

Good Work Plan: establishing a new Single Enforcement Body for employment rights

Submission by Trust for London

To Department for Business, Energy and Industrial Strategy
and the Home Office

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Introduction

1. [Trust](#) for London is one of the largest independent charitable foundations tackling poverty and inequality in London. We support work that provides insight into the root causes of London's social problems and how they can be overcome; activities that help people improve their lives; and work empowering Londoners to influence and change policy, practice and public attitudes. Annually we provide over £8 million in grants and at any one point we are supporting some 300 voluntary and community organisations. Established in 1891, we were formerly known as City Parochial Foundation.

2. The Trust has a long tradition in funding projects to improve employment practice, access to rights for all workers in London and research into labour market and enforcement of rights. We have made significant investment in the Living Wage Campaign, employment advice, worker voice and progression out of low pay. Between 2013 and 2017 we gave nearly £6.8mil in grants under our Employment programme, including 16 grants focused on employment rights in the capital. Since launching our current five-year strategy in 2018, we have given further £3.2mil in grants under our Better Work Programme, including 18 grants for work on employment rights. We also run London's Poverty Profile¹ that uses official data from over 100 indicators to reveal patterns in poverty and inequality in the capital.

3. The Trust welcomes the government's recognition that the current system needs improving and the commitment that the proposed reform will not lead to reduction of resources, and that funding will be made available for new areas of enforcement.

4. We also welcome the opportunity to make a submission to the consultation. In our response we have drawn on the research we funded, qualitative and quantitative data from organisations that we fund and consultation with frontline experts from the Employment Legal Advice Network (ELAN) – a consortium of organisations working in the employment rights sector advising some of the most vulnerable workers. The network is convened by the Trust and comprises of some 40 members, including senior legal professionals, law centres and advice agencies.

5. An Appendix attached to our submission includes case examples of situations illustrating issues within the current system. The examples are cases of real workers assisted by our grantees.

6. The Trust's submission responds to those consultation questions that are particularly relevant to our work and where we have the most knowledge and experience. However, the absence of a response on some of the consultation questions does not imply that we do not have an opinion on this matter. We would be happy to discuss this, and to provide further clarification on our responses upon request.

¹ <https://www.trustforlondon.org.uk/data/>

Summary

7. The current system for employment rights is not effective in enforcing workers' rights. Fragmentation of enforcement between different regulators, re-active enforcement dependent on individual complaints, complexity of law and reduction of professional and semi-professional assistance for vulnerable workers makes it difficult for many to access their rights. Consequently, many workers do not know where to go for advice and few advice agencies provide end to end advice.

8. We welcome the proposal to create a single enforcement body that would take on the functions currently under the remit of the Director of Labour Market Enforcement, with additional responsibilities. These should include enforcement of entitlements such as sick and holiday pay, payslip offences and rights of domestic workers. We would also like to see the new single body having the remit to enforce systemic discrimination issues, Employment Tribunal awards, provide advice and enforce s.54 of the Modern Slavery Act.

9. A single enforcement body could improve the effectiveness of employment rights enforcement by shifting to a more pro-active, intelligence-led system that covers the whole spectrum of violations. The body should provide oversight of existing bodies; simplified central channel for advice to workers, guidance for employers and for reporting; pooled intelligence, a facility to flag and enforce systemic non-compliances and mount pro-active inspections and have the mandate to receive and request data from other enforcement agencies.

10. The central oversight and intelligence functions would also enable the single body to address enforcement gaps, including in domestic work sectors, in the gig economy and to monitor of "phoenix companies".

11. We consider that in order to succeed the body needs to be built on key principles, including: accountability; sufficient resources; retention of expertise; clear lines of separation between immigration and employment enforcement and civil society representation on its governance body.

Response to consultation questions

Q1. Is the current system effective in enforcing the rights of vulnerable workers?

12. While the Trust recognises that current enforcement bodies do important work, we also agree with the government's own assessment that the current labour market enforcement landscape is difficult to navigate and the approach to inspection often piecemeal. Labour market violations and insufficient enforcement of employment rights is a continuous problem. Vulnerable workers and particularly those in low pay and on temporary contracts experience repeated and multiple violations and face barriers in accessing their rights.

13. As the government recognises, deficiencies in the current system also undermine competitiveness of compliant employers. We further believe that this contributes to what some describe as the "culture of impunity", where some employers offend repeatedly with little fear of detection or sanctions.

14. A survey amongst our Employment Legal Advice Network² (ELAN) showed that most organisations (83%) do not consider the current system effective in enforcing workers' rights, and 17% consider it effective in some instances only.

