

DLME Call for Evidence

Response from the Trades Union Congress

September 2023

Why the Trades Union Congress (TUC) is responding to this Call for Evidence

The TUC is the voice of Britain at work. We represent more than 5.5 million working people in 48 unions across the economy. We campaign for more and better jobs and a better working life for everyone, and we support trade unions to grow and thrive.

The TUC and our affiliated unions believe that, wherever possible, it is preferable to resolve employment disputes at work, using internal workplace procedures. Unions play a vital role ensuring that employment rights are respected and upheld, by:

- negotiating improved terms and conditions for working people and putting in place mechanisms to provide remedies where these terms and conditions are breached
- raising employers' awareness of their employment responsibilities, including when new employment rights are introduced
- resolving employment disputes, including by using grievance and disciplinary procedures and the right to be accompanied
- where merited, supporting members to take cases to employment tribunal
- supporting strategic cases which clarify legal duties and set the norms to be followed by employers in similar workplaces and sectors.

The TUC estimates that unions organise around 130,000 union representatives. Union reps have unique workplace insights and experience of common workplace issues, including non-compliance with basic workplace rights. Union reps represent members on an individual and collective basis, negotiating with employers to resolve workplace issues. Union reps also play an invaluable role in the workplace by making sure that people are informed about their employment rights.

Twenty-six per cent of the workforce is covered by a collective agreement that has been negotiated by a trade union.¹ These agreements put in place mechanisms to raise and resolve workplace issues.

There are 6.25 million trade union members² in the labour market. Union members feed back workplace issues to their union reps, giving unions a first hand, contemporary experience of workplace issues.

Collective bargaining remains the best way to protect and enforce workers' rights. There is a strong correlation between collective bargaining and greater compliance with employment rights. In 2015, only 2.7 per cent of workers covered by a collective

¹ (2019). "A stronger voice for workers". TUC.

² (29 June 2023). "Trade unions: Members and relations with the government". House of Lords Library.

agreement reported no paid holiday entitlement, compared with 6.1 per cent of those who were not covered.³

Our recommendations and comments are wide ranging because the Director of Labour Market Enforcement has discretion, under Section 2 (d) of the Immigration Act, to make wide recommendations and observations about the labour market enforcement system.

We believe four fundamental reforms are needed to boost the effectiveness of the labour market enforcement system:

- Firstly, the inadequate funding of the state-led enforcement system must be addressed. The system requires further long-term resources, more inspectors, more proactive investigations and more enforcement actions. We fall well short of the benchmark established by the International Labour Organisation. To hit the ILO benchmark of one inspector per 10,000 workers, the UK would need 3,287 inspectors. There are currently 1,490. Another 1,797 labour market inspectors need to be recruited. The result is widespread noncompliance.
- Secondly, the ties between immigration enforcement and employment rights enforcement should be severed. Currently, there are close working relationships between employment rights enforcement agencies and immigration enforcement. Intelligence sharing and joint investigations are commonplace. The government's single enforcement body initial proposal commits to closer working between immigration enforcement, the benefits fraud office and enforcement agencies. This is counterproductive as there is clear evidence⁴ that workers are deterred from making complaints as they fear being referred to immigration enforcement. Joint working should cease and a firewall between immigration enforcement and employment rights enforcement agencies should be established.
- Thirdly, we need new, innovative strategies to tackle non-compliance in the labour market. Traditional employment relationships have become increasingly fragmented, with business strategies, such as franchising, outsourcing, lengthy supply chains and the use of labour market intermediaries enabling organisations to shirk their employment rights obligations. Large contractors should be liable for breaches of core employment rights in their supply chains. We also propose that trade unions are granted new rights to access workplaces so they can inform workers about their rights and enforce rights where they're being breached.

³ (2021). "TUC action plan to reform labour market enforcement". TUC.

⁴ (November 2022). "Written evidence submitted by the Labour Exploitation Advisory Group (POP0024)".

- And fourthly, the government should introduce mechanisms to boost collective bargaining, including at sector level, giving trade unions the role of raising standards and enforcing rights in a particular sector.

Statement 1 - Labour market non-compliance threats (measured by degree of non-compliant behaviour) are greatest in the following sectors: care, agriculture, hand car washes, construction, food processing, which should therefore be the focus of attention for the enforcement bodies.

The TUC disagrees with this statement.

