



Low Incomes
Tax Reform
Group
A voice for the unrepresented

**Business, Energy and Industrial Strategy Committee inquiry
Future world of work and rights of workers
Response from the Low Incomes Tax Reform Group (LITRG)**

1 Executive summary

- 1.1 As tax specialists with an interest in the tax and related welfare issues of the low-paid, LITRG welcomes this review into the future world of work and rights of workers.
- 1.2 LITRG has been hugely concerned about the impact that ‘flexible working’ has on the low-paid for some time (particularly with their regard to their tax, National Insurance and tax credits positions).
- 1.3 Gaps in information generally available to workers and in provision for protection of their rights, make life extremely difficult for the low-paid. We explain some of the gaps in detail and highlight some associated problems which we hope will be useful to the inquiry and can be summarised as follows:
- ‘Workers’ are often not aware of their employment status and therefore what employment rights they are entitled to.
 - This is unsurprising, given the poor standard of official information and guidance on GOV.UK, some specific examples of which we give.
 - There is a lack of transparency in the system for what we might term ‘dependent’ self-employed persons (see para 4.1.14ff).
 - Confusion around ‘worker’ status helps explain some arguably exploitative practices – umbrella companies marketing employee rights to agency workers, for example.
 - Even if they can be sure of their rights, workers often have no practical way of securing them and we question the effectiveness of the enforcement bodies in terms of their ability to help protect ‘workers’.

- There are ongoing issues with zero hours contracts despite the banning of exclusivity clauses.
- Someone's 'status' is not universal, even when you compare the self-employment rules for tax, tax credits and universal credit. Alignment of rules and definitions would be helpful. Failing that, joined up guidance and advice is essential.

1.4 While we think that reversing the flexible working trend is probably the only real way of bringing about sustainable improvements for workers, we strongly suggest some practical steps that could be taken in the current framework to address these issues and help improve the position of 'workers' in the short term. These are highlighted in bold throughout the response.

1.5 We are happy to discuss any aspect of our response in more detail or to meet if easier.

2 Who we are

2.1 The Low Incomes Tax Reform Group (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 HM Revenue & Customs (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 In 2014, we issued our report 'Travel expenses for the low-paid – time for a rethink?'¹ in which we looked in detail at agency workers and their use of a particular 'umbrella' scheme (Pay day by pay day) to obtain tax relief for their travel costs. HMRC called the model 'non-compliant' yet it flourished. Our research showed that this was mainly because of two things – worker ignorance (or indeed vulnerable workers turning a blind eye to poor practices because they wanted the work) and the businesses involved apparently having little fear of action being taken against them.

3.2 The problems that some flexible workers are coming across with regards to their employment law status and rights may be rooted in similar ground. Although we are not employment law experts, it is

¹ <http://www.litrg.org.uk/reports/2014/141117-LITRG-PAYE-report>

because of our understanding of these issues that we feel we can make a useful contribution to this inquiry.

- 3.3 Our general impression from contact with those in low-paid employment is that while flexible working may suit a minority of individuals, most would like a stable, secure job. Reversing the trend towards flexible working is therefore probably the only real way of bringing about sustainable improvements for workers. While factors like the economic landscape, the government's strategy of labour market deregulation and commercial interests make this a challenging objective, we note from the many reviews touching on this area² that there is a clear recognition that change is needed. We hope that the Business, Energy and Industrial Strategy Committee will find some way to unify these separate works and produce a set of holistic recommendations to truly help move this issue forward.
- 3.4 Incidentally, while the focus of this response is on difficulties workers face in navigating the maze before them, we also note that the system may be unhelpful to some *employers* who want to do the right thing by their worker. For example, the page on GOV.UK that describes 'casual or irregular work'³ consistently refers to a relationship between a *business* and a worker, such that someone engaging an assistant for themselves personally and not in the course of business⁴ would not necessarily appreciate that the guidance applies equally to them.⁵

4 Specific comments to terms of reference

4.1 ***Question 1: Is the term 'worker' defined sufficiently clearly in law at present? If not, how should it be defined?***

- ***What should be the status and rights of agency workers, casual workers, and the self-employed (including those working in the 'gig economy'), for the purposes of tax, benefits and employment law?***

