



**Unite response to HM Treasury, HM Revenue and Customs, Department for Business,
Energy and Industrial Strategy Call for Evidence: Umbrella company market**

This submission is made by Unite, Britain and Ireland's largest union with over 1 million members across all sectors of the economy including manufacturing, financial services, transport, food and agriculture, construction, energy and utilities, information technology, service industries, health, local government and the not for profit sector. Unite also organises in the community, enabling those who are not in employment to be part of our union.

Summary

Unite opposes the continued use of umbrella companies as a means of employment of workers across all sectors of the labour market and calls for legislation to outlaw them. Agencies and employers must be prohibited from using umbrella companies.

Our comments will not seek to answer all the questions posed, but outline our members' experiences of working through umbrella companies and the issues that arise from them. These include:

- misleading and unfair **deductions from workers take home pay;**
- **undermining the expected pay rate** advertised by the agency and industry wide rates for the job;
- **deductions of umbrella company operating costs** from a workers' pay;
- **payslips that are difficult to comprehend** and intentionally ambiguous;
- **breaches of holiday leave and pay entitlement** with umbrella companies preventing workers from taking their holiday;
- large proportions of **agency workers working under umbrellas not receiving the Key Information Document (KID) they have been entitled to since April 2020;**

- fragmentation of the employment relationship and **workers unsure who their employer is weakening employment rights;**
- **undermining of national collective bargaining agreements** and sectoral pay rates;
- workers **caught up in tax evasion schemes operated by the umbrella companies.**

Introduction

- 1) There is currently a lack of any meaningful regulation of umbrella companies. Labour market enforcement bodies do not regulate umbrella companies despite the Government accepting a recommendation from the Taylor Review into Modern Working Practices that enforcement of umbrella companies should be stepped up¹.
- 2) Unite condemns the continued use of umbrella companies across multiple sectors of the UK economy and the exploitative practices that they create. Our members in the construction sector, where umbrella companies are widely prevalent, have consistently reported a wholly negative experience where the role of an umbrella company has no positive benefit to workers in the sector and exists solely to deliver increased profit and deny workers even the most basic employment rights such as holiday pay, sick pay and can result in workers being dismissed without warning.
- 3) The use of payroll intermediaries **undermines collective bargaining, national industrial agreements and rates of pay, detrimentally impacts the terms and conditions of workers, and is a barrier to positive employment engagement** where workers rights and entitlements are protected. Our experiences of umbrella companies include not paying overtime rates, reducing hourly rates of pay and skewing working relationships in favour of employers and agencies.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/679831/2018-02-06_Agencyworkerconsultationdoc_Final.pdf

Realities of working through an umbrella company

- 4) The Freelancer and Contractor Services Association (FCSA)² in its definition of how pay in an umbrella company relationship is calculated admits:

“The umbrella company receives assignment income paid by the agency for the work undertaken. Like any employer, the umbrella must cover employment costs, including Employer’s National Insurance, holiday pay, the Apprenticeship Levy, and pension contributions. These employment costs are deducted from the assignment income.”

- 5) This identifies the problem in many relationships across a range of industrial sectors. Agencies and umbrella companies advertise rates at the assignment income level, workers then suffer major deductions to expected income and take home pay is reduced.
- 6) This expressly highlights that the umbrella company model is content for workers’ rates to be used to pay the expected deductions that any responsible employer would pay. The statement neatly encapsulates that the economic model of umbrella companies is nothing else but a way of from extracting profit from labour.
- 7) Unite’s members rightly view umbrella companies as an exploitative form of employment where workers are forced to pay administration fees to receive their wages along with deductions made from advertised pay such as employers national insurance contributions and employers pension contributions.
- 8) Evidence in the form of pay remittances regularly shows workers can be charged for anything the umbrella company deems necessary. Even employers’ payments of an industry training levy to support apprenticeship training has been passed on to our

² <https://www.fcsa.org.uk/wp-content/uploads/2018/04/Compliant-umbrella-firms-factsheet-2017.pdf>

members and deducted from their pay. It can go as far as charging workers for public indemnity insurance payments which for which no regular employee would be charged.

