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Co-Chairs  
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House of Commons  
London  
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Dear Sammy, Greg, and Mohammad

Thank you for your letter dated the 21<sup>st</sup> of October in which you raise some concerns surrounding amendments to our FCSA Charter and indeed whether this represents a change in our stance on creating and supporting ethical and compliant solutions for contractors within the UK.

The FCSA is a professional membership body that only exists to create the highest levels of legal and financial compliance in the UK contractor marketplace.

The FCSA Charter clearly states:

**‘The objective of the FCSA is to protect and promote the interests of professional contractors and freelancers (‘workers’) by ensuring they are only working with the most scrupulous and compliant contractor support businesses.’**

In order to deliver on this objective, the FCSA constantly reviews its practices and the standards by which it assesses the members companies that carry FCSA accreditation.

Our aim and that of our members is to always seek to provide greater protection to contractors and for that reason our standards evolve to give that assurance.

The core area of our work entails the independent assessment of each member company on an annual basis against the detailed FCSA Codes of Compliance. As I have stated, these assessments are carried out by independent tax and employment law experts (who are themselves independently regulated by their professional bodies) and are so rigorous and evidenced based that each company undergoes around three months of assessment every year. These are open to scrutiny on our website and here for convenience:



[FCSA Codes of Compliance • FCSA Accreditation • FCSA](#)

In addition to this the FCSA will sample check key areas such as pay slips and mystery shop our member companies throughout the year to ensure continuing compliance.

Over the last two years we are able to demonstrate a continuous focus on protecting the supply chain and contractors by highlighting the changes we have made. These include:

### **Increasing Entry Standards for FCSA Membership**

FCSA has observed a marked increase in Mini Umbrella Companies which are solely designed to exploit VAT tax loopholes and to defraud the contractor community at the same time, whilst also denying them their employment rights under UK legislation.

Other companies also emerge to offer non-compliant solutions such as 85% take home offers under the guise of 'tax efficient' schemes, be they UK or offshore.

However, one common factor that these non-compliant companies have in common is that they are short lived in order to avoid the inevitable interest of HMRC and or enforcement bodies within BEIS. This also means they have very little financial history or even financial stability/liquidity. As a result, we strengthened our minimum entry standards for membership to reflect this. They can be found below:

[FCSA-Code-Mandatory-for-all-applicants-V04MC2021.pdf](#)

Applicant companies and current members must pass all of the criteria set out in the mandatory FCSA Codes. The key changes last year were:

- The requirement for all companies to have been trading and UK registered for a minimum of two years. This ensures a least one set of accounts being registered at Companies House which Mini Umbrella firms fail to do.
- The requirement to submit ONLY audited accounts. This gives greater transparency of the financial health of the company as well as providing another independent assurance via the audit of those accounts.

- An increase from a minimum of 50 contractors in each area of FCSA assessment to 75. This further assures establishment as well as a reasonable number of contractors records to independently assess.

As a professional membership body, you will begin to understand that we impose exceptionally high operating standards on our member companies for one purpose only; to assure the supply chain and the contractor that they are dealing with established, ethical, and compliant companies operating with the outsourced labour sector.

As part of our Mandatory Codes of Compliance we expressly ban the operation of the following models as stated in A11 of the Code:

‘A11. Confirm the Applicant / Member company or any associated company linked via Directors (who have been required to complete FCSA Fit & Proper Person forms) does not operate any of the following models:

Hybrid; Loan Scheme; MSC; Pay day by Pay day; Mini Umbrella (MUC); Elected deduction model (EDM)?’

These models have always been banned under our Codes of Compliance.

I can state without exception that no FCSA member company has ever been reported for operating any such model either within the UK or offshore and if evidence did emerge to suggest and prove they were doing so then that company would be expelled from membership and indeed reported to HMRC for operating such models.

Another factor for reviewing minimum entry standards is that we observed a number of new umbrella companies entering the marketplace as a result of the private sector IR35 reforms which came into force this year. Rather than wanting to become a ‘best in practice’ umbrella provider and employer, the motive was more commonly for commercial gain as a result of the reforms.