15. Non-payment of wages, underpayment and non-payment of other entitlements (such as holiday and sick pay) are not only a persistent, but also a growing problem. *Unpaid Britain*³ research, a project of the Middlesex University that we co-funded, found that non-payment of wages or delays in payment of all or some of the promised wage are widespread. The research showed that:

- Unpaid wages amount to at least £1.3bn each year
- Unpaid holiday pay amounts to at least £1.8bn each year
- At least 2 million workers face underpayment each year
- National Minimum Wage arrears (even when detected) may take years to be paid, if at all
- Only 52% of Employment Tribunal awards won are paid in full

16. Furthermore, the research has also documented that rogue employers factor the system deficiencies into their business operating model to avoid compliance. This means that some businesses repeatedly offend with impunity or budget for fines in case of detection. The research found some apparent correlation between worker abuse and offshore company ownership, debt and phoenix companies.

17. The current system is reactive and relies heavily on individual complaints. However, the most vulnerable workers are less likely to take formal action against their employers. Migrant workers are also less likely to complain due to links between workplace related enforcement and immigration enforcement.

18. Our research and organisations that we fund identified common barriers within the current system, including:

- Individuals have to contact different bodies for different issues and do not know where to go
- Those bodies have only very limited resources and facilities for advising clients. Where advice exists, it is fragmented, overstretched and very few organisations are funded to enable end to end advice covering all workplace issues
- A system requiring individuals to act for themselves in courts/tribunals fails victims of the most severe exploitation, such as victims of trafficking, who due to their traumatic experience are unlikely to individually challenge employers, for example, for non-payment of wages or National Minimum Wage
- The system does not sufficiently consider that some vulnerable workers have limited English language knowledge or confidence to speak or write
- The power of an employment tribunal is limited to determining the rights of an individual claimant in the particular case before it. Save in exceptional specified circumstances (discrimination), even where a tribunal is satisfied that there is

² Survey conducted in August 2019. 40% response rate was achieved.

³ Clark, N., Herman, E.: *Unpaid Britain: wage default in the British labour market. Executive summary.* Middlesex University & Trust for London, 2017.

systemic and comprehensive violation of individual rights by a particular employer, it has no power to act

- Equality Advisory and Support Services does not operate effectively
- ACAS are not entitled to give advice tailored to the facts of an individual case
- HSE commonly does not engage with pregnant women who have health and safety complaints
- Some agencies, such as EHRC and HMRC are difficult to access, and there are major delays before they take any action. The absence of any face to face alternatives also deters some of the most vulnerable from making contact
- Some extant enforcement bodies, such the EHRC, have a very low profile and many individuals do not know they exist or that they could assist them with advice and/or support
- Enforcement of individual awards is slow and only 50% of employment tribunal awards are paid in full
- There are significant costs to the individual of obtaining advice on enforcement (e.g. legal costs).

19. Litigation for individuals is uncertain (particularly when no advice is available) stressful, time consuming, expensive and often career damaging. These problems are amplified for individuals who may be left homeless if unable to pay the rent. Individuals also find it difficult to navigate the complex web of employment law and often do not access the right body to deal with their complaint.

20. The complexity of the system and lack of assistance for vulnerable workers make it difficult for an individual to access their rights without specialist advice and support. We fund a number of organisations that provide employment advice, but the demand for specialist employment advice outstrips their capacity and is steadily increasing. For example, one of our grantees operating in South London has seen over 200% year on year increase in demand between 2016 and 2019. The same organisation was able to help clients gain nearly £1million in settlements and awards, indicating that some, if supported, are able to achieve awards.

21. Despite some achieving positive outcomes, a system centred around individual complaints rarely results in systemic change. We welcome the recognition in the consultation document and in the 2018/19 strategy of the Director of Labour Market Enforcement of the need to shift away from individual complaint approach to more proactive enforcement.

Q2. Would a single enforcement body be more effective than the current system?

22. Yes. We welcome the proposal for a new single enforcement body to strengthen the system. We also note the reference in the consultation document to the streamlined labour inspection covered by the International Labour Organization Convention No.81, which the UK is a party to.

23. We agree with the proposal to bring under the new body the current functions under the remit of Director of Labour Market Enforcement, with additional responsibilities. We cover those in our response to Qs 7, 8, 9, 10, 18 and 26 below.

24. A single enforcement body could bring about effectiveness to the current system. There is a need for an umbrella body to oversee existing enforcement bodies; provide a simplified channel to advice and complaints; gather and pool intelligence; act on systemic non-compliances and mount pro-active inspections.

