



# Addendum to

**FCSA's 13<sup>th</sup> December 2024 Response to The Department for Business & Trade's call for evidence for their Labour Market Enforcement Strategy 2025 to 2026**

**20<sup>th</sup> January 2025**

## Introduction

As part of the Department for Business & Trade's consultation process for their 2025/26 Labour Market Enforcement Strategy, FCSA members were invited to a Roundtable discussion with Margaret Beels, Director of Labour Market Enforcement.

For logistical reasons the Roundtable could not take place until Tuesday 17<sup>th</sup> December 2024. However, the deadline for written responses to the consultation remained the 13<sup>th</sup> December 2024. FCSA therefore submitted and published its official response to the Consultation on the 13<sup>th</sup> December, reserving the right to submit an addendum following the Roundtable.

At the Roundtable Margaret Beels and her team delivered a presentation outlining their responsibilities and current context, ongoing enforcement issues, and upcoming changes to employment rights, before posing a number of questions and opening a discussion.

Within the presentation, Margaret also covered the issue of "Mini-Umbrella non-compliance", relating to; the VAT Flat Rate Scheme and Employment Allowance. Reference was made to HMRC's policy proposing new regulations for the Umbrella Company market, announced in the Autumn Budget 2024. The main policy change is to change the entity responsible for payroll taxes from the Umbrella to the recruitment business by April 2026. However, moving these responsibilities from circa 600 Umbrellas to circa 40,000 disparate Recruiters will do little to disrupt the business model of fraudulent firms and will be significantly harder to police.

There is also the separate and perhaps more significant problem of "Gross Payment Fraud", which seeks to avoid both employment rights and costs, as workers are engaged through their own Personal Service Company (PSC) rather than through an employing payment intermediary. Although different in design to the blatant abuse of Mini-Umbrella Companies, we do not see how the new proposed measures can address the causes or prevent either form of 'Payroll Piracy' from continuing.

On 8<sup>th</sup> January 2024, FCSA wrote an open letter to the Exchequer Secretary to the Treasury about Gross Payment Fraud and challenges that exist within the labour supply chain. FCSA has yet to receive an acknowledgement.

The Roundtable discussion asked a number of questions and raised various points that were not covered in our initial response. FCSA therefore asked members to consider the points raised and report back with any further feedback. This document collates and summarises that additional feedback.

## Firm Compliance

Members have highlighted that most of the legislation to deter non-compliance is already in place and that compliant businesses have built their services around this existing regulation and legislation. Temporary workers are already very broadly protected by the following legal frameworks:

- **Agency Workers Regulations (AWR) 2010:** Ensures day one rights, equal treatment after 12 weeks in pay, annual leave, and other conditions.
- **National Minimum Wage Act:** Guarantees minimum hourly pay.
- **Employment Rights Act 1996:** Protects workers from unfair treatment and deductions.
- **Conduct of Employment Agencies and Employment Businesses Regulations 2003:** Protects agency workers and end clients with provision of information and targeted rights and benefits.
- **Employment Agencies Act 1973:** Regulates the recruitment industry in conjunction with the above.

In addition to the existing protections listed above, FCSA accredited Umbrella Companies generally offer a minimum 336-hour overarching contract: This guarantees that an employer will provide an employee with a minimum of 336 hours of work in a 12-month period.

FCSA believes that these protections offer a robust safety net for Temporary Workers, without the need for additional regulatory burdens. The problem is that there is currently a lack of effective enforcement and the enforcement there is, is not effective or properly targeted at serial offenders.

When non-compliance is reported, we see no evidence of anything happening. There is no acknowledgement or sign that HMRC are taking action on any cases FCSA or its members report. This lack of communication creates a disincentive to report non-compliance, as no communication sends a signal to whistleblowers that their efforts are wasted and better spent elsewhere.

Changes to legislation are unlikely to have much of an impact on habitually non-compliant firms, as in many cases, their business models rely on working around any legislation and are further enabled by a lack of enforcement. **Enforcing the existing rules is the most effective way of disrupting non-compliant and fraudulent providers.**

Further, changing the existing legislation will unnecessarily disrupt compliant service providers, such as FCSA members, as they base their entire business model on being

compliant. Disrupting compliant firms in this way affects their ability to take on new business and therefore widens the gap in the market for serial offenders who have no intention of being compliant.

"Upstreaming compliance" all the way through the chain, from payment intermediary to agency to ultimate end-hirer is likely to have a significant impact as they can actively manage and police their own supply chains. There needs to be an obligation placed all the way along the chain to ensure suitable due diligence is conducted, and providing transparency that they are not using fraudulent and non-compliant firms. In some cases, it is not just the Umbrella that is acting fraudulently, but the agency is complicit in the act.

