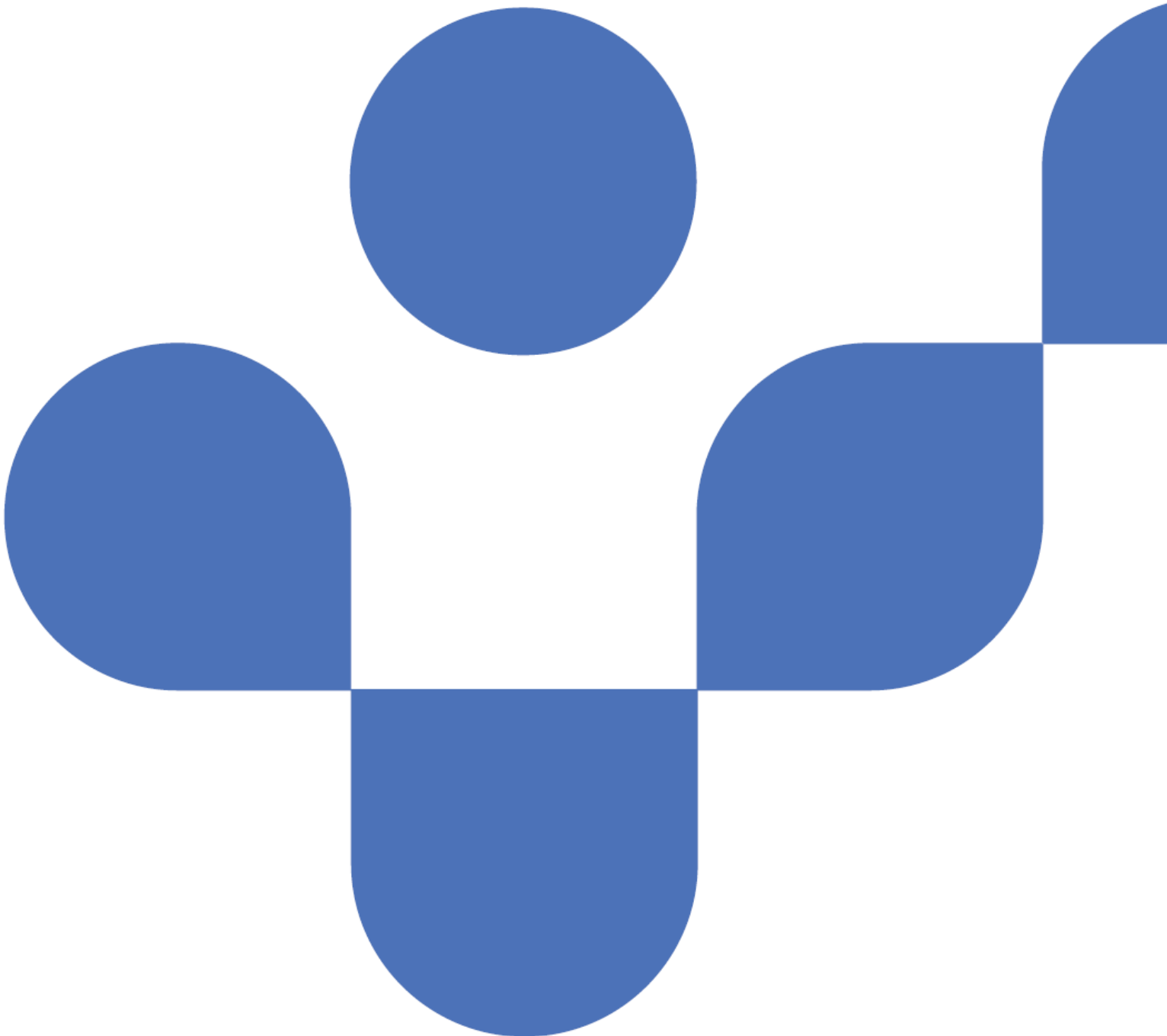


Labour Market Enforcement Strategy 2023 to 2024: Call for Evidence

A response by the Recruitment Employment
Confederation

May 2022



Section 1

Please briefly tell us about you / your organisation and your interest in enforcement of labour market regulations.