- 4.1.1 We think the concept of 'worker' in employment law is unclear –there is not one legislative definition of 'worker' that is applied across the board.⁶ Additionally there is then a wealth of case

² Including the Office of Tax Simplification's review on employment status in 2014/2015 (<https://www.gov.uk/government/publications/employment-status-review>), the Matthew Taylor review (<https://www.gov.uk/government/news/taylor-review-on-modern-employment-practices-launches>), the cross government working group on employment status (<https://www.gov.uk/government/groups/cross-government-working-group-on-employment-status>) and the Cable review of 2014 (<https://www.gov.uk/government/news/employment-review-launched-to-improve-clarity-and-status-of-british-workforce>)

³ <https://www.gov.uk/employment-status/worker>

⁴ Such as a care and support employer – e.g. someone who takes on a carer to help them live independently.

⁵ Another example is that the auto enrolment 'duties checker' on the Pensions Regulator website is configured to provide you with step-by-step guidance on meeting your responsibilities – but only if you enter your PAYE reference number – which you may not have if your worker is not an employee.

⁶ The Employment Rights Act (ERA) 1996 s. 230 provides the core definition of 'worker'. This definition is also picked up for National Minimum Wage purposes (s.54(3) National Minimum Wage Act 1998), in the Working Time Regulations 1998 (SI 1998/1833, s.2) and also in the Pensions Act 2008 for auto enrolment (s.88). However a slightly different definition of 'worker' is used for discrimination law for example in the Equality Act 2010 (s.83(2)).

law interpreting the legislative definitions – meaning that there are a huge number of factors that could be relevant in determining a person's status.

4.1.2 The GOV.UK guidance⁷ is therefore over-simplified when it says:

'A person is generally classed as a 'worker' if:

- *they have a contract or other arrangement to do work or services personally for a reward (your contract doesn't have to be written)*
- *their reward is for money or a benefit in kind, for example the promise of a contract or future work*
- *they only have a limited right to send someone else to do the work (subcontract)*
- *they have to turn up for work even if they don't want to*
- *their employer has to have work for them to do as long as the contract or arrangement lasts*
- *they aren't doing the work as part of their own limited company in an arrangement where the 'employer' is actually a customer or client'*

4.1.3 There is no mention that the considerations may be different depending on the particular 'worker' right they are seeking to uphold. Also, the list of factors to consider seems to be missing some key points – for example the following (which appear in the Pensions Regulator's information on 'worker' status for auto enrolment⁸):

- *'There is an element of subordination between the employer and individual...'*
- *'The individual does not incur any financial risk in carrying out the work'*
- *'The employer provides tools, equipment and other requirements to the individual to carry out the work.'*

4.1.4 **The different descriptions of a 'worker' across official bodies will be confusing people searching for information and we think it would be most helpful if guidance on 'worker' criteria could be more consistent and joined up.⁹**

4.1.5 There are other regrettable omissions in the GOV.UK guidance – it does not make clear that no single factor, by itself, is capable of being conclusive in determining whether an individual is a 'worker'. Neither does it make the point that contractual terms cannot be relied on if they are

⁷ <https://www.gov.uk/employment-status/worker>

⁸ See page 9 of 'Detailed guidance for employers' booklet:

<http://www.thepensionsregulator.gov.uk/docs/detailed-guidance-1.pdf>

⁹ For information, the ACAS (the Arbitration, Conciliation and Advisory Service) definition we feel is equally unhelpful: 'A worker will also work to the terms within a contract of employment and generally have to carry out the work personally. However some workers may have a limited right to send someone else to carry out the work, such as a sub-contractor.'

sham.¹⁰ Further, there is no suggestion that different criteria carry different weight, nor does the guidance stress that status is not a question of choice but fact.

