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Labour Market Enforcement Stakeholder Survey Association of Labour Providers – Written Submission

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Scope of the survey

The Government has made clear its commitment to tackle illegal working and crack down on worker exploitation across all labour sectors.

As part of this work a new Director of Labour Market Enforcement is being appointed to improve the effectiveness of the enforcement of employment rights to tackle non-compliance in all areas. The new Director will have over-arching leadership of the three enforcement bodies – Employment Agency Standards Inspectorate (EAS), Gangmasters and Labour Abuse Authority (GLAA) and HMRC National Minimum Wage (HMRC-NMW). The Director will set a strategy outlining the key priorities for the enforcement bodies and create an Intelligence Hub enabling data sharing between the Director, Labour Market Enforcement bodies and other bodies with intelligence.

The office of the Director of Labour Market Enforcement is interested to hear from stakeholders to help gather invaluable insights into the priorities and activities in Labour Market Enforcement. The following is supplementary evidence to the online survey.

Introduction

The Association of Labour Providers (ALP) is a trade association promoting good practice for organisations that supply the workforce to the consumer goods supply chain across the food processing, horticultural and wider manufacturing, industrial, warehousing and distribution sectors. The ALP supports and represents its members and provides a range of services to help labour providers achieve social compliance and ethical good practice.

The ALP has approximately 320 organisations that voluntarily choose to be members of the Association on payment of an annual subscription and commitment to abide by the membership regulations. ALP member organisations supply approximately 70% of the temporary contingent workforce into the food growing and manufacturing supply chain. Many of these workers progress to form the permanent workforce for UK industry. All organisations that supply labour into these sectors are required to be licensed by the Gangmasters and Labour Abuse Authority (GLAA).

Labour providers operate in a very competitive market largely resulting from the downward pressure on costs exerted by the consumer goods supply chain. It follows that margins are thin, although just adequate to allow efficient businesses to continue.

ALP's members predominantly provide unskilled workers and semi-skilled workers. Market pressures mean that unskilled work is either at, or very close to, national minimum wage (NMW). For many years these irregular low-paid jobs have been largely filled by migrant workers, able to

earn more than they can in their home country. Depending on region EU workers make up between 70 and 100% of workers supplied by labour providers, the remainder being British nationals and those migrants from non-EU countries that have been given right of residence in the UK.

It should be noted that pay rates and terms of employment for temporary agency workers supplied by labour providers are set not by the labour provider but by the hiring client in accordance with the requirements of the Agency Workers Regulations 2010. As such, pay and benefits of temporary agency workers is a cost passed on to the labour user.

The actual hourly rate charged by a labour provider to the hiring client for the supply of temporary workers is ultimately a commercial agreement. Any agreed rate should take into account the particular costs of supply. Hirers of temporary labour that pay unrealistically low rates are knowingly or recklessly conniving in illegality as these rates can only be achieved either through worker exploitation or tax evasion or both.

ALP, with NSF International and many brands is currently developing Clearview (www.clearviewassurance.com), a global labour provider certification scheme.

The ALP is the lead development partner in the “Stronger Together” initiative. Stronger Together was launched in October 2013 as a business led multi-stakeholder collaborative initiative to equip UK employers and recruiters with the practical knowledge and resources to tackle modern slavery in their business and supply chains by providing free good practice guidance and tools through www.stronger2gether.org. The other development partners are the GLA and Migrant Help. The project sponsors are all the main UK supermarkets Aldi, Asda, Co-operative food, Lidl, Marks & Spencer, Morrisons, Sainsbury’s, Tesco and Waitrose.

Within Stronger Together, in three years:

- Over 4200 industry representatives have registered with www.stronger2gether.org to access the resources for use within their organisations.
- Over 2000 individuals from 1100 businesses have attended a [“Tackling Modern Slavery in Business”](#) workshop and committed to take the tackling slavery message back to over 790,000 workers.

Stronger Together was formed in response to the rising number of victims being trafficked into the UK for labour exploitation as identified by the annual National Referral Mechanism statistics released by the Home Office National Crime Agency UK Human Trafficking Centre.

The ALP Chief Executive is also the founder and programme co-ordinator of Fast Forward, a collaborative initiative with many high street retailers and brands to build legal and ethical labour standards compliance in the UK garment, general merchandise and consumer goods retail supply base.

Preamble

1. In the exemplary July 2014 Home Office Migration Advisory Committee (MAC) report, [Migrants in low-skilled work](#), the report concludes:

“The counter-balance to a flexible labour market is to ensure that employers comply with the minimum protections for workers and that these are enforced. MAC found that the incentives to comply are weak. There are some serious gaps in protection, especially for migrant workers. There exist real disincentives for individuals to challenge poor employment practices and to raise grievances.

UK labour law is not providing a minimum level of protection in all cases resulting in a playing field that is not level. There is the risk of a continuum of exploitation starting with failure to pay minimum wages and ensure decent working conditions,

leading to workers being forced to accept sub-standard accommodation, being forced to pay for things that they do not need through deductions from their wages, having their passport retained, and losing both work and accommodation with no prior notice.

The evidence is consistent with increasing migrant exploitation enabled by insufficient regulation of recruitment.”