25. The fragmentation of the current system is a significant deficiency factor, in particular as regards to access. A single body could improve this by providing simplified entry channel for receipt of complaints on a wide range of employment issues and triage to respective regulators. The body should provide for varied accessible channels of reporting, including on-line, through mobile phone apps and in different languages. This could take a form of an interactive online portal that allows for individuals to be triaged so that they can access advice and support and report to the relevant section or body under that umbrella. Accessible advice (outside the enforcement body) ought to be signposted for individuals to obtain support.

26. Our ELAN network members are largely in favour of establishing a single enforcement body with the caveat that the success of the new structure will be contingent on the principles upon which it is set up. Below we recommend some key principles that the body should be based upon:

- Sufficient resources
- Specialisms retained within individual enforcement bodies
- Clear lines of separation between immigration enforcement and employment rights enforcement
- Focus on all forms of work, not just employment
- Accessible to all workers (ensure its communication is plain in English; special provisions to be made for most vulnerable workers, such as those with complex needs, disabilities and non-English⁴ speakers)
- Protection of claimants from benefit penalties through MoU with DWP
- Powers to: enforce effectively; collect and share data about poor employment practice; act on patterns of inequality
- Statutory duty to act on complaints and provide updates on status of complaints
- Mandate to receive and request data from other enforcement bodies
- Mandate to receive 3rd party reports from NGOs
- Representation of NGOs and trade unions on the board
- Any transfer of powers, sharing of responsibilities and data with other regulators clearly defined through an agreement with the single enforcement body; distinction in roles set out in statutory guidance
- Annual impact report issued publicly.

Q3. What do you think would be the benefits, if any, of a single enforcement body?

27. Key benefits of a single enforcement body would be central intelligence repository, oversight and analytical functions. Information sharing from enforcement agencies and centralised record keeping would strengthen intelligence-led

⁴ There is a precedent for this. The GLAA provides information about rights of migrant workers in multiple languages.

enforcement capability, better identify and flag with other enforcement agencies trends in non-compliance and help realise the shift away from the strong dependency on individual complaints. It would also enable tracking of repeat offenders, “phoenix” companies and frequency of abuse in particular sectors and those experienced repeatedly by particular worker categories.

28. Other benefits would include: monitoring and pro-active tackling of poor practice related specific employment relationships, such as “bogus self-employment”, or practices that affect particular workers, such as widespread discrimination of low paid women workers with regards to maternity rights and pay.

29. An umbrella body would also be better placed to identify gaps and monitor instances of bulk and multiple violations and take pro-active enforcement action. Our evidence shows that workers frequently experience multiple violations (for example non-payment of sick pay and NMW violations often go hand in hand), but these are dealt with by different agencies and thus recorded separately. Although data in some areas is scarce, the authors of *Unpaid Britain*⁵ report calculated from Citizens Advice data proportions of workforce experiencing more than one type of violation: 57% of those who were seeking advice for wage and payslip issues also experienced other problems, including with holiday entitlements and unpaid wages. The body would also be well placed to receive individual complaints that singularly may not meet the threshold for enforcement, but in quantity may point to a pattern of non-compliance or poor practice.

30. The intelligence function of a single body would also detect poor practice and “exploitative business models” in certain sectors and target those with enforcement action. A recent report⁶ by Latin American Women’s Rights Service (LAWRS)⁷ highlighted that Latin American women commonly experience violations in three sectors in London – cleaning, hospitality and domestic work. Analysis of 326 cases the organisation supported between 2015 and 2018 showed that 62% of workers experience breach of contract violations, 46% unlawful wage deductions and 20% underpayment of National Minimum Wage. Discrimination, harassment or unreasonable treatment was experienced by 41% of women supported by LAWRS. Some of these sectors have previously been highlighted⁸ by the Director of Labour Market Enforcement as ones with key risk of exploitation. (See case study examples in Appendix).

31. Further benefit of a single body would be strengthened capability to detect and address negative impact of labour market trends (such as gig economy and exploitative practices related on-shoring of some industries), and to assess potential impact of policies, such as new work visa proposals. For example, our grantee Focus

⁵ Clark, N., Herman, E.: *Unpaid Britain: wage default in the British labour market. Executive summary.* Middlesex University & Trust for London, 2017. p.10

⁶ Granada, L., de la Silva, N., Modern, D. *The Unheard Workforce. Experience of Latin American migrant women in cleaning, hospitality and domestic work.* Latin American Women’s Rights Service, July 2019.

⁷ The Trust funds the organisation

⁸ *United Kingdom Labour Market Enforcement Strategy 2018/19*

on Labour Exploitation (FLEX) highlighted the risk⁹ of exploitation linked to temporary labour migration programmes post Brexit.