It's vital that all workers have recourse to a properly resourced labour market inspectorate to enforce their workplace rights.

Labour standards ultimately succeed or fail on the issue of compliance. An effective enforcement system is essential to ensure compliance. Widespread non-compliance destroys the rights of workers, destabilises the labour market, creates disincentives for law-abiding employers who are undercut by lawbreaking competitors and weakens public respect for the law. There is a strong risk that focussing enforcement on a small number of sectors would result in significant non-compliance across the wider labour market.

The TUC firmly believes that the remit of the enforcement bodies is too narrow and should not be limited further. For example, despite repeated reform commitments by the current government, statutory holiday pay is not enforced by any of the enforcement bodies. And they don't have sufficient resources to enforce the limited employment rights that fall within their remit. The TUC advocates that the labour market enforcement system should be expanded to cover a broader spectrum of employment rights, across all sectors of the labour market.

There is non-compliance with employment rights across all sectors of the labour market. For example:

- Analysis carried out by the TUC in 2019⁵ revealed that one in 14 UK workers was not getting their legal holiday entitlement. The sectors with the highest numbers of staff losing out on their legal holiday paid entitlement are education (341,000), retail (302,000), and health and social care (264,000).
- Education unions have raised concerns that their supply teacher members are forced to use umbrella companies. This can be a highly exploitative form of employment with umbrella companies making both unfair and unlawful deductions from agency worker pay. As the government recently confirmed in its call for evidence document⁶, *"there are often no practical consequences for the*

⁵ Trades Union Congress (TUC) (22 July 2019). "2 million workers not getting legal holiday entitlement, warns TUC". TUC.

⁶ HM Treasury (June 2023). *Tackling non-compliance in the umbrella company market*. HMT.

umbrella company for non-compliance with employment law, given the lack of state enforcement and the low rate of individual enforcement against them as employers.” Furthermore, there are extremely high levels of non-compliance with the legal requirement to provide a Key Information Document to agency workers, in the education sector. A NASUWT survey⁷ revealed that in England only 34 per cent of supply teachers who obtained work through a new supply agency reported that they had been provided with a KID detailing how they would be paid and associated deductions, as well as other key details. In Wales the figure is 35 per cent. Therefore, it is vital that the EAS carries out targeted enforcement activity in the education sector. Where workers are compelled to use umbrella companies, we believe that the EAS already has powers to enforce. We’ve set this out further below. We’d welcome feedback from the DLME and EAS on this point.

- Insecure workers – those on agency or zero-hours contracts, for example – are employed in all sectors of the labour market. Insecure workers often have fewer employment rights than employees and, crucially, have no job security. This lack of job security makes them extremely vulnerable. If they raise complaints, they can effectively be sacked without notice. These workers need the protection of enforcement bodies. The Low Pay Commission confirmed the precarious position of insecure workers in its recent report⁸ looking at the enforcement of employment rights for textile workers in Leicester: *“The problem of insecure work and uncertainty over hours and schedules was central to the difficulties faced by the workers we spoke to. Unpredictable hours and incomes meant workers were less likely to exercise their rights and more likely to find themselves trapped with exploitative employers.”* Because insecure workers are employed across all sectors, it’s vital that the enforcement bodies operate across all sectors and do not focus their attention on a handful of priority sectors.
- Usdaw, which represents members in the retail sector, has reported that compliance issues in the warehouse sector are well-known and long-established. Recent high-profile examples have included textile and clothing warehouses in Leicester⁹, as well as details of extremely poor working conditions in the warehouses of some larger retailers.¹⁰¹¹ Both of these examples clearly demonstrate the extent of the threat of non-compliance in this sector. This is

⁷ (2023). “Annual Supply Teacher Survey (England)”. NASUWT.

⁸(July 2022). “Compliance and enforcement of the National Minimum Wage: the case of the Leicester textiles sector”. Low Pay Commission.

⁹ Butler, S. (13 June 2022). “Poor working conditions persist in Leicester garment factories, finds survey”. The Guardian.

¹⁰ (22 November 2022). “Inside the Boohoo warehouse where workers call themselves slaves”. The Times.