- 4.1.6 **Clarification of the existing ‘worker’ rules is needed on GOV.UK. In addition, we suggest that an interactive tool be developed to assist those seeking to determine ‘worker’ status.¹¹**
- 4.1.7 In answer to the question ‘how *should* ‘worker’ status be defined’, we understand that the intention behind the policy is that it should apply to those who are not ‘genuinely’ self-employed¹² and so we wonder if this would be a more helpful way of framing it (i.e. that everyone is at least a ‘worker’ unless genuinely self-employed). Although genuine self-employment would then need to be identified, we think most people would intuitively have an idea of what this looks like so would have a better starting point to understanding the ‘worker’ principle.
- 4.1.8 In terms of the second part of question 1, while we shall not comment on what we think the status and rights of these workers *should* be, we think it is worth looking at what their status and rights currently are. ‘Workers’ are a very heterogeneous group. Looking at agency workers and casuals on the one hand, and the self-employed including those in the gig economy on the other, helps highlight this and the different challenges they face in the system.
- 4.1.9 **Agency workers and casuals:** As agency workers and casuals are usually offered work on an ‘as and when’ basis, there is no mutuality of obligation.¹³ As such, they cannot be employees and (putting aside the possibility of agency workers becoming employees under an overarching or pay between assignment contract) the starting point is that they are both ‘workers’ for employment law purposes.
- 4.1.10 Even though their employment law position is actually quite straightforward, we think that they would have difficulty arriving at that conclusion from the GOV.UK ‘worker’ guidance. Casual workers are given a set of ‘worker’ criteria to consider¹⁴ – which differs from the main set as set out above in para 4.1.2. Agency workers are expressly mentioned on the ‘worker’ page but then have to follow a

¹⁰ Personal service is the key concept in the ‘worker’ definition – to avoid giving an individual ‘worker’ status, a substitution clause may be inserted in the written contract which may not reflect the reality of the situation.

¹¹ This could be something similar to HMRCs employment status indicator (ESI) tool,¹¹ which provides an opinion on the tax employment status of a worker or a group of workers by using information provided which reflects the facts of the engagement.

¹² As set out by Recorder Underhill QC in the case of *Byrne Brothers (Formwork) Limited v Baird* (2002) ICR 667

¹³ The employer is not obliged to offer work and if work is offered, the worker is not obliged to accept it.

¹⁴ See <https://www.gov.uk/employment-status/worker>, which says:

‘Casual or irregular work

Someone is likely to be a worker if most of these apply:

- they occasionally do work for a specific business
- the business doesn’t have to offer them work and they don’t have to accept it - they only work when they want to
- their contract with the business uses terms like ‘casual’, ‘freelance’, ‘zero hours’, ‘as required’ or something similar
- they had to agree with the business’s terms and conditions to get work - either verbally or in writing
- they are under the supervision or control of a manager or director
- they can’t send someone else to do their work
- the business deducts tax and National Insurance contributions from their wages
- the business provides materials, tools or equipment they need to do the work’

link to the ‘Your rights as an agency worker’ guide¹⁵ – where the fact that they are considered ‘workers’ for employment law purposes is only mentioned on page 4 (out of 7).¹⁶

- 4.1.11 All in all, this is something like a maze – and we do not think ‘workers’ are managing to navigate it given what we are seeing with agency workers and umbrella companies as described in para 4.5.1 to 4.5.3.
- 4.1.12 Turning to their tax position now, under the tax rules there are only two categories to consider – employed or self-employed. Agency workers are deemed employees for PAYE purposes.¹⁷ Casual workers have their tax position determined in accordance with general principles and should usually be paid under the PAYE system. It is well known that PAYE does not work well for people who do not have a single, stable job that lasts a whole tax year and there have been problems (to say the least) with PAYE avoidance in the agency worker arena.¹⁸
- 4.1.13 As employees for tax purposes, they are also broadly classed as employees for tax credits and Universal Credit purposes (more on this in para 4.1.23 onwards).
- 4.1.14 ***Self-employed persons including those in the gig economy:*** What we might term a ‘genuinely’ self-employed person is their own boss and so needs no protection under employment law. However other self-employed people, such as construction workers and potentially those in the gig economy, 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. These are what we might call ‘dependent’ self-employed people.
- 4.1.15 If a person performs work personally, outside of their own business or profession, then they are ‘workers’ for most employment law purposes. This will catch the dependent self-employed – however the GOV.UK guidance makes no reference to this fact at all.
- 4.1.16 **An illustration of a dependent self-employed ‘worker’ should be given on the GOV.UK ‘worker’ page to help them self-identify.**
- 4.1.17 Furthermore the rights that flow from ‘worker’ status as outlined on GOV.UK¹⁹ could be misleading to a dependent self-employed person.²⁰ It says:

‘Workers are entitled to certain employment rights, including:

- *getting the National Minimum Wage*
- *protection against unlawful deductions from wages*

¹⁵ <https://www.gov.uk/agency-workers-your-rights>

¹⁶ Interestingly, the ‘Agency Worker Regulations (which purport to give agency workers equal treatment to permanent staff after 12 weeks) are then covered in some depth (for GOV.UK anyway) – despite it being our understanding that these are usually largely avoided!

¹⁷ Under s44 Income Tax (Earnings and Pensions) Act 2003

¹⁸ We try and help workers with these issues for example, by developing our factsheets ‘P800’ and ‘Agency workers’ available from our website: <http://www.litrg.org.uk/>

¹⁹ <https://www.gov.uk/employment-status/worker>

²⁰ We would also note the list also does not include auto enrolment rights.

- *the statutory minimum level of paid holiday*
- *the statutory minimum length of rest breaks*
- *to not work more than 48 hours on average per week or to opt out of this right if they choose*
- *protection against unlawful discrimination*
- *protection for 'whistleblowing' - reporting wrongdoing in the workplace*
- *to not be treated less favourably if they work part-time*

They may also be entitled to:

- Statutory Sick Pay
- Statutory Maternity Pay
- Statutory Paternity Pay
- Statutory Adoption Pay
- Shared Parental Pay

4.1.18 Currently, most dependent self-employed 'workers' are self-employed for tax purposes and so are paid gross. Not being paid via PAYE means that there is no secondary contributor (someone who is liable to pay Class 1 secondary National Insurance Contributions). Secondary contributors are responsible for administering and part-financing statutory payments.²¹ If there is no secondary contributor, then our understanding is that the worker **cannot** be entitled to Statutory Sick Pay, Maternity Pay etc. (as compared to agency workers for example, who can be, due to being paid via PAYE).²²

4.1.19 For a self-employed person, Maternity Allowance or Employment and Support Allowance may be available instead from the Department for Work and Pensions (DWP).

4.1.20 **We think GOV.UK should be updated immediately to make the position for dependent self-employed workers with regard to statutory payments clear. We also recommend that the GOV.UK description that agency workers are entitled to maternity pay *but not maternity leave*²³ is unpacked – this seeming contradiction will surely be causing unnecessary worry.**

4.1.21 Being self-employed for tax purposes also means that dependent self-employed 'workers' have to grapple with the complex self-assessment regime. This system is not simple to understand –

²¹ Social Security Contributions and Benefits Act 1992.

²² We wonder if this nuance accounts for the fact that some communications on 'worker' rights say that they *are not* entitled to statutory payments – for example here:

<https://www.gov.uk/government/news/employment-review-launched-to-improve-clarity-and-status-of-british-workforce>

²³ <https://www.gov.uk/agency-workers-your-rights/maternity-rights-for-agency-workers>

especially for those who are young, have lower levels of education or are migrant workers with limited English (common characteristics of dependent self-employed we would suggest²⁴).

4.1.22 We think HMRC should produce well targeted, clear and easy to understand information about the aspects of the UK tax system that are likely to be most relevant to the dependent self-employed – this will be particularly important given the introduction of the £1,000 tax free ‘trading allowance’ in April 2017,²⁵ which (unless clearly explained) risks giving out mixed messages about gig economy income.

4.1.23 The fact that the dependent self-employed are treated as self-employed for tax purposes means that, on the face of it, they are likely to declare themselves as self-employed for benefit purposes. However the basic definition of what counts as self-employed is different between tax credits, Universal Credit (UC) and tax.