Moving around roles and responsibilities will not remove the behaviour if part of the supply chain is already acting in a nefarious manner. Should the end client have a greater view in who the agency works with – and insist on compliant and industry recognised accredited payroll providers – it would reduce the requirement for further external resource to monitor and simply become a supply chain that is transparent in operation.

We recommend introducing obligations similar to those introduced by the 'Criminal Finance Act 2017', Slavery Act 2015 and Bribery Act 2010, which all could arguably already apply here, if and when enforced.

Naming and shaming is an important deterrent for non-compliance and this is something that can be done more effectively. It would be useful if case studies of instances of serious non-compliance could be shared and published. This tells other rogue operators that regulators understand their business model and that they will be caught.

Case studies can also be used by those with compliant intentions to learn the mistakes of others. In instances where a genuine error has been made – for perhaps lack of knowledge – they could be proactively rectified when realised that they also have a similar practice. This can also be useful for operational staff too, if they see details of a prohibited practice and see something similar in their firm, they could then use this knowledge to whistleblow the non-compliant operations.

However, naming and shaming firms that have made an isolated unintentional error that they are seeking to remedy serves no purpose. Damaging the reputation of a largely compliant firm can create opportunities for rogue firms. It is therefore important to take a considered and outcome focussed approach to naming and shaming.

FCSA and its members want to help Government and Regulators tackle non-compliance and Payroll Pirates. We proactively identify and report wilful non-compliance to HMRC at every opportunity. Unfortunately, without acknowledgement of these reports or updates

on investigations. However, there are some in the market that would like to report rogue operators anonymously and there does not appear to be an obvious way of doing this.

Some members would also find it useful for there to be a designated phone line for employers to ask the enforcement body questions to talk through any compliance issues, without there being a fear of repercussions.

## Supporting Workers

The regulatory landscape is currently fragmented, and this makes it very difficult for workers to know who to ask if they do not understand their rights. This confusion also exists within government agencies as there have been instances of workers securing incorrect advice. We are aware of employers receiving different and conflicting advice too.

Creation of a single enforcement body is an opportunity to improve the consistency of advice. If adequately resourced, the FWA could in effect act as an Independent Ombudsman, providing a much faster route to redress for certain issues than an Employment Tribunal.

Resources such as *'JobsAware'* are useful services for workers in need of free advice and these services should be more widely signposted. The Citizens Advice Bureau is widely known and frequently signposted, but they do not demonstrate a knowledge of Umbrella Companies and how this may affect the accuracy or applicability of the advice they offer.

It is important to have an independent body that has the resources, knowledge and experience to help workers navigate and try to resolve employment issues. In addition to ACAS, these services can help to filter out speculative and/or unreasonable claims, therefore reducing the burden on our stretched justice system.

Government services such as the *'Advisory, Conciliation and Arbitration Service'* (ACAS) do not always demonstrate an understanding of the working relationship when an Umbrella Company is involved, which has led to some workers being misadvised. We recommend that this is addressed via training and close cooperation between ACAS and the FWA. FWA and ACAS should also sign-post to free independent advice services where appropriate.

More needs to be done by Government to give workers confidence that they are engaging with compliant Umbrella Companies. Most of the narrative is around non-compliance – aggregated benefits are scarcely mentioned.

Some of the aggregated benefits include; favourable credit/mortgage references due to workers being in a better position to evidence a stable income and gain wider benefits offered by the continuity of employment under the overarching contract of employment with the Umbrella Company. The Umbrella also prevents workers with multiple agencies/end-hirers from falling into emergency tax codes because the worker just has one single employer covering payroll for all their roles.

It is also important to remember that running payroll in this way reduces the distributional / administrative costs – instead of each agency/end-hirer running separate payroll functions. As FCSA Umbrella Companies have transparent margins these reduced costs benefit; the assignment rate, wage growth, number of hours to a worker, and/or lower consumers prices.

Being employed by an Umbrella can also enhance a temporary workers pension benefits, as workers are auto-enrolled on to a pension. Many workers will also have the option to salary sacrifice under the Umbrella to maintain a single pension pot, and all the benefits that come with that – as opposed to creating an inexhaustive number of separate smaller pensions, undermining their ability to properly plan for retirement. Many agency PAYE schemes do not allow for salary sacrifice models.

Furthermore, FCSA accredited Umbrella Companies generally offer a minimum 336-hour overarching contract: This guarantees that an employer will provide an employee with a minimum of 336 hours of work in a 12-month period.

It is in workers interests that Government shows greater acknowledgement of compliant Umbrella Companies that want to help the contingent workforce enjoy worker rights and to aggregate benefits.

There is a risk that contingent workers and end-hirers opt for self-employment models simply to avoid Umbrella Companies, consequently losing the worker their employment rights in instances when that is not in their best interests. The valuable service our compliant payment intermediaries offer should be recognised.