The Recruitment & Employment Confederation (REC) is the professional body for the recruitment industry, we represent over 3,200 recruitment businesses – 80% of the UK's £38.9 billion industry by turnover, and 11,500 individual recruiters. The UK recruitment sector places over a million people into permanent jobs each year and ensures that a further million are working flexibly through temporary assignments on any given day. Through our code of practice and complaints procedures we promote industry standards and compliance

The recruitment industry is overseen by the Employment Agency Standards Inspectorate (EAS) so REC has a key role in working with EAS to ensure compliance is reflective of the current state of the industry and applied fairly and efficiently across the sector. Many of our members also operate in GLAA regulated sectors or other sectors with low pay and plenty of exposure to the GLAA enforcement and HMRC NMW teams. The REC is interested in ensuring these enforcement teams are aware of the nuances of the temporary labour market that make up a large proportion of the recruitment industry.

Section 2 – Key Areas

1. Recent changes in how UK labour market is operating

For instance, since the end of the Coronavirus Job Retention Scheme (CJRS), changes in employment status (e.g., the shift away from self-employment following IR35 rules changes) increases in job vacancies.

1a. What changes have you observed or experienced?

Over the last couple of years there has been an increase in the number of intermediaries operating in the recruitment sector. This includes umbrella companies and others that purport to offer tax solutions for temporary workers. The number of such companies has increased since the IR35 rules expanded into the private sector, with many of them offering low tax solutions to employees.

REC's Report on Jobs for April reported a continued increase in vacancy numbers across the UK following record growth for the number of vacancies recorded in February 2022. Vacancies have risen consistently since June 2021 according to REC research.

1b. How might these changes impact non-compliance and is this likely to grow or subside over the coming year (2022 to 2023)?

Intermediaries offering tax solutions pose a major threat to compliance in the recruitment sector. Umbrellas operate without regulation currently and are not policed by a formal enforcement body as they sit outside of the remit of EAS. This leaves recruitment businesses with the burden of responsibility to do due diligence on their umbrella partners before using them to pay candidates. This responsibility can be managed by large agencies that have dedicated compliance teams, but smaller agencies may not have the expertise or manpower to perform the level of compliance needed. Umbrella companies can be complicated, shape shifting and often changing their business models, so this requires ongoing and repeated checks by recruiters. This increases the difficulty of policing the umbrella market which is why we need regulation and a dedicated enforcement body to do this.

Whilst some umbrella companies can provide a useful payroll service to recruitment business, due to the lack of oversight in the industry, many umbrellas offer tax avoidance schemes. Where recruiters don't have sufficient tax expertise to identify these schemes, they need support from enforcement bodies to do so. Where noncompliant umbrellas are identified, a dedicated enforcement body is needed so recruiters can report accidental or intentional non-compliance.

Where there is an increased demand for candidates, as there is in the current labour market, they have increased power of employers who are eager to recruit. Unscrupulous umbrella companies can exploit this by offering candidates higher levels of pay. Candidates can then compel recruiters to engage with these umbrella companies which they are more likely to do to avoid missing out on workers which are in short supply.

1c. What response have you observed by the enforcement bodies to identify and address these issues?

EAS have been in conversation with REC around the regulation of umbrella companies and how this can be managed. These conversations were originally taking place in anticipation of an employment bill which would introduce legislation to regulate umbrellas. EAS is well aware of the REC and our members' desire to regulate umbrellas. They will perhaps share in the REC's disappointment at a lack of Employment Bill in the Queen's Speech to enact such legislation.

HMRC's NMW team have also begun to publish more information around the use of illegitimate umbrella companies and some of the methods they use. This included guidance on the use of loan charges to minimise tax and other similar schemes. HMRC needs to be aware of how these schemes adapt and change to ensure guidance remains relevant to the latest iteration of any unlawful umbrella company models.

2. Workforce

Looking at the experience of people engaged in or available for work, either in a specific geographical location or in a particular firm or industry sector.