¹¹ Stokel-Walker, C. (14 August 2022). “A sweatshop in the UK: how the cost of living crisis triggered walkouts at Amazon”. The Guardian.

heightened by the lack of trade union access and oversight.¹² The expansion of online shopping and companies buying up high street brands to incorporate into their exclusively online offer means that this is likely to be an area of growing concern in future years. This trend and Usdaw's concerns chime with the comments made in the 2022/23 DLME Enforcement Strategy:

- "There were no major changes to the ranking of high-risk sectors but the increase in online retail was highlighted as a risk of potential exploitation, through warehousing and delivery services. The GLAA assessed an increased risk from modern slavery due to the large increase in online retail during the pandemic."

Considering the growth of online retail has been faster in the UK than in any other country and the proportion of sales through online retail remains significantly higher than pre-pandemic levels, the TUC sees no compelling reason why this risk has dissipated.

- In March 2022, P&O Ferries committed flagrant breaches of employment law which had a catastrophic impact on seafarers. These included breaching the duty to consult when making collective redundancies meaning they effectively sacked their workforce without consulting with unions. P&O Ferries also admitted that it had dismissed workers unfairly.¹³ Since the P&O Ferries sackings the government has taken no action to strengthen unfair dismissal protections. Ministers have launched a consultation on a draft statutory code of practice that would apply in similar situations. But even when the statutory code is in place an employer would only face a 25 per cent increase in financial sanctions, if they flouted the law. This is unlikely to stop rogue employers from breaking the law. This calculated, deliberate breach of employment law is evidence that seafarers need recourse to an effective regulator. It's clear that employers in this sector are not respecting employment rights.
- University of Bristol research revealed that the majority of gig economy workers are earning below minimum wage.¹⁴ Its findings showed that 52 per cent of gig workers doing jobs ranging from data entry to food delivery were earning below the minimum wage. This shows that non-compliance isn't limited to the priority sectors listed in Statement 1, and that enforcement should take place across the labour market.
- The CWU has long been concerned that exploitation of parcel delivery drivers is rife. The union believes that outside of the Royal Mail Group the vast majority of workers are bogusly self-employed. They've no access to the minimum wage, sick pay or holiday pay and drivers are often mistreated at the hands of their

¹²Laville, S. (16 May 2019). "Boohoo refuses to let union talk to workers about representation". *The Guardian*.

¹³ BBC News (30 September 2022). "P&O Ferries admits Dover chef's unfair dismissal". BBC News.

¹⁴ University of Bristol (13 May 2023). "Research reveals majority of gig economy workers are earning below minimum wage". University of Bristol.

employers. CWU analysis shows that parcel delivery drivers rank as one of the fastest growing self-employed occupations over the past decade.¹⁵ Drivers also routinely highlighted unilateral cuts to their pay, broken promises by management, unfair dismissals and blatant disregard for drivers' wellbeing. CWU interviewees told horror stories of working through broken bones or the deaths of close family members. It is clear from our research that many of the tensions self-employed drivers face is a function of their employment status. For instance, drivers noted that only being paid per delivery forced them to drive recklessly to try and maximise earnings.

This is only a handful of the examples that unions have flagged up. But they demonstrate that non-compliance with core employment rights is widespread and not confined to the priority sectors listed in statement 1. Employment rights enforcement should be focussed on all sectors of the economy.

The TUC would be happy to facilitate a roundtable meeting between the DLME and union officers to explore some of these issues in more depth.

Statement 2 - Some groups of workers (for example, women, younger people, migrants, those with protected characteristics) are at higher risk of experiencing labour market non-compliance than others.

The TUC agrees with this statement.

There is evidence to show that some workers are at greater risk of exploitation.

Recent TUC research¹⁶ shows that certain groups are disproportionately affected by insecure work. As we've discussed above, insecure employment increases the risk of exploitation and workers are less likely to raise complaints about their working conditions.

Our report found that huge swathes of the workforce suffer from the effects of insecure employment. For example:

- Zero hours contract workers have great uncertainty over their working hours meaning they often don't know when their next shift will be or if they will be able to pay their bills.
- Agency workers are being forced to use payroll companies that make unfair deductions from their hard-earned wages.
- Seasonal workers, brought to the UK to carry out key jobs such as picking the fruit and vegetables that are found in our supermarkets, are exposed to staggering exploitation. Many are charged recruitment fees resulting in debt bondage which often leaves them poorer than before they arrived in the UK.

¹⁵ CWU (31 March 2022). *"Levelling Up" the Parcels Delivery Market*, CWU.

