings for tax purposes.⁴
- Tips do not form part of minimum wage remuneration (so must be paid on top of minimum wage pay), however for tax purposes they are counted within ordinary taxable pay and are not viewed as anything extra or special.
- The Government has recently brought in some changes to stop salary sacrifice for tax/NIC purposes – except for benefits that it wants to encourage such as pension-saving and childcare vouchers. However, for minimum wage purposes – *all* salary

¹ The rules basically say that their pay must average out at or above the minimum wage, once the following are factored in: the time they spend in the client's home; time spent travelling between their different clients during the day and their associated out-of-pocket expenses.

² <https://www.gov.uk/national-minimum-wage/employers-and-the-minimum-wage>

³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/726432/calculating-minimum-wage-guidance-july-2018.pdf

⁴ <https://www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim32475>

sacrifice is problematic if it takes your pay below the minimum wage – no matter what the benefit.

- 5.3.6 While we understand that there are justifications for the different approaches (as the two systems are trying to achieve different things), we think more could be done to highlight and clarify such points of difference with employers. It is easy to see how small or micro employers with little specialist payroll/HR support could find it difficult to understand such complexities.
- 5.3.7 Finally, when thinking about how employer resources could be improved, we take the opportunity to refer the Director to our recent submission to the Welsh Revenue Authority on what makes good guidance.¹ While this is concerned with tax, the principles could apply equally to minimum wage guidance.
- 5.3.8 One comment we make is about the use of examples – widely recognised as an essential part of ‘good’ guidance – particularly those derived from actual experience. However it is often the case that these are missing or that if illustrative examples *are* given, they cover situations where the treatment is quite clear or undisputed; examples covering ‘grey’ or nuanced areas would be of much greater assistance.
- 5.3.9 We can see this problem in GOV.UK’s guidance on salaried workers.² In order to work out whether a salaried worker has been paid the minimum wage you must be able to work out the number of basic annual hours they are contracted for. This is actually more complex than it sounds, as usually contracted hours are not stated in annual amounts but weekly (and a year does not contain a nice round number of 52 weeks!).
- 5.3.10 However, the GOV.UK guidance says:

Example

Jeba’s contract says she must work 2,040 hours each year.

She’s eligible for the [minimum wage rate](#) of £7.38 per hour.

She gets paid monthly (12 times a year), so each pay packet covers an average of 170 hours (2,040 divided by 12).

This means she must be paid at least £1,254.60 a month (£1,254.60 divided by 170 makes £7.38) for the basic hours in her contract.

- 5.3.11 How many contracts state an annual amount of hours like this? This example should explain to employers how they can ascertain the annual number of hours from contractual terms along the lines of: ‘You are contracted to work 40 hours per week’, or ‘Your hours of work will be Monday to Friday 9am to 5pm’ – which are both far more ‘real world’.

¹ <https://www.litrg.org.uk/sites/default/files/171215-Attributes-of-good-guidance-CIOT-ATT-LITRG-comments.pdf>

² <https://www.gov.uk/minimum-wage-different-types-work/paid-an-annual-salary>

5.3.12 It is actually our understanding that it is not possible to ascertain an annual number of hours from a contractual terms saying ‘You are contracted to work 40 hours per week’ which means the worker is not a salaried worker but an unmeasured worker (with a different minimum wage basis).¹ It is no wonder salaried workers were recently identified by the Low Pay Commission as being at high risk of underpayment.²

5.4 **14. Are there any examples of good compliance approaches that you have experienced, or examples of best practice, that you wish to highlight to the Director for consideration? These can be drawn from across the regulatory landscape.**

5.4.1 The Director should see if he can learn anything from TPR who are widely regarded as successful and effective at enforcing the auto enrolment programme. They have a clear strategy, which, summed up (in their own words³) is:

“We aim to prevent problems from developing in the first place while keeping the burden on those we regulate to a minimum. Where we find potential problems we may take action to educate, enable or enforce against those involved.”

5.4.2 In our view, one particularly effective aspect of TPR’s approach is that they make their enforcement action *visible* – employers are fully aware that TPR have a range of powers that they can use and that if they fail to give their employees the pensions they are entitled to, they are very likely to get caught and fined.

5.4.3 In particular, their enforcement and compliance bulletins⁴ make for interesting reading as they set out cases and the powers TPR have used in the quarter, relating to automatic enrolment and associated employer duties. Further, where TPR consider a case is sufficiently important they may publish specific details.⁵ While they use these powers in a measured way, they say having the ability to publish detailed information about their enforcement activity plays a vital part in securing the important outcomes of transparency, education and guidance, and deterrence:

“Transparency: We recognise that it is in the public interest to ensure that everyone has a greater understanding of how we exercise our statutory functions. An important aim of publication is to increase understanding of how and when we have used our powers.”