Q4. What do you think would be the risks, if any, of a single enforcement body?

32. A key risk is that the single enforcement body fails to address the current system deficiencies, because it was set up without due reflection of lived experiences of those who had their employment rights violated and those with experience of accessing the current system. We recommend that the consultation includes participation of those with lived experience and pilot testing of the new system with users that include vulnerable workers.

33. Further risks are mainly linked to the principles on which the single body is set up. These can be mitigated by ensuring that the body is built on key basic principles (see para 17 for our recommendation on those principles) and through participation of stakeholders (including NGOs) in the single body's governance structure.

Q5. 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?

34. Yes. The licensing scheme should be extended to those sectors where violations linked to agency labour are documented and the risk of exploitation is known. In London these sectors include hospitality, cleaning and construction.

Q7. Should a single enforcement body take on enforcement of statutory sick pay if this process is strengthened?

35. Yes, provided that extant expertise and enforcement processes are not lost in the transition process.

Q8. Should a single enforcement body have a role in relation to discrimination and harassment in the workplace?

36. Yes, the single body should have some role in relation to discrimination and harassment in the workplace.

37. While there is significant room for improvement in the operation of the Equality and Human Rights Commission (EHRC), as highlighted in the recent report¹⁰ of the Parliamentary Women and Equality Committee, we believe that the EHRC should retain its mandate as the primary regulator for enforcement of the Equality Act 2010 and as the expert body on provision of advice in this area.

38. The single body should in particular have a role in enforcement of pervasive non-compliances, where the matter of discrimination goes beyond an individual or individual complaint and is of systemic nature. Examples of these are matters such as

⁹ *Preventing Exploitation in the Shadow of Brexit: The risk of temporary migration programmes*, FLEX, 2018, viewed on 12 September 2019 <<https://labourexploitation.org/publications/preventing-exploitation-shadow-brexit-risks-temporary-migration-programmes>>

¹⁰ *Enforcing the Equality Act; the law and the role of the Equality and Human Rights Commission. Tenth Report of the Session 2017-19*. House of Commons, Women and Equalities Committee. July 2019

the gender pay gap, treatment of migrant workers or discrimination against pregnant women and parents. A single body with a pooled intelligence and analytical function would be well placed to identify and act upon such systemic issues.

Q9. What role should a single enforcement body play in enforcement of employment tribunal awards?

39. Enforcement of employment tribunal awards is a significant challenge. Even in cases where a worker receives a judgment in their favour, the likelihood¹¹ of receiving all of any of the award is 50%. (See case studies 2,3, 5 and 6 in Appendix for examples illustrating the challenges in enforcement of tribunal awards).

40. We consider that employment tribunals need to retain their current jurisdiction, however the single enforcement body should be given remit to act on referrals from tribunals. The single enforcement body should keep a record of the awards not paid and who they are payable by and have the power to enforce the award should the payment not be made within a given timeframe.

41. All employment tribunal judgments and determinations which result in an order for a respondent to pay money to a claimant (or carry out a recommendation) should be automatically sent to the single enforcement body at the same time when sent to the claimant.

42. Records of Employment Tribunal determinations kept by the single enforcement body should include the name of the Directors of the company and any subsidiary/holding companies. This is particularly relevant with regard to identification of “phoenix” companies. The body should also have the mandate to act on suspicion of “phoenixism”, or to alert the relevant enforcement agency where this is within their area of responsibility.

Q10. Do you believe a new body should have a role in any of the other areas?

43. The single body should further have a role in **enforcement of holiday pay, payslip breaches, failures to provide a written contract and enforcement of rights in the domestic work sector.**

44. We recommend that the single enforcement body is also given the mandate to prepare proposals for:

- introduction of penalties for holiday pay offences
- increase of penalties for payslip offences
- options for system of state payments of awards and arrears (where workers have been unable to recover these) with recovery for the outstanding debt from employers being the responsibility of the respective regulator

45. The single body should also be given powers to receive and act on complaints about failures to pay awards, compensation and arrears.

46. The single body should publish an annual impact report, containing assessment of the state of employment rights in the country, including regional statistical data on

¹¹ Clark, N., Herman, E.: *Unpaid Britain: wage default in the British labour market. Executive summary.* Middlesex University & Trust for London, 2017. p.9

awards enforced, assessment of issues and industry trends, and names of repeat offenders and those that failed to exercise due diligence in their supply chains. The report should also include a ranking of employers in particular industries, similar to the Index of Employer Delinquency proposed in *Unpaid Britain* research:

Top Sectors in London Index of Employer Delinquency	
1	Creative, arts and entertainment activities
2	Food and beverage service activities
3	Other personal service activities
4	Sports activities and amusement and recreation activities
5	Libraries, archives, museums and other cultural
6	Other professional, scientific and technical activities
7	Education
8	Advertising and market research
9	Repair of computers and personal and household goods
10	Security and investigation activities

Unpaid Britain, Index of Employer delinquency – p.14

47. The single body should also have a role in identifying good practice and most effective methods of enforcement and piloting/overseeing pilots of new models of enforcement. This could for example include piloting local level enforcement of National Minimum Wage (NMW).