4.1.24 In tax credits, the activity must be done on a commercial basis with a view to realising a profit and it must be organised and regular. In UC there are two tests – the first is to establish whether the claimant has self-employed earnings for UC purposes. This will be the case if they have income that derives from carrying on a trade, profession or vocation and that income is not already treated as employed earnings. DWP use badges of trade similar to those from tax case law when deciding whether there is a trade, profession or vocation, but DWP guidance²⁶ makes it clear that they are not bound by any decision made by HMRC. The second test²⁷ is whether the claimant is in ‘gainful self-employment’ as follows:

“A claimant is in gainful self-employment where the Secretary of State has determined that—

(a) The claimant is carrying on a trade, profession or vocation as their main employment;

(b) Their earnings from that trade, profession or vocation are self-employed earnings; and

(c) The trade, profession or vocation is organised, developed, regular and carried on in expectation of profit.”

The primary purpose of the gainful self-employment test is to determine whether the minimum income floor²⁸ applies to the claimant’s earnings.

4.1.25 Thus it would seem that a person might be self-employed and paying income tax and National Insurance contributions (NIC) on profits, yet the DWP could determine that they are not carrying on a trade, profession or vocation for UC purposes.

4.1.26 These additional ‘tests’ for self-employment in tax credits and UC are likely to prove a source of confusion and difficulty for claimants and need to be addressed. We would suggest this could be a

²⁴ These characteristics are also often shared by agency workers as we set out in our report.

²⁵ <http://www.att.org.uk/technical/newsdesk/press-release-microbusinesses-will-need-more-clarity-new-allowance-says-tax-body>

²⁶ H4017 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/565510/admh4.pdf

²⁷ s.64 Universal Credit Regulations 2013

²⁸ See our specialist website for a description of the minimum income floor:

<http://revenuebenefits.org.uk/universal-credit/guidance/entitlement-to-uc/self-employment/minimum-income-floor/>

topic for consideration by the Cross Government Working Group on Employment Status.²⁹**4.2 Question 2: For those casual and agency workers working in the 'gig economy', is the balance of benefits between worker and employer appropriate?**

- 4.2.1 We are confused by the question as we think of casual and agency workers as being distinct to those working in the gig economy. Nevertheless, in all of these cases, the balance of benefits is probably out of kilter – to the detriment of the worker.
- 4.2.2 While empowering 'workers' by giving them better information about their status and rights could help address the problem, this also needs to be backed up by an accessible means for them to enforce their position if things go wrong.
- 4.2.3 For a start, where would a self-employed person who was really a 'worker' go with a problem about holiday pay for example? The first page of the GOV.UK 'employment status'³⁰ guide suggests ACAS may be able to help, however ACAS's strapline per their website is 'Help & advice for employers and employees'.³¹
- 4.2.4 The reference to employers and employees here is not helpful. Small details like this may make all the difference to a 'worker' continuing with their search for information or giving up (it is worth noting that the word 'worker' in itself is problematic – it has a specific meaning in the context of employment law but also refers to the working population at large, meaning that it is very difficult to get clear results when using an internet search engine).
- 4.2.5 In any case, from using ACAS's Helpline Online Automated tool (where you are directed if you call the ACAS helpline)³², there seems to be very little detailed advice for 'workers' on the ACAS website.
- 4.2.6 Other GOV.UK guidance³³ suggests there may be other avenues for reporting problems, for example: HMRC, Employment Agency Standards inspectorate, the Health and Safety Executive (HSE). So, should workers use ACAS? Or should they go directly to the enforcement body concerned? What if their complaint spans more than one area? Should they go to them all?
- 4.2.7 It should be noted that an online form for workers to use to contact the enforcement bodies to make a complaint was added to GOV.UK on 8 August 2016 but was removed the next day for 'functional updates' and has still not been reinstated. This leaves a very 'clunky' word document to complete and email to an obscure looking email address as a worker's only option³⁴.
- 4.2.8 **There needs to be clearer demarcation of roles of the various bodies. Ideally, there would also be a single, well publicised, telephone gateway (staffed by people with a good understanding of 'worker' issues) where 'workers' can go to receive advice *and report problems* as well as an internal case management system – this would ease the worker's task of navigating the different**

²⁹ <https://www.gov.uk/government/groups/cross-government-working-group-on-employment-status>

³⁰ <https://www.gov.uk/employment-status>

³¹ <http://www.acas.org.uk/index.aspx?articleid=1461>

³² <http://www.acas.org.uk/index.aspx?articleid=2042>

³³ <https://www.gov.uk/pay-and-work-rights>

³⁴ <https://www.gov.uk/government/publications/pay-and-work-rights-complaints-individuals>

enforcement mechanisms. (Please however, see para 4.5.6. in which we outline a concern that we have about HMRC and ‘worker’ issues.)

