



Response to

The Department for Business & Trade's call for evidence
for their Labour Market Enforcement Strategy 2025 to 2026

13th December 2024

Introduction

The emergence and rapid growth of the well-functioning umbrella market has been a positive contributor to UK growth, productivity and wealth. Compliant bona fide umbrellas provide certainty and security to the workers engaged by them, ensuring that they receive the full protections required by employment law, that their tax affairs are simplified, and all required taxes are remitted to HMRC.

The Freelancer & Contractor Services Association (FCSA) is the UK's leading professional membership body dedicated to raising standards and promoting supply chain compliance for the temporary labour market. Our members provide umbrella employment, self-employed services, accountancy, and business support solutions to the contingent workforce.

At time of writing, FCSA has more than 70 Accredited Members who collectively represent circa 210,000 workers engaged as employees; making them, collectively, one of the largest employers in the UK. 31.8% of the workforce represented by the FCSA are women. FCSA members alone collect c. £6 billion in taxes and NICs which are timeously remitted to HMRC.

FCSA has worked extensively with government and other stakeholders to promote the highest possible standards in the industry, most recently providing labour market intelligence and umbrella regulation advice to directorates in the Department for Business and Trade (DBT), such as Labour Market Enforcement and Employment Agency Standards, and working with HMRC across a number of areas including the off-Payroll Working Forum.

It has also assisted Parliament, giving evidence to the All-Party 'Parliamentary Loan Charge and Taxpayer Fairness Group' and the House of Lords Finance Sub-Committee, as well as being an expert advisor to the DBT-supported JobsAware initiative, the Better Hiring Institute.

This submission outlines our position and recommendations, emphasising the need to strike the right balance for enforcement – recognising that many firms actively want to do the right thing and be compliant but that many will need help in doing so.

FCSA continues to promote compliance within the sector for the benefit of individual workers, HM Government, and the supply chain. As a representative of a unique subsection of the labour market, FCSA has also submitted a body of evidence to the Business and Trade Committee's inquiry into the Employment Rights Bill.

Executive Summary

The FCSA has long welcomed the establishment of a single enforcement body for employment rights. We therefore strongly support the creation of the Fair Work Agency (FWA) and its remit to police the umbrella sector, with a further emphasis on ensuring holiday pay for vulnerable workers is protected. As of September 2024, there were around 1.5 million temporary workers across the UK, which accounts for a substantial portion of the labour market. Please see Appendix for an illustrative view of the supply chain's complexity.

We welcome the Government's clear statement that the merging of the separate bodies is not a money-saving exercise, and that further funding will be made available. This will be a key indicator of whether the Government is likely to succeed in driving out worker exploitation. The effective targeting of those extra resources will also be crucial.

FCSA has long campaigned for regulation and specific legislation that further protects the agency and contractor workforce. However, we are concerned by some of the unintended consequences resulting from provisions in the Employment Rights Bill, as well as changes to Umbrella Regulations all occurring concurrently, without a realistic implementation period for industry to adapt to the changes.

We are concerned that many of the options presented in the Government's various Consultations seem to overlook the fact that; workers will often be employed by an umbrella company (not an agency or end hirer), and this is likely to lead to compliance and enforcement issues. FCSA wants to help the FWA navigate these issues and generate greater compliance across all sectors – enabling enforcers to better target their efforts to effectively tackle non-compliance.

FCSA believes that compliant Umbrella Companies can be part of the solution to the problems Government are trying to solve, and we actively want to play our part in helping the Fair Work Agency to deliver on its mandate by formerly becoming a Partner. Our FCSA codes are tried and tested, with regular reviews and updates; we believe they will prove to be a set of useful assets for the FWA to make use of.

The establishment of the FWA presents the golden opportunity to establish a new culture with the most effective enforcement practices. FCSA encourages developing an approach that learns from the strengths and weaknesses of the existing enforcement bodies, and continuously monitors and fine-tunes its approach.

The FCSA would welcome the opportunity to assist the Government in progressing its agenda in a way that maximises the benefits to both workers and businesses.

Recommendations & Conclusions

FCSA recommends that the FWA takes this opportunity to build an entirely new approach to enforcement; one that seeks to understand the intentions and nuances behind non-compliance and seeks to address them in a way that educates firms on how to be compliant.

By combining the existing three enforcement bodies, the FWA should seek to be more holistic in its approach; using the data it already has and building new data sets to better understand areas of non-compliance, as well as how and where to best target their enforcement efforts. This should also involve making use of data from other parts of Government, as well as other organisations such as the FCSA.

