

**Good work plan: establishing a new single enforcement body for employment rights
Response from the Low Incomes Tax Reform Group (LITRG)**

1 Executive Summary

- 1.1 We are a group of tax specialists with an interest and expertise in labour market issues, particularly in the pay and tax matters of low-paid and vulnerable employees.
- 1.2 It has long been our view that the low-paid require their positions to be protected through effective state enforcement. This is a point we have made repeatedly in our responses to several consultations looking at the enforcement landscape, including those from the Director of Labour Market Enforcement (DLME).
- 1.3 Many pragmatic and sensible recommendations have come out of those consultations, yet progress seems to be very slow. We would have liked to see the government implementing some of the desperately needed changes highlighted in previous consultations, before launching another consultation.
- 1.4 The creation of a single enforcement body seems to represent a natural next step towards a more comprehensive framework of protection for workers. However, to us, this step seems rather premature when the impact of the DLME's recent work is not yet known.
- 1.5 It would also be a huge upheaval when the next couple of years are likely to be a testing time for the UK's workforce. Brexit, in particular, has the potential to create instability, which may ultimately have an impact on workers.
- 1.6 The government should not try to overreach itself at this critical time. The implementation of a single enforcement body should be a longer-term, carefully considered objective. In our view, the risks (discussed at para 3.5 below) most probably outweigh the benefits.

- 1.7 One of the driving forces behind this proposal is, no doubt, concern about how to implement the government commitment made around enforcing holiday pay and umbrella companies (in particular, which body should take on the role). We have recommended several times¹ that the Gangmasters Licensing and Abuse Authority (GLAA) should take on this role – they already have licensing standards covering basic employment rights including holiday pay, and umbrella companies already operate in GLAA licensed sectors, so there would be no reinventing of the wheel.
- 1.8 Once the holiday pay/umbrella company ‘problem’ is removed, the need for the creation of a single enforcement body becomes less urgent. After all, ACAS is already there to provide a simple, single entry point in terms of the ‘user journey’ and the DLME is already having a very positive impact in enabling a more strategic and joined up approach to compliance, deterrence and enforcement.
- 1.9 Given our remit, we have confined the rest of our comments to certain areas, namely questions 5 and 10, where we make some tax-related comments.
- 1.10 Question 5 asks whether the GLAA’s licensing scheme should be expanded to other sectors at risk of exploitation by gangmasters, and our answer is yes.
- 1.11 It is apparent to us that the GLAA has had a positive impact in stamping out vicious and bad working practices in the sectors in which they operate and it is very welcome that they exist to provide another layer of tax checks in the form of their licensing standards, thus helping to thwart any wrongdoing at employer level. Expanding the licensing system would give an extra layer of protection for more workers.
- 1.12 However, we take the opportunity to caution that complex areas of tax law should not be decided as part of a GLAA licence application or appeal (even if the decisions reached are ultimately probably correct). This happened as part of the *FS Commercial* case with the consequence that questions lingered over the authority of the employment judge’s decision and workers continued to get caught out by the controversial umbrella company scheme involved (see para 4.3 below).
- 1.13 With regard to question 10 which asks whether a single enforcement body should have a role in any of the other areas, we take the opportunity to remind government that labour market exploitation very often manifests itself in problems with Pay As You Earn (PAYE) being operated on pay, something that is not addressed in the consultation document at all. Given the constraints in recent years on HMRC’s resources, it is perhaps not surprising that there appears a lack of visible and effective enforcement by HMRC at the lower end of the

¹ For example in our consultation responses <https://www.litrg.org.uk/latest-news/submissions/180516-enforcement-employment-rights-recommendations> and <https://www.litrg.org.uk/sites/default/files/180508-LITRG-response-Agency-workers-FINAL.pdf>

market – a point we have made in several recent consultation responses. We think there needs to be a refocus on PAYE compliance and enforcement at employer level, accompanied by adequate funding for such resources, and wonder if there could be a role here for a new single enforcement body.

- 1.14 Even if this does not happen, there are a number of serious cross cutting issues, both in terms of labour market enforcement and tax and National Insurance (NIC) enforcement, such as false self-employment and non-provision of pay documents that can cause real problems for workers. This, coupled with the fact that there is already some overlap (due to the GLAA's tax and NIC licensing standard), means that there is a clear and unequivocal need for HMRC's tax compliance function and the single enforcement body to work together, in partnership.

2 About Us

- 2.1 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.

3 General comments

- 3.1 This is the latest in a long line of consultation documents that we have responded to touching on labour market enforcement,¹ and we would have liked to see the government

¹ Responses include, but are not limited to:

Low Pay Commission: April 2020 National Minimum Wage rates – <https://www.litrg.org.uk/latest-news/submissions/190610-low-pay-commission-april-2020-national-minimum-wage-rates>

Call for Evidence: UK Labour Market Enforcement Strategy 2019/20 – <https://www.litrg.org.uk/latest-news/submissions/180926-call-evidence-uk-labour-market-enforcement-strategy-201920>

implementing some of the desperately needed changes highlighted in previous consultations, before launching another consultation.