2. In such sectors, which tend to be irregular, competitive and price responsive, business aligns its workforce strategy with its business strategy and so its objectives are:

2.1. Sourcing and retaining a ready supply of reliable, hardworking and flexible workers

2.2. Minimising the employment tax burden

2.3. Minimising employment costs which means:

2.3.1. workers work quickly and without error

2.3.2. the workforce is restricted each and every workshift to that absolutely required by the work needing to be with the ability to switch workers on and off with the minimum of notice as required

2.3.3. workers' rights are limited to not impede on their flexibility or their ability to be replaced with ease

3. The role of the state with regard to prevention of labour exploitation, defined in the United Nations Guiding Principles on Business and Human Rights as the “State Duty to Protect” is to:

a. Define and deliver a base floor of rights and entitlements

b. Protect those most vulnerable in our state from exploitative employers and others who abuse an imbalance of power

c. Provide a voice and access to remedy for those denied their rights

4. The Business, Energy and Industrial Strategy Committee has launched an inquiry into the future world of work, focussing on the rapidly changing nature of work, and the status and rights of agency workers, the self-employed, and those working in the 'gig economy'. The inquiry also looks at such as low-pay and poor working conditions for people working in these non-traditional employee roles. [Terms of reference: The future world of work and rights of workers](#). In October 2016 the Prime Minister commissioned Matthew Taylor, the Chief Executive of the Royal Society of Arts, to look at how employment practices need to change in order to keep pace with modern business models. The [review](#) will consider the implications of new forms of work, driven by digital platforms, for employee rights and responsibilities, employer freedoms and obligations, and our existing regulatory framework surrounding employment.

The ALP is making full and detailed submissions to this review and inquiry

5. There are different perpetrators of egregious labour exploitation in businesses and supply chains:

5.1. The Employer – knowingly exploits or holds its workers in slavery

5.2. The Intermediary supplying workers to the employer who knowingly exploits or holds its workers in slavery. The employer may be complicit, negligent, naïve or genuinely duped by convincing and manipulative individuals.

5.3. The Organised Criminal Gang / Individual – working in a hidden capacity, feeding controlled and exploited individuals into legitimate businesses

Each business model requires a different approach to tackle the exploitation.

Labour Market Enforcement Stakeholder Survey – Written Submission

6. Rights of employees, workers and agency workers

The ALP has made detailed recommendations on this to the “Future world of work and rights of workers” inquiry referred to above.

Whilst this is predominantly a matter of absence of enforcement there are significant areas of complexity in employment rights where the law is not clear, particularly for workers and agency workers. This relates to basic rights such as minimum wage, holiday pay, sick pay and other social benefits. This has the consequence that:

- Workers do not understand their entitlement or their rights
- Employers and labour providers do not understand how to calculate holiday pay correctly
- There is underpayment and incorrect payment

It is recommended that there should be collaboration to develop straightforward guidance for employers / employees / workers and agency workers and to make this readily available on GOV.UK.

7. Enforcement of rights and access to remedy

The UK National Action Plan ([*Good Business: Implementing the UN Guiding Principles on Business and Human Rights*](#)) updated in May 2016 acknowledges the State duty to protect human rights. However significant steps need to be taken by Government in order to:

- Signpost workers to advice
- Provide advice
- Provide access to remedy to vulnerable workers

The Director of Labour Market Enforcement needs to address key questions in his/her strategy:

- What is the current position with regard to labour market enforcement in the UK
- What is the objective and the responsibility of the state and other actors with regard to labour market enforcement
- What is the gap between where we are now and where we need to be
- What is the plan and timetable to achieve this
- What resources are required to achieve this – including appropriate funding for the Gangmasters and Labour Abuse Authority

At this stage, the ALP raises four key issues with regard to enforcement of rights and access to remedy for the Director to consider in developing the UK Labour Market Enforcement strategy:

- 7.1. Workplace Health, Safety and Employment Rights poster - Employers have a current legal duty under the Health and Safety Information for Employees Regulations (HSIER) to display the 2009 approved poster in a prominent position in each workplace or to provide each worker with a copy of the approved leaflet.

This poster should be simplified, made to be more eye catching, in multi-language versions; should have added to it key employment rights; how to access further information and how to report labour abuses up to and including modern slavery. There should be a civil penalty for not displaying the poster which may be applied by a wide variety of enforcement bodies including those within local authorities.

- 7.2. Rebranding of acas – acas provides a valuable and needed service but how many of the vulnerable workers in the UK actually know of its existence? Its very name, an acronym for the Advisory, Conciliation and Arbitration Service is a throwback to the industrial relations regime of the 1970s.

acas should be renamed and rebranded into the modern employment era with a name that is clear to all such as “The Employment Helpline”. This is merely a renaming exercise and no structural changes are required. The emphasis should remain on this body signposting and resolving matters before they reach Employment Tribunal. Their resources to achieve this should be enhanced.

Calls should be redirected as required to the GLAA; the HMRC NMW Enforcement Team; the Modern Slavery Helpline. Information should feed into the office of the Director of Labour Market Enforcement Intelligence Hub.

- 7.3. Minimum Wage Enforcement – This is currently ineffective. There needs to be a root and branch re-evaluation of the strategy and effectiveness of national minimum wage enforcement in the UK. This should be conducted by the Low Pay Commission in association with the office of the Director of Labour Market Enforcement

- 7.4. Access to Employment Tribunals - The Justice Committee report on employment tribunal fees concluded that fees had "an unacceptable impact on access to justice". In the year to March 2016, 83,031 tribunal applications were made compared to 61,308 the previous year, 105,803 in 2013/14 and 191,541 in 2012/13, the last full year prior to fees being introduced.

Whilst seeking to limit “scandalous, unreasonable or vexatious” claims, there should be a full review of access to remedy through the UK justice system, particularly for the most vulnerable workers to include the potential for:

- Free conciliation, mediation and arbitration services
- Speedy dispute resolution – perhaps by a 'fast track' employment tribunal with increased use of phone and Skype/Facetime meetings