Providing better information to firms must be a key pillar of the FWA's work. This needs to involve proactive education of firms on how best to be compliant, but also via a more reactive approach of allowing firms to question whether they are getting things right without fear of repercussion.

FCSA Codes of Conduct are a key resource that the FWA should make use of, as well as inviting the FCSA to join the Social Partnership Board.

At a higher-level, we recommend that closer attention is paid to the synergies between changes between Umbrella Regulations and the Employment Rights Bill and their combined unintended consequences. FCSA believes Government can achieve everything it is aiming to, if it allows sufficient time for implementation and puts in place suitable mitigations as per our recommendations in various other consultations.

Responses to Call for evidence questions

Employment rights enforcement priorities and governance

- 1. Briefly, and in no more than 100 words, what do you believe should be the priorities for employment rights enforcement as we transition to the FWA?***

Building an understanding of existing loopholes needs to be priority. Enforcement cannot be effective if firms manage to deny workers their rights in lawful ways.

The existing enforcement bodies should be mindful that overly robust enforcement could lead to unintended consequences, such as non-compliant providers migrating workers over to Contracts for Service (CfS). FCSA members follow a code of conduct for CfS that prevents abuse of worker rights.

FCSA would encourage a change in mindset, to one that seeks to recognise firms' intentions. When firms demonstrate they want to be compliant, enforcement bodies should actively guide and help them improve.

2. The FWA will take some time to be set up. What should priorities be for the enforcement bodies before then? What should be FWA medium to longer-term priorities and why?

The three existing bodies need to start by undergoing a joint exercise to map out their existing competencies and powers. This will ensure there are not any policy or enforcement gaps, or areas of duplication through overlap. Before any meaningful progress can be made, there needs to be a shared understanding of *who* is currently responsible for *what*, and that a plan is agreed to ensure 'all bases are covered'.

To facilitate the change in mindset we recommend in question 1, FCSA would encourage a new focus on education: Enforcement bodies need to help firms build the knowledge and understanding that is required to be compliant – especially with those firms who have a clear intention to be compliant and do the right thing by workers. Enforcement bodies need to allow firms to ask questions without fear of repercussions: For example, if an unintended mistake is identified as a result of a firm asking a compliance question, this should not trigger an investigation that leads to a penalty and 6 years of backdating.

We also need to move away from an approach of untargeted outreach to find non-compliance. This sets completely the wrong tone and is less effective than it could be. HMRC and Companies House in particular have a lot of underutilised knowledge and technology already in house. FCSA recommend that the range of datapoints are examined, and that work is undertaken to better understand what more the data currently held by Government can tell you. This will help the new Enforcement Body to develop a much more refined, and better targeted approach to Enforcement.

3. The FWA will have a statutory duty to publish annual reports and a triannual strategy, overseen by a social partnership board with tripartite representation from business representatives, trade unions and independent experts. What data and reporting should the FWA publish to ensure good accountability and transparency, via these publications or otherwise?

FCSA would welcome the opportunity to be a member of the Social Partnership Board as there is a lot of value and insights that we would bring to help the FWA to be most effective.

The Annual Report should provide a detailed breakdown of all trends identified, as well as a summary of common themes and patterns of non-compliance. There should be a clear distinction made between unintended mistakes and nefarious activity or wilful systemic abuse. These reports would be most helpful if the remedies/rectifications were also included (on an anonymised basis). Examples and case studies should be as specific as possible, as high-level summaries can often be too vague, and can sometimes lead readers into making assumptions and false conclusions. FCSA would also welcome monthly updates.

FCSA believes this approach and level of detail would maximise the utility of Annual Reports, as there would be proper incentive for companies to read them. The Annual Report would not merely serve as a KPI tracker with Management Information, it could help readers learn how companies have failed to comply, and why. Firms that want to comply could therefore use this information to avoid making the same mistakes as others.

The Annual Report could even include (or signpost to) an education piece. This would demonstrate a welcome rebalance of ‘Carrot Vs Stick’. Addressing non-compliance needs to be the ultimate aim.

Communication and engagement

1. How do you expect stakeholders to be engaged by the FWA and what do you see as the benefits?

Knowledge sharing should be foundational to the FWA’s stakeholder engagement strategy. There needs to be an appreciation that there are a lot of unknowns for many firms and that greater knowledge will drive greater compliance.

There needs to be a change in the “communication contract” in that firms need to be granted permission to ask questions without fear of repercussions. This could be achieved through an ‘amnesty of voluntary checks’, with perhaps a cap on the number of questions asked per year. In practice this would mean that enforcers are not to see a question as a ‘tip off’ to any other breaches, or to look for other instances where a penalty may apply.