¹ As explained here: <https://ion.icaew.com/tourismandhospitality/b/weblog/posts/national-minimum-wage---and-the-salaried-worker>

² <https://www.gov.uk/government/news/low-pay-commission-report-on-non-compliance-with-the-minimum-wage>

³ <http://www.thepensionsregulator.gov.uk/regulate-and-enforce/regulatory-approach.aspx>

⁴ <http://www.thepensionsregulator.gov.uk/doc-library/enforcement-bulletins.aspx>

⁵ <http://www.thepensionsregulator.gov.uk/doc-library/regulatory-intervention-reports.aspx>

Education and guidance: To provide guidance to improve practices, behaviours and compliance with legal obligations which otherwise might lead to intervention; and to encourage higher standards by sharing good practice.

Deterrence: To deter unlawful or improper practices or behaviours, to increase awareness of such practices or behaviours and to inform others who may be adversely affected by such practices or behaviour.”

5.5 **15. How can the three enforcement bodies work more closely in partnership to tackle non-compliance?**

5.5.1 In terms of ensuring that the three enforcement bodies work better together with each other (and other regulatory bodies too), it seems to us that joint working and intelligence sharing are part of the lifeblood of the GLAA – indeed their strap line is ‘working *in partnership* to protect vulnerable and exploited workers’ (our emphasis).

5.5.2 One only needs to look at the GLAA’s press releases¹ to see some positive examples of partnership working involving the GLAA and bodies like the National Crime Agency, the police and local authorities.

5.5.3 While the GLAA seem to be an energetic, dynamic, inclusive organisation, fully focused on mission priorities, we are unsure whether the same can be said for the other two bodies, where hitherto deeply-ingrained cultural norms and behaviours may be evolving, but at a slower rate.

5.5.4 In particular we wonder whether more needs to be done to counter the traditional bureaucratic ‘silo mentality’ that seems to exist within HMRC, which in our experience (in terms of HMRC’s tax functions) can hinder progress.

5.5.5 These traits cannot be conducive to the type of collaborative working required of them on labour market issues. There is therefore a need for significant cultural change, at a faster pace, in HMRC in order that they can work effectively and successfully with other bodies. Good communication and leadership could help them see the bigger picture. It may be that structural and procedural changes are necessary for them to then accomplish the broad goals set.

5.6 **16. Where should joint working efforts be directed as a matter of priority? (i.e. on any specific cross-cutting issues, sectors, regions etc.) Please provide evidence to support your answer.**

5.6.1 *Umbrella companies*

5.6.1.1 We continue to hear of problems with umbrella companies. Here is one of the most recent queries that we have received to our website: *Hi, the Umbrella Company I am with make*

¹ <http://www.gla.gov.uk/whats-new/latest-press-releases/>

charges to process statutory payments such as my holiday pay or if I qualify for SSP. Are you able to clarify if they are allowed to do this?

5.6.1.2 It is unclear whether these deductions are being made from gross pay (in which case they may well be ‘unauthorised deductions’) or whether they are wrapped up in the umbrella company margin and are coming off of the calculation before gross pay is arrived at.¹ Whatever the case, we think such practices need to be investigated further.

5.6.2 *False self-employment*

5.6.2.1 From our considerable involvement with voluntary organisations such as the charity TaxAid,² and via feedback from members of the public to our website, we strongly believe there is an ever-increasing trend towards the ‘false’ self-employment of low-paid workers.

5.6.2.2 We focus on this issue in much of our response to the recent Employment Status consultation³ and look at what may be driving such behaviour on the part of engagers. Within that response, we include a selection of queries that we have received from workers presenting potential false self-employment, for example:

Hi, I moved to UK on January and I start to work as Nanny in March of this year. In signed a contract saying that I will work just for than as a self employee. But the other Nanny told us that I couldn't be a self employee if I work for just one family. The family promised to change the contract and everything, but thy never did. I just left the job and I would like to know how I can pay for my taxes. I don't have any idea how to start the process but I want pay the taxes. I had work£1193.00 in March, £947.00 in April and £750.00 in May (but they just payed me £ 500). Could you help me with this? Thanks a lot! (I am Portuguese and I was working legally)⁴ (sic)

5.6.3 *Non-provision of pay documents*

5.6.3.1 This poor employer practice, often linked to false self-employment (and PAYE avoidance), but not always, can have wide reaching knock on effects – e.g. on ability to claim benefits, get credit, check minimum wage compliance.