- 3.2 Our approach to this consultation is therefore to make some important general comments on the creation of a single enforcement body but to confine the rest of our response to answering questions 5 and 10, where we can make some tax-related points.
- 3.3 The current enforcement landscape is fragmented and complex and, on the face of it, an overarching labour inspectorate seems like a good idea. We agree with the Director of Labour Market Enforcement that ‘If one were starting from scratch, it is unlikely that one would design state labour market enforcement along its current lines’.
- 3.4 However, after a proper period of analysis and evaluation, we do not agree that the hasty creation of a single enforcement body is the right step to take at this time. Instead, it should be a longer-term, carefully considered objective. In the shorter term, we think that the government should be concentrating their efforts on implementing some of the desperately needed changes that have been recommended by various experts and specialists, including Matthew Taylor, the Low Pay Commission and the DLME.
- 3.5 We say this for the following reasons:
- 3.5.1 Firstly, placing enforcement under a central authority, practically speaking, would be a bigger and more complex undertaking than has perhaps been set out. It has the potential to be extremely disruptive and distracting. At the same time, we expect a significant shift to umbrella schemes in the temporary worker industry as a consequence of the April 2020 off payroll rules¹ (see more comments in para 5.6).
- 3.5.2 There is also Brexit looming – which could mean an outflow of workers from the UK. Migrant workers in low paying sectors tend to have lower reservation wages² (the lowest wage rate at which a worker would be willing to accept a particular type of job) and employers’ wage

Employment status – <https://www.litrg.org.uk/latest-news/submissions/180531-employment-status>

Good work: Enforcement of employment rights recommendations – <https://www.litrg.org.uk/latest-news/submissions/180516-enforcement-employment-rights-recommendations>

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

Informing Labour Market Enforcement Strategy 2018/19 – <https://www.litrg.org.uk/latest-news/submissions/171010-informing-labour-market-enforcement-strategy-201819-0>

The future world of work and the rights of workers – <https://www.litrg.org.uk/latest-news/submissions/161216-future-world-work-and-rights-workers>

¹ <https://www.litrg.org.uk/latest-news/submissions/190529-payroll-working-private-sector>

² <http://cep.lse.ac.uk/pubs/download/cp478.pdf>

bills could go up after Brexit. Some employers may look to displace these costs – potentially to the detriment of workers.

- 3.5.3 Secondly, while there are current synergies between HMRC's National Minimum Wage unit, the Employment Agencies Standards Inspectorate and the GLAA, the main challenge, as we see it, will be ensuring that the different constituent parts of the new body, each with their own deeply ingrained cultures, behaviours, skill sets and areas of focus and responsibility, can come together to cooperate and communicate. This will be a delicate process and should not be rushed.
- 3.5.4 Finally, the rationale behind the need for a single enforcement body can seemingly be separated into three separate strands:
- simplification of the 'user journey' for workers;
 - closing the enforcement gaps around holiday pay and umbrella companies; and
 - enabling a more strategic and joined up approach to compliance, deterrence and enforcement.
- 3.5.5 Playing devil's advocate, in terms of the first bullet point, ACAS – a strong and recognisable brand – is already established. We are optimistic that with a few improvements, it could be a single gateway where workers can go to receive advice and report problems and to be supported through the task of navigating the different enforcement mechanisms.
- 3.5.6 In terms of the last bullet point, while there are no doubt some inefficiencies, the DLME is working hard to promote a joined-up working and strategic direction across the three bodies. We have been impressed by the lengths to which he and his staff have gone to understand the inner workings of the labour market and the true extent and nature of non-compliance. He has a good measure of the risk areas and priorities and his changes should be given a chance to work. If after an appropriate period of time, the evidence suggests that they are not having the intended impact, then it would be reasonable for the government to look at this again.
- 3.5.7 If the introduction of state enforcement of holiday pay and umbrella companies is the real issue underpinning this consultation then it seems to us that the answer lies with the GLAA – provided they are also given significantly increased funding and resources.
- 3.5.8 They are an energetic and dynamic organisation, both matters fit squarely under their remit (they have licensing standards covering basic employment rights including holiday pay and umbrella companies already operate in GLAA licensed sectors) and they are widely regarded as being robust and effective in helping to stamp out bad practices. In many ways, if the government were able to grasp the nettle, and take up our recommendation, the urgency behind the creation of a single enforcement body starts to melt away.
- 3.5.9 We therefore think that the establishment of a single enforcement body, while a logical next step to a more streamlined and cohesive system, should be viewed as a longer-term aim – and one that requires much more careful consideration, research, discussion and planning.

4 Question 5 – Do you think the current licensing scheme (for supply or use of labour) should be expanded to other sectors at risk of exploitation by gangmasters?