¹⁶ Trades Union Congress (August 2023). *Insecure work in 2023*, TUC

- Many self-employed workers don't benefit from basic workplace rights such as parental leave and struggle financially, with 1.88m self-employed workers earning less than 2/3rds of the median wage (£9.72). Citizens Advice¹⁷ demonstrated that nearly half a million self-employed workers could be bogusly self-employed, suggesting many bona fide 'workers' are not receiving their NMW entitlement.

Insecure work disproportionately affects groups of workers who are already discriminated against in the workplace.

- TUC research shows that one in six (17.8 per cent) BME workers are likely to be in insecure work. This compares to 10.8 per cent of white workers.
- Analysis from the Work Foundation estimates that 27 per cent of disabled workers (1.3 million) are in severely insecure work in the UK, compared to 19 per cent of non-disabled workers.¹⁸
- New research by the Work Foundation and UNISON¹⁹ shows that women in insecure jobs are significantly more likely than men in insecure jobs to indicate they are struggling to get by. Nearly one in three women (32 per cent) say they are struggling to get by compared to less than one in four men (23 per cent). Insecure work appears to disproportionately impact the mental health of women – 16 per cent of women in insecure jobs say they experienced poor mental health, compared to 11 per cent of men. This compares with 10 per cent for men and 11 per cent for women in secure jobs.

There is also evidence to show that some migrant workers are being failed by the enforcement system. A 2019 joint review carried out by Defra and the Home Office, cited 'unacceptable' welfare-related concerns. In August 2022, the Independent Chief Inspector of Borders and Immigration revealed²⁰ the staggering levels of exploitation and lack of enforcement activity linked to the short-term seasonal worker visa scheme:

"In eight of 19 reports, Home Office compliance officers identified "significant [welfare] issues". Reports included summaries of interviews in which some workers told compliance officers that they were treated poorly, discriminated against on the basis of nationality, had received incorrect pay, were living in damp, poor-quality and unsafe accommodation, or had been obstructed from accessing healthcare."

The ICIBI report concluded that: *"Overall, the Home Office has not demonstrated that it has the mechanisms or capabilities in place to assure itself that scheme operators are*

¹⁷ (18 August 2015). "Bogus self-employment costing millions to workers and Government". Citizens Advice Bureau.

¹⁸ Navani, A; Florisson, R; Wilkes, M. (June 2023). The disability gap: Insecure work in the UK. The Work Foundation

¹⁹ Gable, O; Florisson, R. (July 2023). Limiting choices: why people risk insecure work. The Work Foundation (Research partner: UNISON).

²⁰ Neal, D. (May – August 2022). "An inspection of the immigration system as it relates to the agricultural sector". Independent Chief Inspector of Borders and Immigration.

meeting compliance requirements. When serious concerns have been raised by workers themselves, it did not act promptly or seriously.”

This exploitation is well publicised, backed up by worker surveys commissioned by government departments and confirmed multiple recent articles²¹ from an investigative journalist.

Robust evidence of exploitation and unlawful practices exist already. It should be acted upon.

Statement 3 - Jobseekers are increasingly using non-traditional means to find work (for example, online or via apps, social media) placing them at greater risk of fraud and scams.

The TUC agrees with this statement.

The fissuring of the employment relationship often means that a worker is supplied, sourced or employed by a labour market intermediary that they will not actually be working for.

For example, many workers are forced to sign up to use umbrella services as a condition of receiving an assignment. Workers will be told this at short notice and it is not realistic for them to check the relevant paperwork or conduct due diligence on the umbrella company. Often the contract obliges them to agree to unlawful or extremely unfair deductions from pay. The TUC has heard directly from workers that umbrellas force them to sign up to deductions from their pay relating to rewards schemes and insurance schemes which don't exist.

Unions report that this 'onboarding' process can take place entirely online.

We are also aware that offshore recruitment is being used to source workers to fill vital labour market shortages – both in the care and agricultural sectors. It's been extensively reported that some workers are charged extortionate recruitment fees leaving them in serious debt.

Again, many of these workers will never meet the organisations that they will be working for, prior to arriving in the UK. The outsourcing of the employment relationship leads to a lack of accountability and enables labour market intermediaries further down the supply chain to exploit workers.