5.6.3.2 We enclose as Appendix 1 a selection of anonymised queries that we have received that help demonstrate the extent and breadth of the issue.

¹ We explain how umbrella companies work in this factsheet:

<https://www.litrg.org.uk/sites/default/files/Umbrella%20factsheet%202018.19%20FINAL.pdf>

² <http://taxaid.org.uk/>

³ <https://www.litrg.org.uk/sites/default/files/180531-LITRG-response-Employment-status-FINAL.pdf>

⁴ From a minimum wage perspective, it is not clear to us if the ‘au pair’ exemption would apply here and if we were HMRC’s NMW unit, we would probably want to look into this further.

- 5.7 **17. Where might there be scope for wider state regulators, beyond the remit of the Director, to collaborate with the three enforcement bodies for a multi-agency approach to non-compliance? (i.e. HMRC tax, HSE, Insolvency Service, Environment Agency, Local Authorities etc.**
- 5.7.1 With respect to the specific problems highlighted above in the answer to question 16, there is definitely scope for wider state regulators, e.g. HMRC tax and TPR, to work together with the three enforcement bodies. For example:
- 5.7.2 **Umbrella companies** – action could be jointly taken by EAS, GLAA and HMRC tax.
- 5.7.3 Umbrella companies tend to exploit the fault lines that exist in the tax system – e.g. tax and NIC, employment and self-employment, temporary and permanent workplace, etc., so should be of definite interest to HMRC tax. Even though umbrella companies do not formally fall under the remit of the EAS at the moment, many workers in umbrella companies are handed over to them by employment agencies, which do. In addition, many operate in GLAA licensed sectors and may be breaching certain licensing standards e.g. those covering tax and basic employment rights.¹
- 5.7.4 **False self-employment** – action could be jointly taken by HMRC NMW team, HMRC tax and TPR.
- 5.7.5 False self-employment not only denies people the certainty of having their taxes and National Insurance dealt with under PAYE² but also denies them certain ‘rights’ such as the minimum wage and having a workplace pension.³
- 5.7.6 **Non-provision of pay documents** – this is an area where HMRC tax and HMRC NMW (along with ACAS) could usefully collaborate (not least because it is unclear where primary ‘responsibility’ for this issue currently sits and this needs to be clarified....)
- 5.7.7 The right to a payslip exists under the Employment Rights Act, meaning a worker’s first port of call is probably going to be ACAS and on to an Employment Tribunal potentially. However, there is a legal requirement on employers to provide P60s and P45s under tax law. In addition, there is a NMW angle as workers are entitled to know whether they have been paid the minimum wage.
- 5.7.8 As you will see, the need for HMRC tax to be involved in tackling these areas of concern is a recurring theme. In addition, as there is much overlap and no real clear demarcation in

¹ <http://www.gla.gov.uk/media/1596/licensing-standards-may-2012.pdf>

² Under the PAYE regulations (<http://www.legislation.gov.uk/uksi/2003/2682/regulation/80/made>) the general principle is that it is the engager’s responsibility to get tax status right for the purposes of operating PAYE

³ See the Pensions Act 2008 for auto enrolment (s.88)

terms of which body 'owns' issues, it is clear to see why these issues may currently be falling through the cracks.

5.8 ***18. Are there any examples of joint working best practice in labour market enforcement that you wish to highlight to the Director? Examples may also be drawn from across the regulatory landscape.***

5.8.1 See our response to question 15.

5.9 ***19. Are there any gaps in current labour market intelligence which could be addressed through engagement with third parties? (i.e. beyond the state enforcement bodies). If so, please detail how such an approach could work in practice.***

5.10 It seems to us that issues around 'dependent self-employed' workers seem to be flying under the radar at the moment. These are people whose work has many of the characteristics of self-employment (e.g. they decide when they work and use their own tools), but who often have less autonomy than genuinely self-employed people and may derive all or most of their income from the business that they work for.

5.11 These people could include those who work in the gig economy, such as delivery workers, who often seem to face uncertain hours and low pay, with unrealistic targets.¹

5.12 Many may well fall under the definition of 'worker' for employment law purposes (and indeed, 'employees' for tax purposes, however this has not yet been tested in the courts), however because they are being treated as self-employed for both tax and employment law purposes they will be largely invisible to the enforcement bodies as they will not appear in any official 'employer' data.

5.13 As such, we would like to stress the importance of the enforcement bodies building contacts and relationships with charities who are often the first port of call for such people who are having problems at work or who are confused about their taxes (such as Citizens Advice and TaxAid). This could be helpful in identifying recurring themes, so that the enforcement bodies know where to look for issues.