48. In our submission to the Review of Employment Practices in the Modern Economy we proposed a system where enforcement of NMW is partially devolved to local authorities. Our proposal was that the responsibility for NMW enforcement is partially devolved to local authorities, with co-ordinated work at regional and national level. The co-ordination could be overseen by the single enforcement agency. We found that in the current centralised system the HMRC does not have the resources, or the relationships with workers and employers to effectively enforce NMW. The benefit of a partially devolved system would be that local authority staff are closer to the ground and hence are more likely to know workers and employers in their area. This closer relationship would make reporting NMW non-compliance more likely. While local authorities may not be used to enforcing employment rights, they already deal with employers in their areas on issues such as Business Rates, Planning, Licensing, Trading Standards, Environmental Health, Pollution, Health and Safety. Many of these include an enforcement element.

49. Precedents for devolved enforcement exist for example in health and safety, where both local authorities and the Health and Safety Executive have powers, and legal guidance sets out the distinction in roles.

50. We do not propose that NMW enforcement should be fully devolved. Central compliance and policy functions and liaison across government departments would need to be retained. Supervisory and appeals function should also be held centrally to ensure independence and accountability.

51. The single body should be given powers to enforce employment rights of domestic workers. Domestic workers, often migrant women living in the UK or arriving to the UK on overseas domestic workers visa, are very vulnerable to abuse. This has been well documented by our grantees, such as LAWRS and Voice of Domestic

Workers, Kalayaan (ELAN network member) and in the Independent Review of the Overseas Domestic Workers Visa conducted by James Ewins QC in 2015¹².

52. Domestic work remains a sector where inspections have been wholly absent, despite the propensity of serious abuse and ongoing advocacy by non-government organisations and domestic workers themselves. The single body would be well placed to address this enforcement gap and mount intelligence-led investigations where other bodies, such as the Home Office will have data flagging potential abuses through the National Referral Mechanism or Overseas Domestic Visa documentation; and receive complaints either by 3rd parties (such as support organisations) and domestic workers themselves.

53. There is a precedent for labour inspection in domestic work sector in Ireland, where the Workplace Relations Commission has been inspecting since 2011.

Q17. Is there enough guidance and support available for workers/employers?

54. Extant guidance and support provided by statutory bodies is insufficient and fragmented. ELAN network members find that advice and information provided by ACAS and available through gov.uk is often not detailed enough or tailored to individual circumstances. While NGOs and law centres provide some support, demand significantly outstrips their capacity and advice is not accessible in all geographical areas.

55. Workers have limited knowledge of their rights and often do not know where to go for advice, or whether they can access rights. This is in particular the case for workers who are told by their employers that they do not have recourse, because of their self-employed status or because of their immigration status. The absence of a single-entry channel makes it less likely for workers to seek advice, because of the lack of clarity over which body to go to, or the difficulties in accessing individual bodies.

56. Workers, especially migrant workers and vulnerable workers (such as those with disabilities or pregnant women) are often reluctant to raise concerns or complaint with their employers. Many vulnerable workers risk falling into poverty or becoming homeless if they complain and lose their job. Others fear verbal or physical retaliation and immigration enforcement. Lack of guidance and support for workers who are afraid to raise issues lead to underreporting and to serial offenders escaping with impunity. Better guidance, access to support and simplified contact channels (and possibility of reporting in other languages) would improve reporting and access.

57. The single body should operate a central advice and reporting hub (with options to report through a variety of channels including phone, online, mobile phone application and access to face-to-face/dedicated caseworker for very vulnerable workers with complex needs). The hub should signpost workers to further independent specialist advice and guidance. This must include signposting to immigration advice as well as welfare benefits advice. Information provided by workers should remain confidential and not impact on their immigration status.

¹²Ewins, J., *Independent Review of the Overseas Domestic Work Visa*, viewed 16 September 2019, <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/486532/ODWV_Review_-_Final_Report__6_11_15_.pdf>

Q18. Should a new single enforcement body have a role in providing advice?