- 4.1 Yes, we think there is a case for extending the GLAA’s licensing system into sectors characterised by insecure and vulnerable employment, such as social care, car washing and construction.
- 4.2 The licensing scheme covers areas like health and safety, accommodation, pay, transport – but also tax¹ – providing many workers with protection from tax and NIC geared exploitation, which helps cut down on things like false self-employment and illegal travel and subsistence schemes.
- 4.3 This is very welcome given some of the problems with HMRC’s tax compliance function that we allude to in section 5. However, we take the opportunity to caution against complex areas of tax law being decided as part of a GLAA licence application or appeal. This happened as part of the *FS Commercial* case, in which the then GLA took action against a Pay Day by Pay Day (PDPD) umbrella scheme, assisted by technical input from HMRC.² While the tax and NIC issues were considered and declared non-compliant by the Judge in that case, it did not set a precedent in pure tax terms with the consequence that questions lingered over the authority of the Judge’s decision and PDPD continued to be promulgated. It also did not apply to any businesses operating PDPD outside of the GLAA regulated sectors.
- 4.4 We recommend, going forward, that where there is a dispute as to whether something a labour provider is doing is compliant or not in the context of a GLAA licence application or appeal, the GLAA should pass the case to HMRC to test the legality in the independent tax tribunal. It would then be for the GLAA to take action around the licensing standards based on the outcome.

5 Question 10 – Do you believe a new body should have a role in any of the other areas?

- 5.1 Exploitation may manifest itself in problems with tax and NIC for workers. This seems to be particularly the case for temporary workers – many of whom tend to be young and unskilled; but even more so for temporary, migrant workers – whose often-limited English, cultural differences and poor awareness of the requirements and protections of the UK system leave them particularly vulnerable to poor treatment or exploitation.

¹ Licensing Standard 2.1 Critical: PAYE, NI and VAT: This Standard requires a license holder to accurately calculate and deduct tax and National Insurance from all workers’ pay and pay the correct amount to HMRC in a timely manner.

² <https://www.gla.gov.uk/whats-new/press-release-archive/191112-gla-success-in-challenge-over-pay-day-by-pay-day-schemes/>

- 5.2 Often tax and NIC geared exploitation is not all that obvious, for example employers who partner with tax refund agents and then – for payment of some commission – encourage their staff to use them to secure tax refunds upon their departure from the UK or in respect of their tax-deductible expenses.
- 5.3 But sometimes such exploitation is obvious – driven by an employer’s desire to avoid or minimise the costs and obligations of having to operate PAYE. It is also often inextricably linked with other types of abuse for workers.
- 5.4 We are not convinced that HMRC are currently doing enough to counter problems around unscrupulous employers and tax and NIC¹ and it is our view that some investment in PAYE enforcement in particular, would be desirable. Ideally, there would be a role for a new enforcement body in helping HMRC identify the priority areas requiring action, which could lead HMRC to focus their efforts and resources properly. However, HMRC’s ability to successfully tackle these non-compliant arrangements, and ultimately protect employees against exploitative practices, requires adequate resources as well as a clear plan for action.
- 5.5 At the very least, there are a number of ‘cross cutting’ issues, both in terms of protecting worker rights and around tax avoidance, where good collaboration will be required. These include:
- 5.6 ***Umbrella companies***
- 5.6.1 We continue to hear of problems with umbrella companies. Umbrella companies tend to offer models that exploit the fault lines that exist in the tax system – e.g. tax and NIC, employment and self-employment, temporary and permanent workplace, etc.
- 5.6.2 More recently, they have started to offer models that impact on employment rights – e.g. the ‘elective deduction model’, under which low-paid agency workers are treated as employees for tax purposes so that PAYE is operated as is required by HMRC’s rules, but treated as self-employed for all other purposes, meaning that they are not paid the minimum wage, nor given paid annual leave, etc.
- 5.7 ***False self-employment***
- 5.7.1 From our considerable involvement with voluntary organisations such as the charity TaxAid 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.

¹ Certainly since we published our report looking at PDPD umbrella schemes, in which we highlighted that HMRC were pursuing individual workers for unpaid taxes, rather than their unscrupulous employers: <https://www.litrg.org.uk/latest-news/reports/141117-travel-expenses-low-paid—time-rethink>

- 5.7.2 This is where employers intentionally exploit the vagueness of the rules in order to take on people as self-employed when they should be employed. False self-employment not only denies people the certainty of having their taxes and NIC dealt with under PAYE but also denies them certain 'rights' such as the minimum wage and having a workplace pension.
- 5.8 ***Non-provision of pay documents***
- 5.8.1 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 the ability to claim state benefits, get credit, check minimum wage compliance.
- 5.8.2 The right to a payslip exists under the Employment Rights Act. However, there is a legal requirement on employers to provide P60s and P45s under tax law.
- 5.9 Taking all of this together, and not forgetting that extending the GLAA's licensing system will mean more overlap between the GLAA and HMRC's roles, if and when a single enforcement body is established, there is a clear and unequivocal need for information sharing and working together.

LITRG
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