Many of these firms attempted to gain FCSA membership and this made us aware that a number had very little understanding of their employment law duties as an employer of temporary worker populations. This was another prompt to quickly review our entry standards so that we could again assure the contractor that they were dealing with fully compliant and established umbrella firms.



## **Revised FCSA Codes of Compliance**

In January of 2021 we embarked on a comprehensive review of all of our operating standards. This included a line by line review of all four of the FCSA Codes of Compliance which can be found below and are in addition to the Mandatory Code set out above:

[FCSA-Code-Umbrella-employment-V06UC2021.pdf](#)

[FCSA-Code-Limited-Company-advisor-V04LC2021.pdf](#)

[FCSA-Code-Self-employed-CIS-Contractor-V04CC2021.pdf](#)

[FCSA\\_Fit-and-Proper-Persons-Criteria\\_vMay2021.pdf](#)

You will see that whilst our applicant and member companies go through the independent scrutiny set out the Codes it is also a requirement that every director of an FCSA company undergoes a due diligence check as part of our assessment process.

The review of our Codes encompassed any legal and tax regulatory changes but also looked at creating greater protection and transparency for the contractor. One area where we felt we needed to show leadership was to create greater transparency around pay slips and particularly holiday pay. Our Codes have been fully expanded to ensure they go beyond any legal minimum requirements to providing a blueprint of best practice and fairness to fully protect the rights of workers. The detail of these can be found from B10 of our umbrella code.

These and other changes were instigated to provide the most comprehensive set of compliant operating practices in the industry and the FCSA and its companies are proud to give this assurance to the sector and to subject ourselves to independent scrutiny by the most knowledgeable tax and employment law experts in the industry.

The Codes you see in this letter and on our website were eventually amended and agreed in May 2021 after consultation with FCSA members, and other stakeholders including IPSE, BEIS, HMRC, Apsco, TEAM and REC.



We were eager to consider views from all parts of the supply chain, including the voice of the contractor. Moving forward, the FCSA would be happy to include this committee in any review changes to our standards.

The revised Codes of Compliance went live for new applications on the 16/3/21 and for current FCSA members (to allow for software changes) on the 1/10/21.

### **A robust Complaints Procedure**

The FCSA Charter allows for any body or person to make a formal complaint against an FCSA member company. Specifically:

‘6.1. Any complaint that a member has breached the standards contained within this Charter shall be dealt with in accordance with the FCSA complaints procedure.’

In essence, the FCSA Charter is a summary of the comprehensive Codes of Compliance and if someone wishes to make a formal complaint then they are required to quote the part of the Charter and Codes that they feel the member company has breached.

As part of the review, it was noted that in order to further protect the contractor and supply chain that A8 of the Mandatory Code was not referenced in the Charter. This is set out below:

‘A8. Confirm all group companies’ operating activities covered by this code are based in the UK and the significant majority (75%) of your services are undertaken in the UK.’

Further details can be found above within the Mandatory Codes.

This has always been in the FCSA Mandatory Codes so is not new.

Its intention has always been to recognise that it has been common practice for thousands of UK companies to occasionally make the decision to transfer certain back office functions such as IT support to other providers and these may well be based around the globe.

As some of our members become larger and more successful (just like recruitment companies and other sectors) it is natural to want to transfer their

expertise to non UK countries. To prevent them from doing so would be anti-competitive in what is a perfectly legal and proper activity.

However, we have always had in mind the protection of the contractor and so have always indicated to our member companies that whilst our members are encouraged to grow, the UK contractor must remain at the heart of our Codes and so FCSA companies servicing UK contractors must be registered in the UK and be subject to UK tax, company, and employment law.

As I have already highlighted, if the FCSA Codes are looked at in detail it is abundantly clear that no tax avoidance or indeed any non-compliant services can be offered to contractors who are also subject to UK legislation and regulation.