We'd encourage the DLME to return to recommendations that were made in the 2018/19 strategy²² where the previous DLME said: *“To help ensure compliance throughout supply chains, joint responsibility measures should be introduced where the brand name (at the top of the chain) bears joint responsibility for any non-compliance found further down its own supply chain. Where non-compliance is found, follow-up*

²¹ See the work of Mellino, E. The Bureau of Investigative Journalism.

²² Metcalf, D. (May 2018). *United Kingdom Labour Market Enforcement Strategy 2018/19*, HM Government.

action by enforcement agencies in conjunction with the brand name and supplier would be undertaken in private to provide an opportunity to correct the infringements within a given timeframe. Failure to correct could result in public naming of both the brand name and supplier”.

Statement 4 - Ongoing labour shortages in some sectors are not translating into improved conditions for workers in those sectors.

The TUC agrees with this statement.

In some sectors, workers on short-term exploitative visas are used to plug labour shortages. We’ve set out above the exploitative conditions faced by workers on short term visas. Far from improving, conditions are deteriorating in some sectors where there are labour market shortages. This is because of the widespread non-compliance with labour standards and a lack of enforcement activity that are synonymous with short term exploitative visas.

Independent analysis from the Migration Advisory Committee confirms²³ that *“pay growth in the most exposed sectors has been relatively weak – at least compared to the trend across the labour market – with only administration offering stronger pay growth compared to the average.”* The MAC report identifies agriculture, logistics, manufacturing and hospitality as areas with weak pay growth compared to the general trend across the labour market. These are sectors with labour market shortages. A lack of pay growth in these sectors is indicative that shortages are not leading to an improvement in terms and conditions.

Analysis²⁴ carried out by the TUC economics team reinforces this: *“There is therefore very little evidence that pay is rising as a result of labour shortages. To the extent activity is being held back by a lack of workers, firms are not stepping up to increase pay. Overall, the message is that the strength of the recovery is exaggerated. **There is no market led pay utopia here. It may even be that firms are using higher vacancies to try and source cheaper workers rather than increasing pay for existing workers.”***

Statement 5 - Workers and employers are sufficiently aware of employment rights and know where to go for help.

The TUC disagrees with this statement.

In 2019 The Times newspaper²⁵ reported that four out of five Britons are unaware of employment rights. A survey of 2,000 people discovered a “widespread lack of knowledge and understanding” of employment rights.

²³ Migration Advisory Committee (December 2022). *MAC Annual Report*. The Migration Advisory Committee.

²⁴ Trades Union Congress (October 2021). *Jobs and recovery monitor*. TUC

²⁵ The Times (7 October 2019). “80% of workers ignorant of legal rights”. *The Times*

The Resolution Foundation found that “workers’ awareness of the various bodies is extremely low (just 6 per cent of private sector employees said they would approach an enforcement body in the event their rights were violated, for example)”.²⁶

For some workers there are no feasible enforcement routes available to them. Undocumented workers are deterred from reporting labour exploitation because they fear being referred to immigration enforcement which could result in them being deported. Low paid agency workers cannot raise complaints about unlawful umbrella company practices with enforcement bodies as this does not fall within their remit. And seasonal workers have been totally failed by the labour market enforcement system and the relevant government departments, as demonstrated in the ICIBI report we refer to above. Furthermore, given the lengthy delays with the employment tribunal system²⁷ it is not realistic to expect seasonal workers to bring an employment tribunal claim as they are only in the country for periods of up to 6 months.

Statement 6 - Workers have confidence in the three enforcement bodies that their cases are being dealt with proactively.

The TUC disagrees with this statement.

We believe the examples of non-compliance with labour rights that we’ve flagged throughout this response demonstrate that bad employers are acting with impunity and are free to exploit workers and undercut employers who do comply with employment law.

The TUC acknowledges that there are some good working relationships between some of the enforcement bodies and unions. EAS has worked with NASUWT and BFAWU welcomed the awareness raising events it hosted with the NMW enforcement team.

NASUWT has developed a good working relationship with colleagues at the EAS. This has included attendance and presentation at a number of NASUWT events in order to educate supply teachers about number of issues relating to working through a recruitment agency, including the importance of the Conduct of Employment Businesses Regulations (2003) Regulations, the Key Information Document, and the role of umbrella companies.

This has proved beneficial and alerted a number of supply teachers about the role of the EAS and how to pursue a case.