## Focus on Enforcement

When asked where the FWA and the existing bodies should focus their limited resources, FCSA members overwhelmingly felt that targeted enforcement has to be the top priority. Education is also important and, in many cases, will be the byproduct of more effective enforcement.

Agency supply chains should be a key target area, with action targeted on tip-offs and reports of non-compliance. Many agencies and Umbrella Companies know who the non-compliant providers are – often because they offer what others cannot. In many cases, Umbrella Companies have been told that if they do not offer some of these non-compliant models/practices, then workers will simply choose another employer.

This shows that some Recruiters are already struggling to enforce a compliant supply chain, and there are clearly some agencies that are complicit in the non-compliance. This further demonstrates that the proposed Umbrella Regulations are unlikely to disrupt the business model of the Payroll Pirates, and that the policy could make enforcement much harder - especially when you consider the numbers of Recruiters compared to Umbrellas.

Compliant firms are therefore keen to clean up the market, as rogue firms are competing with an unfair advantage. Signposting for whistleblowing for these businesses would be a good step forward.

That is not to deflect and say that there is not a big problem in the temporary labour market – there certainly is. However, it is important to acknowledge that firms with an accreditation already undergo regular independently conducted compliance audits – this is essentially the most effective form of enforcement that exists. The focus should therefore be on Umbrella Companies that do not have any accreditation, particularly the large companies offering solutions to high-risk sectors.

## Patterns of non-Compliance

The scale of exploitation appears to be largely static. Whilst members do not see non-compliance becoming more widespread, the problems that exist remain persistent and without any improvement. We do not see how the legislation will tackle non-compliance.

Some of our firms operate in the professional contractor market and there is little in the way of worker exploitation in that part of the market, indeed these are often very well-paid individuals. We observe that non-compliance is more prevalent in lower paid and lower skilled jobs – parts of the recruitment sector that operate at high volumes; e.g. pickers/packers, warehouse workers, drivers, social care workers, and increasingly labourers and hospitality workers.

There are repeat instances in the Medical and Driving sectors where non-compliant Limited Company solutions are used – these are often a clear breach of IR35 legislation.

Some of our members also have a lot of Social Worker enquiries that ask for '85% - 90% take home pay schemes' – naturally our members do not offer these schemes, but it seems clear that others in the market do. It appears that the public sector's temporary labour supply chain is disproportionately affected.

There has also been an increase in student visas that limit work to 20 hours in term time. Unfortunately, some Recruitment Agencies fail to do the necessary 'Right To Work' checks and instead rely on the Umbrella Company to do this. Whilst it is the Umbrella's responsibility as the employer, it is often the case that the Agency send the worker to work before the Umbrella even knows about the contractor, i.e. the Umbrella gets money for a worker on a Friday afternoon that actually started the role 2 weeks previous. This shows that a lot of Recruiters are not completing basic due diligence of their candidates. It also highlights the danger of giving them the more complex responsibilities that relate to Payroll and tax remittance.

In the above example, it is often too late to have prevented a worker from working more hours than they are legally allowed to, because of the poor due diligence of the Recruiter. By the time the Umbrella has identified that the worker may be limited to working 20 hours per week, the worker may have completed a timesheet for 40 hours. This causes a legal friction as the employer should not backdate employment, or pay the excess wages as it breaches the conditions of the visa, and yet the worker has worked and would therefore be entitled to NMW at the very least. Managing 20 hour limited student visas is extremely difficult as there is no standard for proving term times, and courses can vary considerably – this leaves the use of student visas highly susceptible to abuse.

## Communication and Engagement

FCSA and its members welcome an open and transparent relationship with the FWA, with clear and direct communication. Transparency should go both ways and engagement should be frequent, including regular newsletters and webinars for updates and guidance.

We would like also to see roundtables and focus groups where the FWA can test ideas with members before making any changes, these can also be used to get members to help to build the FWA's understanding of the drivers of on non-compliance. FCSA would help facilitate these sessions wherever we could.

FCSA have compliance codes of conduct which members are independently assessed against. We welcome any feedback on our codes from the FWA, we currently send our



codes to DBT and HMRC NMW for comment – in the spirit of transparency we also publish our codes on our website. We would continue to seek input on our codes from the FWA. FWA attendance at FCSA events will also help to build FWA's understanding of how FCSA and its members operate.

Members would also welcome a dedicated team or email address for any concerns or questions. This will help organisations to test that they are doing the right thing and be sure of their compliance. These channels should not be used as evidence to justify punishing a company for trying to correct non-compliance if found to be a mistake. If a company has voluntarily come forward and is working with the FWA, they should be given some grace.

Fostering a close working relationship with compliant businesses, promoting good practice, and working closely with FCSA will be key to ensuring the success of the FWA.