To achieve this without undermining proactive investigation, the enforcement body will need to ‘look both ways’ and have separate ‘Enforcement’ and ‘Compliance Engagement’ Teams. At the FCSA, we prefer to help a firm build their compliance (carrot approach), before we consider any form of sanction.

Generally, the firms engaged with the FCSA want to proactively improve their awareness, and compliance . It is important to remember that a proportion of these firms are small – their turnover significantly overstates their means and creates a false impression of the resources potentially available to them. For example, it is commonplace for an umbrella company with only 6 internal staff to ‘employ’ and provide payroll for over 200 people.

It is also worth noting that, most firms cannot afford the lawyers that larger employers can, which is a significant disadvantage in a legally complex area. Whereas, most larger employers tend to have legal counsel inhouse. The FWA should seek to level the playing field by creating more equitable access to compliance information.

In terms of the benefits of this approach, we would expect to see, not just greater compliance but also more rights being realised by employees and workers. Overtime, FCSA would also expect to see less demand placed on enforcement resources and as a positive intended consequence less pressure on HM Courts and Tribunal Service. This would enable enforcement teams to be better targeted towards the most serious non-compliers. We also expect the taxpayer to benefit because there would be less incentive for non-compliance models, tax evasion, and cash in hand working. This would ultimately mean more income tax and National Insurance revenue for HM Treasury.

2. By which channels might awareness of the FWA be increased before and once it is established and why do you recommend them?

Making use of the existing networks of Trade Associations such as FCSA would be a sensible starting point. Awareness can be spread through a range of channels, such as; webinars, face to face engagements, social media posts and other publications.

Professional bodies and associated payroll companies will be able to access all firms and individuals that want to comply and therefore get the information to the right place.

However, we must also consider those that may not know the first thing about compliance, what rights individuals have and therefore fall into non-compliant arrangements. This could be addressed by using other parts of government to provide information at critical points of their journey through the system e.g. The Home Office sharing information about employment rights and the FWA as migrants enter the country, and/or Companies House explaining expectations when setting up a limited company.

There could also be potential to develop a push mechanism that responds once Real Time Info (RTI) has been submitted to HMRC. This could potentially be a portal alert on the government gateway for instance, or information could be sent to all registered addresses with Companies House. FCSA have launched our own live PAYE real time checking service, 'veriPAYE' and we would be happy to introduce this sort of push notification. However, it is important to note that this would only cover those who are using the veriPAYE service.

FWA may also be able to make use of software providers and their links to National Minimum Wage functions in HMRC. FCSA is not in a position to provide an IT based/technical solution, but we believe this could be something worth exploring.

3. Where can communications around compliance and enforcement be improved such that workers are aware of their rights and their obligations? What evidence do you have that they work?

There could be potential to make use of payslips as a way of getting information to workers about their rights. For instance, a short message with a QR code to guidance could be added to the payslip or even to Council Tax Demands – alternatively a leaflet could be provided. Establishing a legal requirement to provide the information at critical points of a worker's journey through the system may also be an option, e.g. when being asked to sign a contract.

ACAS, Citizen Advice and Local Council are bodies that workers are already signposted to when there is a problem, and they already provide guidance – perhaps this guidance could be renewed and refreshed with tools such as flow charts that workers can follow to understand their rights and obligations in their particular set of circumstances.

For segments of the workforce of particular concern, a more targeted approach may be useful. For instance, new arrival migrant workers could be provided with Right to Work 'how to guides' via the Home Office. These could include warnings of scams and how to protect themselves from falling into exploitation or into a position where they are avoiding tax and other obligations.

Due to changes in how the public consume media, we do not consider Advertising campaigns to be effective, as it is increasingly difficult to assess whether the right audiences are being reached. This highlights the importance using many different channels of media and communication platforms to target your messaging.

4. Who do you see as the key partners for the FWA thinking both of other agencies or wider stakeholders (for example, by sector) and why?

FCSA would welcome the opportunity to become a key partner of the FWA. We have well developed and published Codes of Conduct that we ensure are kept up to date and in line with both legal and financial legislation. FCSA codes are considered best practice models by the temporary workforce industry.

FCSA prides its self on its ethical approach and of being a driving force for compliance – we want to play our part.

We would recommend the FWA also partnering with The Chartered Institute of Payroll Professionals (CIPP) as they share a similar approach to compliance to the FCSA.

It may also be worth exploring a partnership with The Business Application Software Developers' Association (BASDA) as they could help to develop measures to prevent non-compliance through the use of technology – potentially by adding to their best practice guidance and potentially developing a code to stop software non-compliance.