5.14 It seems to us that reputable end user businesses who rely on delivery services may be keen to help stamp out wrongdoing in their supply chain by reporting exploitation (they may be shocked at how drivers are treated or surprised that standards are so low, for example). Other delivery services may also be a rich source of information when it comes to reporting exploitation, as they are potentially harmed by poor practices that undercut them.

¹ Indeed, they are also at higher risk of crashing:

<https://www.theguardian.com/business/2018/aug/20/gig-economy-demands-raise-uber-and-amazon-drivers-risk-of-crashing>

- 5.15 Incidentally, we note that it is now possible for the general public to report any suspicions about exploited workers to the GLAA¹ – this is a positive development in terms of helping to build a picture of risk.
- 5.16 However, it is not clear (even to us) if this facility can only be used to report issues in GLAA licensed sectors or more widely. This (along with other reporting pathways, as necessary) should be clarified as soon as possible. We think that this facility should then be better publicised and promoted – including perhaps via a national campaign on TV, radio, billboards, train posters, etc.

LITRG
26 September 2018

¹ <http://www.gla.gov.uk/report-issues/english-report-form/>

Appendix 1

Dear Sir/Madam My Employer refused provide to me Document P-45 and P-60. From month May 2016 I stay on break from this Employer. I han't any income for long term. Jobcentre and Housing Benefits claims is regularly rejected. Lack P-45 affected to my living. HMRC Customers Team refered my case to ACAS. I met the difficulties contacting with ACAS. I familiarized with ACAS Procedures. Only HMRC is competent dealing with this case. Currently I am stragglng of the whole living cost. Can I ask for consideration in this matter? Yours faithfully (sic)

Hello. I am getting a little concern about my work placemnet. I work as a nail technician for XXXXXXXX. I hardy get any payslips and only when asking for them . I never recieved my P60 . I would like to become self employed and I need these information .My National Insurance Number is XXXXXXXX (sic)

Hello I was employed as a part time (worker) from October 2017 until 1 June 2018 after I resigned. I had a contract of employment and was paid £561.60 per month, working 16 hours per week (£129.60 p/w). I have been asking the (employer) for payslips since October 2017, and then subsequently a P60 and P45 prior to leaving. I have been told that this was being sorted out but to date I have not received any of these documents. I am due to start another part time job next week but am now in a situation where I do not have a P45 or P60. This was my sole job and I have not reached state retirement age as yet and do not receive any other pensions or benefits. I also requested that the (employer) enroll me on the pension scheme but this did not happen. I am not sure how I go about ensuring I receive these documents or what rights I have. I understand that if I earnt over £116 per week, I should have received a payslip and been registered for NI credits. Any help would be appreciated. (sic)

Tax Aid case study

Wife called about her husband who had been working for his grandfather for the last 15 years.

- Paid monthly by BACS.
- The grandfather has provided 'employer' letters to Mortgage Company for husband.
- The husband had never received payslips or P60s.
- Husband currently earns £19,800 pa.
- Grandfather now suffers from Alzheimer's.
- Caller had spoken to ACAS but they are unable to help.

I would be very grateful for help and advice please. I am a (mum) trying to work inside school hours. I have a 12hr per week job working as an XXXXXX. I work at home on my own personal equipment. I have held this position since 1st May 2015. I have in all this time only received about 5 payslips. I am under the tax threshold as I am on the living wage. The (employer) refuses to complete any kind of payslip as I don't pay tax. He sees it as an irrelevance. However, I thought it was a legal thing that an employee (I have a contract) has

a payslip. I am about to start a second job as a XXXXXX for 90 mins a day during term times so it will be interesting to see what they do. It bothers me greatly that I don't exist to the tax office. I'd feel happier with some sort of paper trail as the (employer) makes it feel quite underhand. And with this second role won't I need to be recorded for NI contributions? Won't that also impact my pension contributions? I have contacted the tax office to no avail. They don't seem that interested as I'm not earning enough to be interesting to them. I've tried their website. I cannot find this answer anywhere. How can I make my first employer give me a payslip? And what do I need to be careful of in regards to NI and Pension being a low earner? Do I self assess? It bothers me I cannot prove my income or it's source. How can I even say apply with my husband for a mortgage if I cannot prove where my salary comes from? Surely this isn't allowable.....? I cannot find out.

Tax Aid case study

- In 2013 client started work in call centre for company
- £5 deducted each week from them to pay for 'accountant' but company kept money and then eventually went bust.
- No payslips or P60s.
- ACAS had advised that based on description of job, staff were definitely employees.
- PAYE not operated.