- 9) A Unite member working in Scotland's rail system on a public sector contract summed the experience of working through an umbrella company:

"I wait for a text every Friday to say if I will be working the following week. If I book a holiday and go away with my family there's a real chance that my place at work will be taken by another worker and I'll have no work. If I take a day off I might be replaced, if I call in sick I might be replaced, if I don't work every shift I'm offered, no matter how short noticed, I might be replaced.

"I pay an umbrella company up to £100 a week to get my own wages. I have no holiday pay, no sick pay, no unpaid holiday pay. I can't work anywhere else if there's no work for a few weeks....My 'holiday pay' is actually a percentage of my net income that's taken off, then when I get it back it's at gross, so is taxed twice. I also pay both employers and employees NI contributions.

- 10) Unite has no reason to be confident in the responsibility for umbrella companies falling under the scope of the Employment Agency Standards Inspectorate (EAS). We are not convinced that the number of inspectors necessary to monitor umbrella companies is available from current resources. Enabling effective enforcement means significantly increasing financial resources to fund more inspectors. To highlight this point, it was reported that inspections of employers by HM Revenue and Customs, responsible for policing minimum wage laws, and the Employment Agency Standards Inspectorate (EASI) fell by 20% and 50%, respectively, during 2020 compared with 2019. Resources are a major factor and with 40,000 employment agencies covered by only 19 EASI inspectors it is difficult to imagine this having a major impact in preventing exploitation³.

³ <https://www.theguardian.com/business/2021/may/16/hidden-cost-of-umbrella-companies-in-uk-may-top-45bn-a-year>

11) Any mention of the role of trade unions have been explicitly left out of the consultation despite representing over six million workers across the UK and being armed with the knowledge of the key sectors of the economy where umbrella companies are prevalent.

12) Unite calls for legislation to **end the role of umbrella companies in all their guises in the UK labour market, across construction and all other industries.**

13) Abuses are widespread and not helped by the make-up of certain sectors of the UK economy with lengthy supply chains, fragmented sub-contracting, and labour-only providers acting in a similar vein to gang masters in other sectors such as agriculture. Moreover, the **prevalence of agencies and incidence of umbrella companies fosters a widespread culture of fear, precarious work** and sizable levels of labour abuse.

14) Another example of the attack on workers by umbrella companies arose during the Covid-19 pandemic when, despite government confirmation that umbrella company workers qualified for the Coronavirus Job Retention Scheme, umbrella companies refused to furlough many of our members because workers would continue to accrue holiday pay. That left low paid workers out of a job, without income, and dependent on benefits, plunging them into poverty. This example of workers being cast aside establishes the false nature of this employment relationship, in effect a financial ruse for employers and agencies from which to exploit workers. Umbrella companies undermine employment conditions through the following, but not exhaustive, exploitative practices:

- non-payment of holiday pay;
- illegal deductions from wages (e.g. in construction CITB levy payments);
- withholding pay slips;
- charging of money for receipt of pay slips;
- no provision of personal protective equipment (PPE);

- non-payment of national minimum/living wage;
- workers being housed in unsuitable, inhumane accommodation;
- undercutting of national wage agreements;
- exploitation of posted workers;
- confiscation of passports;
- administration fees.

Growth of umbrella companies

15) Unite became aware of the umbrella tax scam in the construction industry after April 2014 when the UK Government introduced legislation which prevented agencies and payroll companies categorising workers as self-employed.

16) Although each scheme is slightly different, the main characteristics of the umbrella scheme is that a workers' gross pay is paid into the umbrella company, which then makes deductions and pays the "employee" wages.

17) The umbrella company fee and employers' national insurance contributions are often deducted. The worker can then be paid the national minimum wage and deductions are made for employers' tax and national insurance.

18) The workers' earnings can then be boosted through "performance related pay" and/or "expenses". **Agencies and contractors are also forcing workers to pay the national insurance contributions they should be paying by making these deductions from the top line advertised rates.**

Key Information Document

19) Unite is keen to see any government evidence or evaluation of the effect of the requirement for employment businesses, often through umbrella companies, to provide agency workers with a Key Information Document (KID) in the delivery of workers' rights. We are unaware of any.