58. Yes. The single body should act as a gateway to advice and guidance for workers and employers.

59. Advice should be provided across all areas of employment law, with a signposting facility to other bodies with specialist expertise, independent specialist advice agencies and mediation as an alternative to litigation. Experience of our grantee YESS over the past five years shows that most employees do not want to litigate, but want to remain in work and resolve their concerns. Early mediation can achieve that.

Q19. Would having a single enforcement body make it easier to raise a complaint?

60. Yes, provided that:

- The body has a high enough profile
- Multiple channels of reporting are open to ensure access to all, including most vulnerable workers
- Confidentiality and line of separation between employment rights and immigration enforcement are ensured.

Q20. Would a single enforcement body improve the ability to identify the full spectrum of non-compliance, from minor breaches to forced labour?

61. We welcome the proposal for the single enforcement body to focus on the full spectrum of non-compliance. Labour rights violations occur on a spectrum, a *continuum of exploitation*¹³ that spans between decent work and forced labour. While most violations occupy the centre of the spectrum, individual workers' experiences will vary over time. Workers also commonly experience multiple violations at the same time. If enforcement of minor breaches is not effective or underlying issues are not identified (such as exploitative business models and deliberate repeat offending), this leads to more severe and or/more widespread exploitation.

62. Some of the Trust's grantees have expressed concern that prioritising one form of abuse, or too strong a focus on a specific sector, can lead to reduction of enforcement and in some cases lack of will to investigate in other areas. While the priority focus on modern slavery following the passage of the Modern Slavery Act in 2015 has led to more potential modern slavery cases being identified and awareness increased about the issue, some organisations reported reluctance of some enforcement agencies to enforce abuses that were not severe enough to meet the threshold of modern slavery.

63. While intelligence-led prioritising can help address entrenched problems in one area, the single body should ensure that all claims made are pursued and appropriate enforcement is undertaken in a timely manner, regardless of severity of the abuse or the sector in which it occurred.

¹³ Skrivankova, K.: *Between decent work and forced labour: examining the continuum of exploitation*. Joseph Rowntree Foundation, November 2010.

64. The single enforcement body would also improve enforcement in instances where there may be overlap in mandate between regulators, or it is unclear which body has the responsibility to enforce. Failure to act or reluctance to take up cases where there is overlap in mandate or lack of clarity is a common problem encountered by organisations we fund.

65. The single enforcement body should also cover and prioritise sectors where inspection and enforcement has been minimal such as domestic work and the gig economy.

Q22. Which breaches should be publicised?

66. Enforcement actions should be published to ensure that companies are held to account. Publication would also act as a deterrent and have an educative role, in particular in areas where regulation tends to be poorly understood. Which breaches are publicised should be determined by quantity and severity. For instance, a single instance of non-payment of wages (unless it is a forced labour offence) is unlikely to cross the threshold of publicity. However, if an employer offends repeatedly, these breaches should be publicised, including through the use of social media.

Q23. Do the enforcement powers and sanctions currently available to the existing enforcement bodies provide the right range of tools to tackle the full spectrum of labour market non-compliance?

67. No. Experience of our grantees and findings of research that we supported, such as *Unpaid Britain*¹⁴ and *Tough Gig*¹⁵, point out that low detection and inspection rates and low sanctions are not sufficient deterrent and contribute to what some describe as the “culture of impunity”. (See case studies 1-4 in Appendix for examples for challenges in enforcement in the so-called gig economy.)

68. Failure to use enforcement powers with regards to the EHRC have also been highlighted by the recent report¹⁶ of the House of Commons Women and Equalities Committee.

Q26. Should a single enforcement body have a role in enforcing section 54 of the Modern Slavery Act?

69. Yes. Lack of enforcement and monitoring of compliance of s.54 has been repeatedly raised by civil society and in the recent independent review¹⁷ of the Modern Slavery Act. No public body is currently assigned the responsibility for enforcement of s.54. We recommend that the single body is given the mandate to enforce s.54 in conjunction with the Independent Anti-Slavery Commissioner (ISAC). The IASC’s

¹⁴ Clark, N., Herman, E.: *Unpaid Britain: wage default in the British labour market. Executive summary*. Middlesex University & Trust for London, 2017.

¹⁵ Broughton, N., Richards, B.: *Tough Gig: Tackling low paid self-employment in London & the UK*. Social Market Foundation, 2016.

¹⁶ *Enforcing the Equality Act; the law and the role of the Equality and Human Rights Commission. Tenth Report of the Session 2017-19*. House of Commons, Women and Equalities Committee. July 2019

¹⁷https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/796500/FINAL_Independent_MSA_Review_Interim_Report_2_-_TISC.pdf

mandate is largely in the area of policy and victim protection. The expertise of the ISAC would complement well the enforcement function of the single body.