However, NASUWT has flagged up that despite such positive interactions, the evidence provided throughout this call for evidence suggests that there are a number of workers who do not have the confidence that their cases are being dealt with proactively.

²⁶ Judge, L; Slaughter, H. (April 2023). *Enforce for good*. Resolution Foundation.

²⁷ Machell, M. (24 August 2023). “Employment tribunal delays increase 60% since 2010”. HR Magazine.

Statement 7 - Compliance and enforcement interventions by the three bodies are helping to ensure a level playing field for business.

The TUC disagrees with this statement.

We believe the examples of non-compliance with labour rights that we've flagged throughout this response demonstrate that bad employers are acting with impunity and are free to exploit workers and undercut employers who do comply with employment law.

Statement 8 - Current enforcement penalties (for example, financial, reputational) deter more serious labour market exploitation.

The TUC disagrees with this statement.

The TUC believes that enforcement penalties should punish those employers who breach the law and provide a robust deterrent to prevent future non-compliance.

We agree with recommendations from the DLME in previous years, made by, Professor Sir David Metcalf, who called for much larger penalties.

He noted that an employer in the UK was likely to be inspected by one of its three enforcement bodies on average only once every 500 years. Sir David Metcalf then went on to note that, *'If you . . . have not got the resources . . . then you need heavier penalties.'*²⁸

Looking at the EAS enforcement activity between 2021-2022²⁹, the TUC does not believe that 2 prosecutions, 3 prohibitions and 1 LMEO is a proportionate enforcement response to the widespread exploitation and flouting of employment law in the agency sector. Increasing sanctions could create an effective deterrent.

Statement 9 - The enforcement bodies have a difficult job prioritising their resources but, on balance are addressing the right issues.

The TUC disagrees with this statement.

The responses we've given throughout this submission demonstrate that we think the labour market enforcement system is failing a large number of workers, particularly insecure and migrant workers.

²⁸ O'Connor, S. (28 December 2017). "Bigger fines urged for employers who underpay staff". *Financial Times*

²⁹ Department for Business and Trade (26 June 2023). *Employment Agency Standards (EAS) Inspectorate: annual report, 2021 to 2022*. Department for Business and Trade.

Statement 10 - Coordinated enforcement actions by the enforcement bodies are helping to achieve a more compliant labour market.

The TUC disagrees with this statement.

We believe the examples of non-compliance with labour rights that we've flagged throughout this response demonstrate that bad employers are acting with impunity and are free to exploit workers and undercut employers who do comply with employment law.

The TUC believes more information should be shared with stakeholders about joint operations and the outcomes they deliver for workers.

Statement 11 - Cross-government working has been effective in tackling labour exploitation in high-risk sectors (for example, care, hand car washes, agriculture, construction)

The TUC has concerns about cross-government working, specifically where information is passed to immigration enforcement from the enforcement rights teams and where they carry out joint operations together.

There is much evidence to show that close working between immigration enforcement and employment rights enforcement bodies deters vulnerable migrant workers from making complaints about their working conditions, and effectively prevents them from accessing justice.

- The Labour Exploitation Advisory group states³⁰ that *“workers with regular immigration status may refuse to report abuse or exploitation out of a real or perceived fear that reporting could put their jobs at risk and negatively affect their visas. Even British nationals may fear that reporting issues at work could result in their colleagues, friends and family being vulnerable to immigration enforcement action. This also extends to the wider public, with a 2019 University of Nottingham study³¹ finding that the British public are hesitant to report suspected instances of modern slavery out of a concern that it may lead to negative immigration consequences for victims due to the police’s perceived close relationship with immigration enforcement authorities.”*
- A 2021 Home Officer Review into data sharing³² found that *“It is recognised that data sharing between the police and Home Office can be a contributing factor influencing the decisions of migrant victims not to report a crime. We understand from the sector that many victims they support have been deterred from seeking help from the police. Perpetrators often use the victim’s immigration status to*

³⁰ Labour Exploitation Advisory Group (November 2022). *Written evidence submitted by the Labour Exploitation Advisory Group (POP0024)*.

³¹ Birks, & Gardner. (2019). *“Introducing the Slave Next Door.” Anti-trafficking Review.*

³² Home Office (15 December 2021). *“Review of data sharing: migrant victims and witnesses of crime”*. Home Office.

exert fear or control, threatening that immigration action will be taken against the victim”.