4.3 *Question 3: What specific provision should there be for the protection and support of agency workers and those who are not employees? Who should be responsible for such provision – the Government, the beneficiary of the work, a mutual, the individual themselves?*

4.3.1 Please see our answers in sections 4.1 and 4.2 above which may prove useful input into this question.

4.4 *Question 4: What differences should there be between levels of Government support for the self-employed and for employees, for example over statutory sick pay, holiday pay, employee pensions, maternity pay?*

- *How should those rights be changed, to ensure fair protection for workers at work?*
- *What help should be offered in preparing those people who become self-employed (with, for example, financial, educational and legal advice), and who should be offering such help?*

4.4.1 We do not comment on the bulk of this question, but in answer to the second sub-question, please see para 4.1.22 in which we make some suggestions on how the self-employed could be supported with their self-assessment taxes; and our comments below.

4.4.2 Awareness of financial matters, including taxation and associated matters, must begin with education in schools³⁵ and lifelong learning must continue as people’s circumstances change and they need to meet new obligations.

4.4.3 One key point here is the difference between ‘advice’ (as in the question) and ‘guidance’. HMRC do offer a range of assistance, such as online learning via webinars and so forth, but this falls far short of ‘advice’. Also, cases we have come across in the past indicate that ‘advice’ given by the DWP to jobseekers to try self-employment has been lacking and that many find themselves in difficult circumstances as a result – for example, they have been told by DWP to claim Working Tax Credit on the back of being ‘self-employed’ but HMRC’s opinion has later been that they are not self-employed for tax credits purposes. Or perhaps that they have not been doing enough working hours, having counted hours that HMRC did not consider as ‘qualifying remunerative work’ for the purposes of tax credits.

4.4.4 **We conclude therefore that if any one body purports to offer ‘advice’ in connection with becoming self-employed, it must be joined up.**

4.5 *Question 5: Is there evidence that businesses are treating agency workers unfairly, compared with employees?*

³⁵ A relevant cross-reference here is to the work of the APPG on Financial Education for Young People. LITRG has contributed to their work in the past and we have stressed the need to include tax as part of young people’s financial education. See for example: <http://www.litrg.org.uk/latest-news/news/160122-press-release-campaigners-urge-higher-priority-school-lessons-about-money>

- 4.5.1 In the past, agency worker exploitation has often manifested itself in problems with PAYE. This is not necessarily anything to do with the end clients that they work for, but is instead facilitated by intermediaries in the supply chain such as umbrella companies.³⁶
- 4.5.2 The new rules on employment intermediaries from April 2016 mean we should see fewer PAYE problems, however they also mean that umbrella companies need to find a way of remaining relevant. Indeed, we have recently noticed some highlighting their ability to provide ‘employee’ rights:
- ‘If you join an umbrella company.... you’ll receive the best of both worlds. Not only will you be able to benefit from all the perks contracting offers, you’ll also have access to the same rights and benefits given to permanent employees. These include holiday, sick, and maternity & paternity pay.’³⁷*
- 4.5.3 We think the implication here is that you have no basic rights as an agency worker – which of course is incorrect.³⁸ We think this could be scaring workers into paying for the ‘employment services’ of an umbrella company unnecessarily.
- 4.5.4 The ‘elective deduction model’ was created by industry experts in 2014 as a consequence of HMRC’s rules to deal with onshore intermediaries and ‘false self-employment’ (widely used in the construction industry). Under this, the individual is treated as an employee for tax purposes so that 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.
- 4.5.5 In our opinion it would be extremely unlikely for such a clear division to exist between employment law status and tax law status. The individuals concerned are likely to be at least ‘workers’. We think that the existence of such schemes is evidence of the problems that workers face in understanding their employment law positions.
- 4.5.6 In addition, the fact that HMRC took no action against the elective deduction model from a National Minimum Wage (NMW) perspective (none that we are aware of anyway) makes us question their ability to handle ‘worker’ problems.
- 4.5.7 This, coupled with the issues outlined in paras 4.2.3 to 4.2.7 and problem of employment tribunal fees leaving workers weak and with few other options for redress, we wonder if there could be a role for the Gangmasters Licensing Authority here? We are aware that their *proactive* approach to worker protection has a very positive impact in stamping out vicious and bad working practices in the sectors in which they operate. Moreover, they are soon to be expanded into the new Gangmasters and Labour Abuse Authority (GLAA)³⁹.