- 20) **Focus is required on what is contained in this document**, and it seems that currently all this does is make it necessary to provide an explainer for continued exploitation.
- 21) Understanding the **realities of the agency labour market is key. A worker looking for work in an industrial sector is unlikely to choose to walk away from a job whether a KID is provided or not.** Additionally, the document could be considered as only **providing a menu for worker exploitation**, and in many sectors workers will be simply unaware of its existence or presence.
- 22) It is not uncommon that agency work seekers are required to sign a host of forms or are deemed to have accepted conditions, without knowledge of what is contained therein. **We do not therefore view the KID as a silver bullet in the debate concerning the ongoing influence of umbrella companies in our labour market.**
- 23) Moreover, the scope of the consultation seems to be about enshrining the role of umbrella companies in the labour market despite major concerns about their lack of regulation, exploitation of workers, and limiting the tax returns to the UK Treasury.
- 24) Clearly, the House of Lords Economic Affairs Committee understands that, in the context of changes to the IR35 rules, the increased use of umbrella companies was not seen as a positive development in the UK labour market⁴:

*“Although a large number of umbrella companies have complied with the rules....**certain non-compliant entities may still be using disguised remuneration schemes. Several witnesses recommended...stronger regulation of umbrella companies**”*

and

*“...why has the Government not yet implemented the Taylor Review recommendation that **determining employment status must be simpler, clearer....understanding of which rights and responsibilities apply**”?*

⁴ <https://publications.parliament.uk/pa/ld5801/ldselect/ldeconaf/50/5007.htm>

Employment status

25) Unite has a straightforward view of employment status that could be used to simplify the current position on intermediaries and outsourced workers. In terms of employment rights and taxation, **Unite is of the view that there should be only one definition provided by legislation to define workers, all of whom must have full employment rights. There is an immediate need for this to happen.**

26) Unite is supportive of the **“Status of Workers Bill”⁵ to make provision for the creation of a single status for workers** by amending the meaning of “employee”, “worker” and “employer” in the Trade Union and Labour Relations (Consolidation) Act 1992 and the Employment Rights Act 1996. Unite’s General Secretary, Sharon Graham, highlighted the need for such legislation saying:

“It’s a disgrace that millions of UK workers are the victims of inadequate labour laws which have more holes in them than Swiss cheese. Passing this Bill is an absolute necessity for Britain’s workers.”

27) UK workplace law has many problems but one of the worst is the classification of workers into categories, many of which have none or only a few of the rights.

28) At the same time, while it should be clear that **the organisation that substantially determines the terms on which the individual works is the employer**, a better option would be to **have joint and several liability so that main contractors have a responsibility for the supply chain they contract to deliver works or services.**

Rates of pay

29) While we maintain our position that umbrella companies should be banned, any regulation of activity **should prevent umbrella companies from undercutting widely**

⁵ <https://bills.parliament.uk/bills/2876>

accepted and understood rates of pay across industries. For example, an **umbrella company should not be permitted to advertise rates for roles that are less than the rates contained any existing nationally agreed collective bargaining agreements** in an industry. The terms and conditions in the agreements must also be protected.

30) We are aware that the TUC will also be responding to this consultation and support the points it makes about wider regulation including:

- strengthening the conduct regulations to make sure agency workers are always paid the advertised rate;
- agencies paying operating costs of the umbrella company, rather than the worker paying the fee. If agencies use umbrellas then they should pay for the service. Workers should never have to pay a fee to receive their wages;
- increasing the resources for EAS, enabling them to recruit enough inspectors;
- no worker can be forced to use one particular umbrella company (and can always opt for a direct PAYE option with the agency/organisation that they are working for;
- Making those who promote and operate schemes that are deemed to be forms of tax avoidance exclusively liable for any tax avoided;
- Making it unlawful for agencies to receive financial incentives or ‘kickbacks’ from umbrella companies, via timesheet commissions, introductions, or otherwise.