As a result, the additional item you have identified at 1.1 of the FCSA Charter is not new, but it was decided to make a new reference to it so that if any form of non-compliant offer was ever made by an FCSA company and this was offshore then reference could be made to it within the Charter.

I acknowledge that I could have made this much more explicit within the new entry in the Charter and more closely replicated the wording that runs throughout the Mandatory Codes which I have already referred to.

Once the confusion surrounding 1.1 had been made clear to me, I immediately amended the wording which now reads as follows:

‘1.1. FCSA Members shall be UK-based firms that do not provide more than 25% of their operations outside of the UK. The FCSA does not permit offshore arrangements/solutions or structures that seek to evade or avoid UK tax regulation or employment rights as set out in the FCSA Codes.’

I remain confident that no FCSA member company operates any form of disguised remuneration scheme or tax avoidance scheme, and no such complaint has ever reached my office.

I also remain confident that the work we have undertaken and continue to undertake is done purely on the basis of providing the most compliant standards in the industry and ensuring that they undergo the most rigorous and independent assessment.

You refer to HMRC engaging umbrella companies that went onto offer ‘disguised remuneration’ schemes and suggest that HMRC only use FCSA companies. That is



not the case. It is a matter for the HMRC to say whether they only use FCSA companies. I do not have that information and am not aware of that arrangement. But I can state that no FCSA company has worked with HMRC and offered any form of 'disguised remuneration' or indeed any form of non-compliant or unlawful arrangement.

I regret that you have made that damaging statement before checking whether it has any basis in fact and having done so I would ask you to correct, publicly the inference you make within that paragraph of your letter or provide evidence to the contrary.

FCSA and I have worked tirelessly to assist the APPLCC along with BEIS in defining regulation for the industry and with HMRC in identifying unlawful and non-compliant practices and operators. We will continue to do so as our only mission is to drive out non-compliant practices in the sector.

It is also worth noting that FCSA continues to be a leading voice of compliance in the industry and the standards I have set out in this letter are well respected in the sector. Because of this more end hirers and agencies wish to use the services of FCSA companies. I should stress for fairness that we are not the only compliant choice, but I would argue that because we are fully transparent by publishing out standards, explaining how they are assessed and implemented there is a level of trust that is placed in us.

The take up of the FCSA offer has therefore created some resentment in three distinct groups within the sector:

We have to ensure that applicants for membership can meet the standards we set on behalf of contractors not hope to or be coached to do so. In addition, I have already described why we must only consider established companies who we can properly check. This has to be in place to assure our stakeholders and clients.

This means that many apply or enquire but only around 30% progress into membership.

Supply chains are increasingly asking for FCSA companies because they understand the assurance of high standards of compliance that come with an FCSA company.

This means that other non-FCSA companies may have suffered some financial detriment because they cannot persuade the supply chain to engage with them.



And finally, the FCSA has shone a torch on the sector for some years, exposing non-compliant practices and actively working with HMRC and BEIS to identify these and those who expose contractors to them.

Because of our steadfast loyalty to compliance and the fact that we continually increase standards, not as is suggested, water them down, we have come under attack from some of these disgruntled individuals.

We anticipate that will continue because the FCSA and its members believe whole heartedly in giving compliant assurance and the highest standards of ethical delivery to contractors and the supply chain. We will continue to do so.

I would respectfully suggest that having invited the FCSA to do so that you ask all operators, either umbrella companies or representative bodies to be as fully transparent with their standards of operation as the FCSA is.

Whether it's the FCSA or an individual company we should all publish in detail how we protect the contractor and supply chain and all of us in the sector should demonstrate exactly what standards we operate to, how they are judged and what recourse to justice in the form of complaints or reporting the contractor has access to.

I hope this response provides you and your colleagues with the assurance you need and that you understand that recent changes have been made to further protect the worker. It is just unfortunate that I didn't ensure clarity on this matter in the first instance, but I hope that you will accept that as soon as this was highlighted we made immediate clarifying changes.

Yours Sincerely

Phil Pluck  
CEO FCSA