2a. What has been the experience of workers arising from changes to the labour market? Please provide specific evidence.

The expansion of IR35 into the private sector has led to changes for many workers who would have previously operated as limited company contractors. Some of these workers may have taken a slightly naïve approach to the changes in the different way of working and were unaware of what the changes to their employment rights would be. Workers who were used to working as contractors would not previously have dealt with issues around holiday pay or pensions and may have been unaware of their rights around these and therefore what to expect from Umbrellas companies reflecting these things in their pay slips.

2b. Have changes in the immigration rules in 2021 impacted on workers' experience and has this differed between migrant or domestic workers?

No comment

2c. Are these impacts consistent across the board or do they vary by sector? If the latter, then how?

The impact of IR35 was most seen in high paying skilled jobs such as IT contracting, finance and consultancy. These professions would previously have frequently operated outside of IR35. Other sectors were also affected, and the problem of umbrellas offering alternative low tax solutions to former contractors applies across all sectors.

2d. Is there any evidence to suggest additional threats to workers associated with labour shortages?

No comment

3. Workforce Engagement

Looking at evidence of how workers gain understanding and enforce their employment rights.

3a. What examples can you share of initiatives that have assisted workers to understand and enforce their rights – particularly as regards harder to reach workers?

The introduction of the KID was a good development in helping workers understand their pay and any deductions. This can be of particular use to

candidates who are engaged through umbrella companies as it gives a much clearer breakdown of who is responsible for making what deductions from pay and when in order to guard against Umbrellas taking an employee's holiday pay for example.

4. Business Engagement

Various mechanisms initiated or supported by the enforcement bodies encourage, influence and embed good practice, e.g., Responsible Car Wash Scheme, Construction Protocol and the Apparel and General Merchandise Public/Private Protocol, The National Minimal Wage Naming Scheme and the Good Business Charter.

4a. What impact do you think these interventions have had? i.e., are they effective?

The NMW name and shame scheme has had some impact in that it makes information around which companies are breaching NMW regulations public and improves transparency for workers. If companies know that their breaches of the regulations will be publicly available this will encourage them to take the necessary precautions to avoid breaches in the future.

4b. Why? What would make them more effective?

The current NMW name and shame scheme is something of a blunt weapon. All levels of non-compliance are treated the same way and there is no distinction between intentional and accidental non-compliance.

In the temporary recruitment market confusion in the application of the Working Time Regulations 1998 can lead to accidental non-compliance, because the regulations were not designed with agency workers' working patterns in mind. Calculating holiday entitlement and holiday pay in these cases can be exceptionally complex and even government guidance has been overruled by subsequent legal cases. Much of the UK's current employment legislation was drafted before flexible working models became commonplace and out of date legislation can lead to a serious lack of clarity for these workers. Employers need clarity in this area to ensure workers get their full entitlements and to protect businesses who are trying to abide by the rules from being accidentally non-compliant

4c. Are there any other examples of good practice? These can be drawn from across the regulatory landscape.

No Comment

5. Recruitment

5a. What changes have you observed to recruitment patterns and practices. For example, online recruitment and offshore recruitment.

There has been an increase in the number of online companies and apps offering work finding services that claim to be outside the scope of the Employment Agencies Act 1973. Many of these businesses appear to offer services that fall within the definition of an employment agency or employment business as set out in the act but claim to be outside of the scope of the regulations that police the industry.

5b. Do any of these trends you observe raise concerns about compliance?

Yes, where these companies claim to be outside of the scope of the Conduct of Employment Agencies and Employment Business Regulations 2005 and therefore do not offer candidates the protections these regulations offer. If these companies are allowed to continue to operate without regulation this will cause all kinds of compliance issues as workers will have no regulatory framework to fall back on if there are issues around pay or other employment issues.

5c. Do you have any evidence to share in respect of recruitment fraud?

No comment

6. Employment models

What evidence can you present as regards compliance of newer models of employment – for example gig economy workers, employment through umbrella companies¹, joint employment models²

6a. Do you have evidence of these being associated with worker exploitation?