Resourcing and prioritisation

1. What should the 3 enforcement bodies be doing now to ensure the FWA achieves sustained and lasting improvements in employer compliance?

Focussing on education and awareness is foundational to furthering and building employer

compliance. As a starting point we recommend educating members of staff from the 3 enforcement bodies on FCSA codes to build an understanding of existing best practice.

It would also be useful to educate other regulators on how to look out for and address non-compliance. For example, Ofsted regulate the education sector which includes a range of workers of contractual working arrangements where non-compliance could occur. For instance, Teaching Assistants could quite feasibly end up earning below the National Minimum Wage by working excess hours.

In this example, if a Teaching Assistant turns up 10minutes early and/or leaves 10minutes late, these extra minutes (Excess hours) are unpaid as they fall below the 15minute cap. However, these extra minutes could add up to a significant number of hours of unpaid work. We recommend that enforcement bodies speak to Teaching Assistants and other workers potentially in similar circumstances, to build understanding of whether actual hours are reflected in their pay.

2. How should the FWA prioritise its resource between compliance measures (helping employers) and enforcement measures (punishing poor practice, deliberate and serious non-compliance)? How might its success in both areas be assessed?

The FWA's ultimate aim has to be to help companies be more compliant. Enforcement measures against known bad actors must also be a priority but it is important to make a fair assessment of a non-compliant employers intentions before deciding they are a bad actor that can only be dealt with by using the FWA's enforcement powers.

Greater weight and resource needs to be given to education and coaching. This needs to be both reactive, i.e. answering employer questions, and proactive i.e. going out to institutions to train employers on best practice.

The FWA's Annual Report should be used to track the number of compliant companies Vs the number of non-compliant companies, and make sure metrics reflect genuine mistakes, with a success measure being a reduction in both genuine mistakes and flagrant breaches. KPIs need to take account of the intentions behind any breach.

The remedies and resolutions to any breach need to be assessed as to how effective they are. This is something that will likely need to be tracked over a number of years for major breaches to check for recurrence.

For rectifications there will need to full checks of everything, rather than a sample high-level or randomised check to ensure breaches have been put right. For example, if there is a National Minimum Wage breach, the checks will need to include checking that the money owed has actually been paid out.

3. *What are the key labour market non-compliance risks for which the FWA needs to be ready? What is the evidence for this?*

Individuals being moved from a contract of employment to a contract for service when this is not a suitable option for the worker. While Contract for Service is a compliant way of working, it is important to ensure it is a model that is being used appropriately. Abuse of various working models can lead to worker's rights being undermined. It is therefore important to ensure that any measures taken factor in this risk of distorting the market and encouraging abuse in other areas.

A key risk in the construction sector is where workers being moved onto the Construction industry Scheme (CIS) and being treated as self-employed when they should not be. Under CIS the requirement to pay at least NMW is not a consideration. The main example of this risk would be a Labourer – a Labourer is always task-managed and therefore cannot legitimately be considered self-employed, and given the low wage rates, there is a real risk National Minimum Wage laws could be breached.

It is also important to monitor for any increase in Directors of companies – and if there is a spike in a particular sector. This could mean that more workers are being forced into 'Trading As' status in order to avoid National Minimum Wage by accepting lower pay rates. Companies House data – particularly the SIC codes – is useful for tracking patterns and building an evidence base.

4. *Holiday pay will be a new area of enforcement for the FWA. Where are the key priority areas as regards holiday pay non-compliance (for example, by employment model or by sector) and how might these risks be tackled?*

It is important to be aware that 'Holiday Pay Guidance' and the 'Working Time Directive' do not presently align, and it does not appear that new legislation intends to address this. It is important that enforcement bodies build their practical understanding of the regulations

and guidance as presently written and work to improve these in order to fairly address instances of non-compliance.

In terms of operational issues, FCSA recommends looking at the main pain points and/or areas of greatest risk for non-compliance. For instance, “Leavers”. It is possible that holiday pay for someone leaving a firm may not be calculated correctly – it is most likely that this would be an instance of unintended non-compliance. In most cases this will be down to a failure of systems or process not being followed correctly. It is therefore important that holiday pay calculations are sufficiently transparent for an employee or worker to see and understand, so that the employee can query any mistakes. Similarly, a robust and transparent system prevents workers claiming more days they are entitled to.

In line with the FCSA codes of conduct, as a resolution we recommend mandating that advanced holiday pay is on wage slips, or that the day balance is tracked in days rather than a monetary amount. For example, if a worker has a 25 day holiday allowance in a given year, on their wage slip they should be able to see that they have taken 23 days so far, and they therefore have two days remaining.