Wider intermediary examples

31) Another issue brought to our attention by Unite members, not specifically in relation to umbrella companies, is the extent to which agencies sub-contract contracts for services of freelance workers. Unite **members engaged in the provision of sign language interpreter services constantly battle being booked by one agency only to find out the booking has been subcontracted by a larger agency who has been unable to fill the booking** (usually due to unfavourable terms and conditions, or by not having the specialist knowledge to be able to book sign language interpreters). This then leads to confusion about who the employer is, can lead to a ‘race to the bottom’ in pay and terms and conditions and disguises the employment relationship.

32) Furthermore, Unite has evidence of **an exploitative use of an intermediary, where a cleaning operative is engaged through PAYE and Class 1 NICs**, yet this worker is told they are **not an employee or worker and have no statutory employment rights**. This encapsulates the realities of the level of misdirection that employers and their intermediaries will go to **in order to avoid employing workers directly, evading holiday pay, sick pay** and other statutory entitlements. Unite will pursue the case on behalf of our member but this type of arrangement is indicative of a government content with an imbalance of power in the relationship between worker and engager or employer.

33) **Elongated supply chains** means cuts made to prices that result in a **race to the bottom on pay and conditions**. We would encourage the **Government to consider the wider role of intermediaries and to look at the detrimental impact on work of lengthy supply chains in industrial sectors**. This should include **placing limits on the extent of sub-contracting chains**.

34) The reality is that only by forcing companies to comply with legal obligations and **embedding a culture of direct employment supported by collective bargaining will the Government collect the taxation returns due from all workers** and ensure dignity and respect in employment.

Joint and several liability

35) Unite supports an extension of UK law so that **organisations and lead contractors who transfer obligations to other parties can be liable and accountable for any breaches of employment rights in their supply chains of workers**. This would prevent 'phoenix' cases from disappearing along with the companies, giving workers a route to enforce rights. It would **help with sub-contractor engagement**, and could **help incentivize more permanent employment contracts** as companies become more careful about selection.

Construction sector

36) Unite has previously flagged up examples of low paid workers in construction being coerced into using personal service companies and other labour market intermediaries such as umbrella companies, as a pre-condition of securing a job.

This leads to:

- a lack of transparency about who the employer is and who is responsible for making sure that a worker is paid and receives their basic workplace rights;
- a lack of transparency about pay rates. Pay rates will often differ from what is advertised as labour market intermediaries can charge a fee to process payments;
- workers will not be entitled to any basic employment rights, including holiday and sick pay;
- workers being at risk of significant tax liabilities. Some working people will be unaware of the tax liabilities that arise through the use of labour market intermediaries such as personal service companies and umbrella companies.

Case study symptomatic of construction industry engagement process:

Boqus self-employment and umbrella companies

37) Unite won a ground-breaking legal victory at the employment appeal tribunal (EAT) in the battle against bogus self-employment and the use of payroll companies. Unite took the case on behalf of pipefitter Russ Blakely against the employment agency On-Site Recruitment Solutions Limited and payroll company Heritage Solutions City Ltd⁶.

38) The case was for the unlawful deduction of wages and employer's national insurance contributions as well as the non-payment of holiday pay. This was the first time that an employment appeal tribunal has considered a bogus self-employment appeal involving

⁶ <https://www.unitetheunion.org/news-events/news/2018/february/unite-in-groundbreaking-legal-victory-against-bogus-self-employment/>

the use of a payroll company.

39) Unite appealed the case to the EAT, after the Reading employment tribunal rejected the case, wrongly finding Mr Blakely was not a worker.

40) The fact that the decision was made at the EAT means that it is binding on all employment tribunals and must be applied in other cases.

41) The employment appeal tribunal found:

The tribunal was wrong to decide that Mr Blakely was not a worker

When determining whether there was a contract (part of the test of whether someone is a worker) the tribunal must consider the intentions of the worker and all surrounding circumstances, not just the intentions of the employer

There was a contract between Mr Blakely and On-Site (the agency) - importantly, the use of a payroll company did not circumvent this relationship

Mr Blakely (and therefore other agency workers being paid through payroll companies) could be a worker of the agency, the payroll company or both. The possibility of being a worker of more than one body provides the opportunity to dramatically reduce the amount of umbrella/payroll company rip offs.