Joint employment models can lead to exploitation due to the lack of transparency around employment status. Where a candidate is employed by multiple organisations it creates ambiguity around which entity holds which responsibilities, and this confusion can be exploited to undermine worker rights. A joint employment models can be used to limit accountability and lend itself to potential exploitation.

¹ Umbrella company is a term used for company that employs a temporary worker (an agency worker or contractor), often on behalf of an employment agency. The agency will then provide the services of the worker to their clients. Umbrella companies do not find work for the workers they employ.

² Joint employment model: An example of this is an employee formally employed by one employer the (primary employer) may be deemed constructively employed by another employer (secondary employer) for example an employer and a contractor or subcontractor performing services for the employer or a staffing agency providing employees to the employer.

Use of umbrella companies can similarly lead to exploitation of some workers, in particular overseas workers. There have been cases where unscrupulous umbrellas have employed overseas workers who do not have the correct right to work in the UK. Some umbrellas would then exploit these workers by paying less than minimum wage or not complying with other employment legislation, but the workers feel unable to report these breaches due to their illegal worker status. This leaves workers trapped in illegal working conditions with no recourse to address this.

6b. Do you have evidence of other employment models that might give rise to compliance concerns?

No Comment

7. Enforcement resourcing

All 3 enforcement bodies engage in educational activity, promotion of compliance, enforcement and support to workers.

7a. What assessment do you make of how these 3 bodies operate?

The Employment Agency Standards Inspectorate (EAS) generally has a good relationship with large parts of the UK recruitment industry through their frequent roundtable sessions. The work of EAS is recognised as valuable in policing the industry in spite of their limited resource. Where the recruitment industry does have some concern over the operation of EAS is in their lack of resources. This is particularly noted by large agencies who have reported having multiple random inspections within a few weeks of each other. For larger agencies, with robust compliance processes, this can lead to a lot of work being required for very little gain. This means that resource is not being used as effectively as it could be to police the industry. As reported by our members, much of EAS' work seems to be driven by external complaints. Whilst some complaints may be genuine and lead to EAS identifying breaches, this does not seem like the most efficient model in many cases. It would be a better for EAS to adopt a more systematic approach to inspection to ensure that some agencies aren't inspected unnecessarily frequently whilst others are not inspected at all.

REC members that operate in GLAA sectors have reported that they can find the GLAA's enforcement to be overly officious in some cases. This includes feedback that the scope of what GLAA is inspecting is overlapping and contradicting with EAS which seems inefficient. Members have reported being told one thing by EAS and another thing by GLAA. Reviving the planned single enforcement body (SEB) that was proposed in the Matthew Taylor Report would help to address this by creating a single point of reference for all compliance issues and minimising the opportunity for conflict. Even if a single enforcement body is not forthcoming, more needs to be done to promote

transparency between enforcement bodies and create a joined-up approach. Ambiguity between bodies creates gaps to be exploited and a cohesive approach between the enforcement bodies would prevent this.

7b. Provide evidence and examples of best practice to address labour market non-compliance that you would like to highlight to the Director?