- Freedom of Information requests found that all labour inspectorates in the UK had provided information on migrant workers to immigration authorities for enforcement purposes at least once between 2016 and 2019, and all but one had conducted simultaneous operations with Immigration Enforcement.³³
- Matthew Taylor, the previous DLME, recognised these concerns. He stated³⁴: “Concerns were voiced by many stakeholders about conflating labour market enforcement with cracking down on illegal [sic] migrants. I share this concern and would want to ensure the Single Enforcement Body for employment rights does not assume any responsibility for immigration enforcement as part of its remit.”

The TUC believes there should be a firewall between immigration enforcement and enforcement bodies.

Statement 12 - Failure to provide detailed, timely, physical, and accessible payslips can leave workers vulnerable to exploitation.

The TUC agrees with this statement.

The TUC would like to signpost the UNISON submission, and previous submissions, where it has repeatedly flagged up non-compliance with regulations relating to workers’ payslips in the social care sector. This is a longstanding problem in the social care sector.

USDAW has also flagged that access to payslips is one of a growing number of issues it is coming across concerning pay and payroll. Payroll functions are increasingly being outsourced. These systems then malfunctioning has led to the short-term underpayment of wages in several large companies it has members in, causing workers significant hardship.³⁵³⁶

Statement 13 - Key Information Documents (KIDs) are providing those workers entitled to receive them all the information they need in relation to their employment.

The TUC disagrees with this statement.

³³ “PREVENTING AND ADDRESSING ABUSE AND EXPLOITATION”. Flex, LAWRS & Trust for London.

³⁴ Matthew Taylor CBE, UK Director of Labour Market Enforcement (2019-2021)

³⁵ Jolly, J. (17 July 2022). “Next apologises to staff after IT problems cause months of underpaying”. The Guardian.

³⁶ Wood, Z. (15 July 2022). “Asda employees ‘skipping meals’ due to monthly payroll errors”. The Guardian.

There are extremely high levels of non-compliance with the legal requirement to provide a Key Information Document to agency workers, in the education sector. A NASUWT survey³⁷ revealed that in England only 34 per cent of supply teachers who obtained work through a new supply agency reported that they had been provided with a KID detailing how they would be paid and associated deductions, as well as other key details. In Wales the figure is 35 per cent.

A large-scale survey³⁸ carried out by IR35 Shield also reveals similar levels of non-compliance with KID requirements. In November 2021 it carried out a survey of 3,750 contractors and found that:

- 57 per cent of respondents did not know what a Key Information Document is.
- Only 26 per cent said their agency provided them with a Key Information Document despite this being a legal requirement.

These are not new findings and have previously been shared with the DLME. Trade unions would welcome further information about what the DLME and EAS are doing with the evidence that has already been submitted. The TUC believes that EAS should be undertaking proactive investigations to tackle this non-compliance.

Statement 14 - Lack of contractual clarity around employment status can put people at greater risk of exploitation.

The TUC agrees with this statement.

The issue of employment status has long been a problem for workers and their employers. The current rules on status are complex and confusing. The current uncertainty means that individuals can miss out on their rights at work. It is also all too easy for employers to devise sham arrangements so as to deprive workers of their rights. It is not uncommon for unscrupulous employers to tell zero hours contract workers and agency workers that they have no rights – even though the legal reality may be very different. Employers also seek to avoid their employment and tax obligations by misclassifying staff as self-employed. In recent years, the issue of the employment status has become more complex, with the growth in zero hours working, agency worker and platform working. Thanks to several union-backed cases, the courts and tribunals have rightly concluded that staff employed in the gig economy have many of the features of standard employment relationships and are therefore entitled to rights. These developments are welcome. But this does not mean that the issue of status is finally resolved. The problems relating to employment status are also not limited to the so-called gig economy but can be found across more traditional workplaces and sectors. The current three-tier approach to employment rights means those in insecure work, who are most in need of protection, are the very people who miss out key workplace rights, because they don't qualify as employees. As a result,

³⁷ Ibid.

³⁸ IR35 Shield (January 2022). *Ir35 Impact Survey 3,750 Contractors*, IR35 Shield

they can be hired and fired at will. They miss out on parental rights so find it difficult to balance work and family life and are not entitled to redundancy pay if work dries up.