This level of transparency enables the worker to see their holiday balance and therefore remove any confusion over cancelled holiday days. Alarming, this risk is all too present in local councils.

Another risk area for non-compliance is workers that are on long term sick, Maternity leave, or indeed any form of Statutory Leave. Many workers are left having to trust that their employer/hirers calculations are right, without any transparency or checks or balances. Again, we feel that FCSA codes are effective at mitigating this risk, as we impose a requirement to tell the worker and provide that transparency.

We recommend that the FCSA codes are reviewed by the existing enforcement bodies as they are tried and tested and we believe that they will be helpful to others in preventing and tackling non-compliance.

Moving towards an FWA

1. What do you value about the present practices of the 3 employment bodies that you want to see continued by the FWA and why?

FCSA supports the naming and shaming of nefarious actors within any given market – particularly where there is no clear intention to be compliant. However, we believe it would

be helpful if more context is disclosed around the non-compliant activity as this will help to prevent further victims and deter further offenders.

FCSA values having sight of the LME Strategy and how it is working – publishing the areas of most concern is particularly helpful as it guides supply chain precautions. We value the opportunity to feed-in and we would welcome further opportunities to partner with the FWA and the existing enforcement bodies.

As already stated, FCSA wants to see the FWA take a more educational approach to enforcement. We like how the EAS currently undertakes proactive visits and checks in a way that fosters two-way communication, helping and encouraging firms towards compliance. FCSA believes that the NMW teams need to learn from this approach.

2. What would you like to see done differently?

FCSA believes it is unhelpful for the NMW team to name and shame genuine errors and that greater emphasis needs to be placed on a firm's intentions. Naming and shaming is less effective if it is a default response, it should be reserved for flagrant and wilful breaches. On the other hand, the GLAA and EAS have not been as proactive at naming and shaming any rogue agencies they identify. Publicly shutting nefarious firms down will disincentivise bad behaviour. There is a real opportunity for the three enforcement bodies to learn from each other and fine tune their approach.

The FWA needs to build-in a proactive advice area for firms so that they can work with FWA to become more compliant, without the fear or risk of heavy-handed enforcement. Firms will often not know whether or not they are fully compliant, but they fear asking. FWA actively needs to demonstrate that it is safe for firms to do so if they want to see greater compliance and to eradicate inadvertent breaches.

FCSA would also question some of the approaches to investigations. For instance, we question whether the national Minimum Wage Team are checking enough companies, as they just seem to select big companies and doing extensive audits on them. This seems to be an approach that seeks to reach for low hanging fruit by going for targets where some form of non-compliance is more likely to be found if you look hard enough. This approach leaves a vast swathe of the market without proper oversight or enforcement.

FCSA recommends a more targeted approach to proactive investigations. For instance, Companies House SIC code data can be used for monitoring trends and targeting

investigations. However, it is important to note that this will only covers Limited Companies and not other forms of self-employment.

3. *The enforcement bodies currently use different approaches for compliance and enforcement – which of these do you think are most effective and should therefore be preferred for the FWA and why?*

FCSA favours the open communications approach of the EAS. Wherever possible, we believe it is far more effective to educate and guide firms towards full compliance. In most cases this is the best way of delivering the outcomes regulators want to see.

However, we recognise that there are nefarious actors out there that this approach will not work for, and they need to be managed with heavier forms of enforcement as outlined above. The key to guiding your approach should be through assessing of a firm's intentions.

4. *In establishing the FWA is there any good practice you would like to highlight from other UK and/or international regulators/enforcement bodies, either in the labour market enforcement space or beyond?*

One of our key points has been about understanding the intentions behind any instances of non-compliance. This is something that is important to the New Zealand Inland Revenue Department (IRD) and it is embedded into how they approach tax investigations. FCSA believes it is worth assessing how the New Zealand IRD conduct tax investigations to gain an understand of how their approach works. FCSA believes that investigations should be conducted on the basis of no assumed guilt and be conversational.

Looking to other UK regulators, a scoring card similar to Ofsted's could be a useful way of monitoring compliance, informing the public and gathering data. This data can then be used to identify trends and establish whether guidance is an issue, or there are any other underlying trends. The FWA can then investigate the reasons behind the trends and take remedial action. Score Cards and the data they generate can then be used as Management Information and KPIs and fed into the FWA's Annual Report. It will be important to take a carefully considered approach to establishing the score card criteria in order to avoid any unintended consequences, or false impressions with regard to a firm's compliance.

Appendix

An illustrative view of the supply chain complexity