No Comment

Other issues

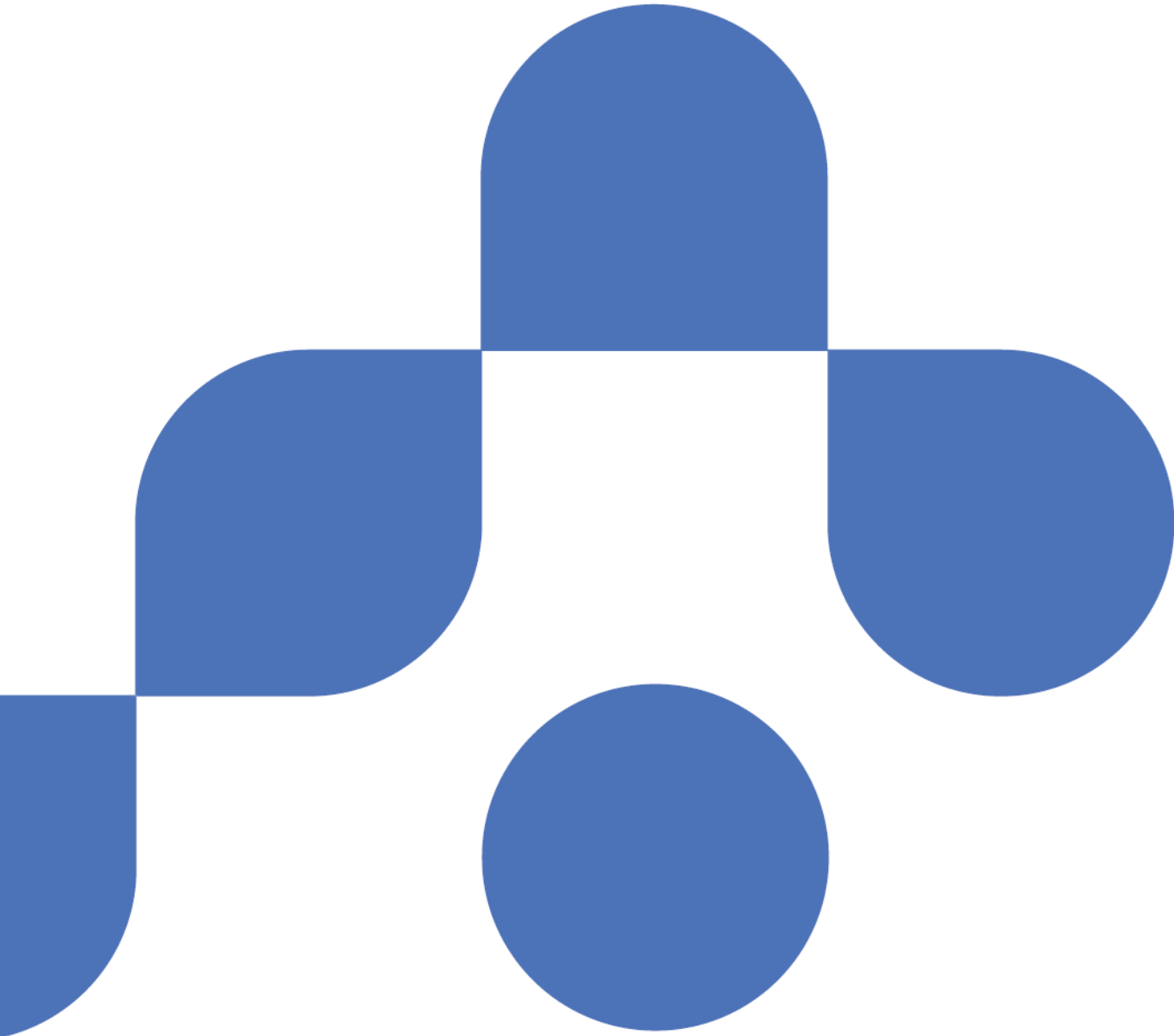
8. Over and above the issues raised above, are there any other relevant issues you would like to bring to my attention for this strategy? For instance, effectiveness of labour market enforcement and how this could be improved, allocation of resources and good practice that can be drawn from across the regulatory landscape.

In scenarios where recruiters are engaging with umbrella companies or other intermediaries many of them have internal procedures to identify non-compliance and reject these companies on this basis before engaging with them. However, where these infringements are identified there is no wider system to record or report these issues. This ties back to the need for a centralised regulator for umbrella companies. As it stands a recruiter can choose not to engage an umbrella they deem to be non-compliant, but with nowhere to report this, the umbrella is free to continue to try and engage with other businesses who may not be as diligent in their pre-engagement checks.

For more information on this submission, please contact:

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The REC is the voice of the recruitment industry, speaking up for great recruiters. We drive standards and empower recruitment businesses to build better futures for their candidates and themselves. We are champions of an industry which is fundamental to the strength of the UK economy. Find out more about the Recruitment & Employment Confederation at www.rec.uk.com



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