Statement 15 - Migrant workers coming to the UK on short-term visas are less likely to be aware of their employment rights or to seek remedies in cases of labour violations.

The TUC agrees with this statement.

We've addressed the issues faced by migrant workers above.

In addition to the above, RMT has flagged up that migrant seafarers, who are often exploited and on extremely poor terms and conditions, can be effectively barred from accessing support from enforcement bodies, as when they are docked they are denied 'shore access' meaning there is no way they can seek assistance from the authorities.

Section 3 – other comments

- Unions are increasingly concerned that despite repeatedly submitting evidence of non-compliance from their respective sectors, in response to previous strategy consultations, enforcement work is not being targeted at these areas and non-compliance levels remain unchanged.
- Some unions feel that the regular cycle of strategy consultations is not followed up by subsequent enforcement.
- The TUC is concerned at the emphasis being placed on the need for stakeholders to provide 'robust evidence'. Enforcement bodies shouldn't need a neat bundle of 'robust' evidence handed to them on a plate. It should be the role of the enforcement bodies to proactively investigate alleged labour offences and pull together the requisite evidence. If they don't have the capacity to go out and investigate and find the necessary evidence, then the TUC believes that is a key indicator that the enforcement system is not fit for purpose.
- There are also some situations where employment rights breaches are so obvious and egregious, and have been widely reported in the media, with worker testimony (P&O Ferries mass sackings, umbrella company exploitation, unlawful recruitment fees being charged to seasonal workers) that there is plenty of existing robust evidence for enforcement bodies to be using as the basis of their investigations.

We echo concerns raised by the RMT union about the weakness of the new enforcement arrangements created under the new Seafarers Wages Act, introduced by the Government in response to the flagrant illegality of P&O Ferries' mass dismissal of UK seafarers.

- The Maritime and Coastguard Agency will be responsible for enforcing this new element of labour market regulation. The MCA is responsible for enforcing core

international maritime legislation on UK and non-UK flagged ships working from UK ports. This includes port state control inspections of foreign flagged vessels for compliance with the Maritime Labour Convention. There are a number of problems with this approach in respect of UK labour market conditions.

- Firstly, the purpose of MLC Regulation 2.2 on Wages is simply to ensure that seafarers are paid for their services. It states that "All seafarers shall be paid for their work regularly and in full in accordance with their employment agreements [contracts of employment]." If the contract of employment states the seafarer is paid £1 per hour, as long as the seafarer is being paid £1 per hour, the MCA inspector would record MLC compliance. In other words, the entire MLC inspection regime is predicated on minimum international standards by simply requiring an account of what should be paid under contract and measures to prevent late payment of wages. Regulation 2.2 was transposed into UK law by the [Merchant Shipping \(Maritime Labour Convention\) \(Minimum Requirements for Seafarers etc.\) Regulations 2014](#). This enforcement regime is anathema to labour market regulation, progressive collectively bargained terms and conditions of employment and labour market enforcement in the UK.
- Secondly, the MCA often use (legally) 'Recognised Organisations' to carry out ship inspections if they do not have capacity to carry them out. ROs are private organisations, invariably classification societies. Given that the Maritime Minister has said that the MCA will be given no extra resources to carry out its functions under the Seafarers Wages Act, there is a distinct possibility that this new aspect of the MCA's functions could be outsourced to private sector bodies within the maritime industry. We need more assurances from the Government that the MCA will not be permitted to outsource this function.
- And finally, MCA inspectors have a legal right to board any ship docked in a UK port, regardless of flag. HMRC NMW Enforcement officials who, in our view, should be doing this enforcement work on the Seafarers Wages Act do not have that legal power. The MCA's legal right to access qualifying vessels in port is probably why they have been given these new labour market enforcement powers. But without a change in the inspection culture at the MCA, to act in the favour of seafarers by calculating the applicability of the NMW equivalent proposed by the SW Act, this will be a totally ineffective enforcement regime that will be subject to constant dispute from rogue operators with wealthy owners who will take the MCA and UK Government to court to test the regulation at a very early stage.
- Powers in Section 4 (7) (8) and (9) of the SW Act create secondary regulations which will set out the calculation of hours worked and the level and application of the NMW. The DfT is still consulting trade unions and employers. We would

urge the DLME to take steps to respond to the consultation on these secondary regulations in the SW Act.