Q27. Would introducing joint responsibility encourage the top of the supply chain to take an active role to tackle labour market breaches through the supply chain?

70. Yes. Joint responsibility would drive good practice and address business models that create conditions that can lead to exploitation and facilitate breaches.

71. Long supply chains and contracting out of business operations often lead to poorer conditions for workers, particularly in relation to pay and benefits. As far as possible, businesses should ensure that decent working conditions are provided where work has been contracted out and throughout supply chains. Expectations on labour rights due diligence within supply chains and own operations have increased with the introduction of the UK Modern Slavery Act 2015 s.54 on transparency in supply chains.

72. Reporting of violations and raising complains by workers working in outsourced functions is a particular challenge. *The Unheard Workforce*¹⁸ report by LAWRS that we funded gives examples of abuse of cleaners in London's financial district. Cleaners are rarely employed directly by the businesses, creating a situation where neither the companies whose offices are being cleaned, nor the companies that lease the properties are responsible for the wages paid or conditions of employment. Similarly, in the hospitality sector often neither the brand that licenses the use of their brand name to a hotel, nor the company that manages the hotel is responsible for the conditions of employment and wages of the housekeeping staff provided by a contractor. Procurement and purchasing practices that look for lowest possible cost and lack due diligence underlie some of the widespread poor practice and labour rights violations. (See case study 7 in Appendix for example of issues in sub-contracting and outsourcing).

Conclusion

73. It is clear from the above that this consultation process raises a large range of important issues. The purpose of response is to outline the overall need for a single enforcement body and not go into the detail as to the exact powers and mode of operation of such a body. It is our firm submission that such a body is absolutely vital if the employment rights of vulnerable workers are to be properly protected.

ENDS

¹⁸ Granada, L., de la Silva, N., Modern, D. *The Unheard Workforce. Experience of Latin American migrant women in cleaning, hospitality and domestic work.* Latin American Women's Rights Service, July 2019.

Appendix

Case studies provided by Trust grantees illustrating issues within the current system highlighted in our submission.

Case study No. 1

Mr. X worked in the so-called gig economy as a courier for a company which dismissed him after an unfounded allegation. Mr. X was treated by the company as an independent contractor instead of a limb b worker as the work he performed suggested; hence the company denied him the basic employment rights that come with the limb b worker status. On top of not having any holiday pay throughout the duration of his working relationship with the company, Mr. X was abruptly subjected to an investigation following an unsubstantiated allegation from one of the company's clients. He was suspended without pay and despite not being recognised as a worker subjected to a disciplinary meeting where he was subsequently dismissed by the company.

Despite having requested it, both verbally and in writing, Mr. X was denied a trade union representative at the disciplinary meeting, nor was he allowed to make use of the trade union's services at the appropriate time. Mr. X brought a claim for trade union detriment and for the denial of his right to be accompanied to a disciplinary meeting by a trade union representative.

Had there been an enforcement body monitoring how companies classify their workers and compliance with employment rights, Mr. X would have likely received paid holidays and allowed representation at a disciplinary meeting and possibly saved his job.

Case study No.2

Mr. Z has been working in the so-called gig economy as a driver for the company since 1999. Until 2017 the company treated him as an independent contractor and denied him employment rights. In 2017, following a legal claim brought against the company by Mr. Z's colleagues, the company rectified the situation and declared that all its drivers, including Mr. Z, were limb b workers and had been misclassified in the past. However, the company failed to make amends for all the years it has deprived its drivers holiday pay and other rights that come with worker status, such as protection from discrimination or trade union rights.

Since 2013, Mr Z has had a disability which impacts the way he can carry out work. He needs more rest breaks and needs to take medications at certain hours. Before 2017, when he asked the company to make reasonable adjustment, the company simply reduced his hours of work, with the consequence that he was not able to earn enough money to provide for his family; therefore, in spite of his health he had to increase the hours of work again. When in 2017 the company agreed that he was a limb b worker Mr Z expected that the company would now recognise his rights and in 2018 he asked for reasonable adjustments in order to vary his shift compatibly with his medical needs. However, the company refused to comply and Mr Z is now claiming failure to make reasonable adjustments before an employment tribunal.

Case study No.3

Mr Y has been working in the so-called gig economy as a courier for a big company since 2007. At the relevant time, the company engaged him as self-employed independent contractors and not as an employee or worker, which meant that he was not entitled to minimum wage. Over 11 years he was paid around £4 an hour.

This is a clear example of how some employers operate business models that allow them to avoid paying minimum wage. Whilst there have been recent improvements and tribunals are now recognising the rights of individuals misclassified, little has been done to deter companies that have systematically engaged in unfair treatment of workers.