³⁶ Saying that, ‘tax efficiency’ throughout the supply chain means that contracts can be negotiated at lower prices, thus benefiting the end clients in the form of cheaper labour.

³⁷ <http://www.parasolgroup.co.uk/help-me-decide/faqs/why-join-an-umbrella-company/>

³⁸ Further, nowhere is it explained to workers that the ‘additional’ rights that the umbrella company may be able to offer you as an employee as compared to a ‘worker’ may not be all that valuable considering agency work is not always durable (unfair dismissal or a redundancy payment are only available after two years’ service for example).

³⁹ <https://www.gov.uk/government/consultations/labour-market-exploitation-improving-enforcement>

4.5.8 The new GLAA will work across all labour sectors – with an appropriate extension of funding and resource – could its remit include gig economy ‘workers’ etc. too?

4.6 Question 6: Should there be steps taken to constrain the use by businesses of agency workers?

4.6.1 No comment

4.7 Question 7: What are the issues surrounding terms and conditions of employees, including the use of zero-hour contracts, definitions of flexible contracts, the role of the Low Pay Commission, and minimum wage enforcement?

4.7.1 We assume the question is asking about issues surrounding terms and conditions for all ‘workers’, including employees.

4.7.2 We previously responded to the Department for Business, Innovation and Skills (BIS) consultation on zero hours contracts⁴⁰ highlighting various concerns that we have about their use. While we appreciate that the government has recently taken steps to improve protection for workers by, for example, banning exclusivity clauses⁴¹ our feeling is that such changes will not make much of a difference to those staff holding unskilled/low paid roles and who needed the government’s protection the most.

4.7.3 This is because by the government’s own admission, exclusivity clauses are contained in only 9% of all zero hours contracts, which we think are most likely to be for staff holding skilled technical rather than elementary roles. Additionally banning exclusivity clauses does little to help those staff who are not under an exclusivity clauses in the literal sense but who feel like they are due to the practice of blacklisting if they turn down work.

4.7.4 In a nutshell, we think the above outlined provisions are too narrow and limited in scope, and we think the government need to go much further to protect low-paid workers on zero hours contracts.

4.7.5 In terms of NMW enforcement, HMRC may have recently stepped up their activity substantially. However, as we mentioned in para 4.5.6 we have concerns regarding HMRC’s ability to handle ‘worker’ NMW cases.

4.7.6 We are also aware of more general issue (as a result of reading a recent National Audit Office report⁴²) in that the number of referrals passed to HMRC from the ACAS helpline reduced significantly in the year ending December 2015. Until recently, the number of calls which ACAS’s predecessor, the Pay and Rights helpline, referred to HMRC had been increasing. In 2014-15, HMRC received 3,180 referrals – a 40% increase from 2013-14. However since the helpline changed to the ACAS helpline, this trend has reversed with 1,340 referrals (although this is only for period April 2015 to December 2015).

⁴⁰ <http://www.litrg.org.uk/latest-news/news/140314-zero-hours-employment-contracts-litrg-response>

⁴¹ Small Business, Enterprise and Employment Act 2015

⁴² <https://www.nao.org.uk/wp-content/uploads/2016/05/Ensuring-employers-comply-with-National-Minimum-Wage-regulations.pdf>

4.7.7 **This is extremely concerning to us and we would like to see this anomaly investigated as a matter of urgency.**

4.8 ***Question 8: What is the role of trade unions in representing the self-employed and those not working in traditional employee roles?***

4.8.1 We have no real comment other than to say that we think there certainly is a role – The Union of Construction, Allied Trades and Technicians (UCATT), Britain’s only specialist Construction workers union, take an active interest in dependent self-employment for example.

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