Case study No.4

Mrs X and Mr X, husband and wife, worked as a driver and an assistant driver for a company. They worked regular hours and fixed days. When after a year of working for the company they asked for holidays, the company owner told them they were not entitled to holidays and dismissed them without notice. They brought a claim before the employment tribunal for automatic unfair dismissal. The tribunal found that they were in fact employees of the company and awarded them with a compensation of slightly more than £50,000.00 between the two of them. The company refused to pay and apply for a reconsideration of the tribunal decision. The company lost, but still refused to pay.

Mrs and Mr X had no alternative than to start proceedings before the County Court. They had to pay the County Court fees and had to pay the bailiffs to serve the Court orders as the company owner refused to receive the orders from them. By the time the company owner went before the County Court to make a declaration on the company's financial situation – almost a year after the proceedings before the County Court were started - the company declared insolvency.

Mrs and Mr X have no way or resources to enforce the tribunal judgement and to receive the award they lawfully won. Had there been a Government body aimed to enforce tribunal awards Mr and Mrs X would have received the compensation they were entitled to.

Case Study No. 5 – Andrew

Andrew undertook seasonal summer work as a cleaner for university halls of residence. He was not supplied with a contract of employment nor ever given a payslip. He contacted a Law Centre after not being paid for three months. Many of his colleagues had unsecure immigration status and had been told by their employer that they would be reported to the Home Office if they complained.

Andrew had not been paid correctly, had been denied holiday pay and the National Living Wage. After an Employment Tribunal ruled in his favour, the Respondent

refused to pay. Only on threat of enforcement action was a payment plan agreed to and complied with.

Case Study No.6 – Brenda and Claudine

Brenda and Claudine worked together at a local bakery for many years. One afternoon they were told that the bakery would be shutting by the end of the week and that they would no longer be employed. When Client D and Client E met with their ex-employers a week after the dismissal, their ex-employers attempted to pressure them into signing forged letters of resignation. They felt physically intimidated and at a loss with what to do.

The Respondent's Directors were attempting to strike-off their company, to which the Law Centre objected. All attempts by the Law Centre and the Employment Tribunal to contact the company and its directors have failed. Brenda and Claudine are currently waiting for a judgement in default so they can, at the very least, attempt to secure a redundancy payment and notice pay from the government services. The legal process has been ongoing for over a year.

Case Study No.7 – Derek

Derek was employed as a cleaner, working in a number of different premises for his employer. He attended the Law Centre after his contract was terminated for no reason after a few months of employment. Upon reviewing his documents and payslips, it was clear that he had not been paid holiday pay, notice pay and multiple unauthorised deductions from wages. These deductions included penalties for forgetting to submit timesheets on the day of work, deductions for cleaning of uniform and deductions for the administrative costs of processing payslips.

Fortunately, the employer agreed to pay Derek correctly after negotiations with a Law Centre. However, Derek has reported that most of his colleagues had been subject to the same deductions. Many of these deductions are historic and it is likely many claims will be time barred in the Employment Tribunal.

Case Study No.8 – Emily

Emily was employed as a nursery worker in a small nursery. Her wages were often paid late or only partially. She had to buy items for the nursery, as well as her own expenses for work, out of her own money. Finally, she fell sick and her employer refused to pay her statutory sick pay (SSP).

During her sick leave, Emily was dismissed due to her absence. Emily asked for her wages up to her dismissal, her notice pay, her owed SSP and repayment of expenses. The employer refused and, additionally, supplied Emily with a different version of her contract of employment with a shorter notice period provision. With regards to SSP, HMRC eventually intervened and paid Emily SSP due to a continued refusal of the employer. For the other matters, the case is now in the Employment Tribunal. Due to delay in the Employment Tribunal, this matter has been going on for over a year.

Case Study No.9 – Frank

Frank was contacted by a security company and asked to work as security for a well-known national shop. Frank was assured that he would be paid £8 an hour (less than

the National Living Wage appropriate for his age) and travel expenses. He was not given a contract of employment nor payslips. Frank was only paid a fraction of his wages and not repaid his travel expenses. Eventually, Frank refused to work until he was paid properly. It has transpired that the client company had contracted their security work to a company who subcontracted.

This company had in turn subcontracted it. Finally, this company subcontracted it again. However, Frank was instructed to lie when asked by the client company and say that he worked for the 2nd subcontracted company. All companies have thus far refused to disclose the legal identity of Frank's employer or assist with its identification. This includes the client company. This has led to the Law Centre having to submit five claims to the Employment Tribunal against companies with different names in a bid to bring a claim against the correct one.