



## **Labour Market Enforcement strategy 2023 to 2024: call for evidence – Unite the Union**

### **Section 1**

**Please briefly tell us about you / your organisation and your interest in enforcement of labour market regulations.**

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.

### **Section 2 - Key areas**

**FISHING INDUSTRY:** Unite has members who work in the fishing industry and is affiliated to the International Transport Workers Federation (ITF), the global union federation. Attached to this response are the ITF's response to the DLME call for evidence, and a separate ITF document on the plight of workers in the fishing industry.

**HOSPITALITY:** Unite responses for this sector can be found under a separate heading at the end of this document.

#### ***1. Recent changes in how UK labour market is operating***

*For instance since the end of the Coronavirus Job Retention Scheme (CJRS), changes in employment status (eg, the shift away from self-employment following IR35 rules changes) increases in job vacancies.*

*1a. What changes have you observed or experienced?*

*1b. How might these changes impact non-compliance and is this likely to grow or subside over the coming year (2022 to 2023)?*

*1c. What response have you observed by the enforcement bodies to identify and address these issues?*

## **2. Workforce**

*Looking at the experience of people engaged in or available for work, either in a specific geographical location or in a particular firm or industry sector.*

*2a. What has been the experience of workers arising from changes to the labour market? Please provide specific evidence.*

*2b. Have changes in the immigration rules in 2021 impacted on workers' experience and has this differed between migrant or domestic workers?*

*2c. Are these impacts consistent across the board or do they vary by sector? If the latter, then how?*

*2d. Is there any evidence to suggest additional threats to workers associated with labour shortages?*

### **SOCIAL CARE**

Social care continues to be an example of a sector that regularly treats workers badly - low pay, insecure work, no sick pay, sleep in payments and no pay for travel time, are just some of the ways in which workers doing essential work have extremely poor pay and conditions.

### **AGRICULTURE**

On Christmas Eve 2021 Defra and the Home Office released the review of the seasonal workers pilot. The pilot began in March 2019 and allowed two licensed operators to recruit 2,500 temporary migrant workers from non-EU countries to work in UK fresh produce for up to six months.

The review found evidence of widespread exploitation of workers.

Unions have long warned that a combination of factors make seasonal migrant workers vulnerable to exploitation. The review confirms that this pilot scheme, in its current form, facilitated the exploitation of a group of vulnerable workers.

We are particularly concerned that even a review run by the government found that:

- 16% were not being paid in full and 4% not paid on time;
- Nearly 20% said operators were not sticking to contractual agreements;
- Nearly half had not received their employment contract in their native language, which was a requirement for the pilot'
- 15% said their accommodation was unsafe, uncomfortable, unhygienic or cold;
- 10% said their accommodation had no bathroom, no running water and no kitchen;
- More than a fifth of workers said farm managers had treated them unfairly, with reports of racism, discrimination or mistreatment on grounds of workers' nationality leading to disrespectful language or poorer quality work or accommodation; and

- workers reported not being provided with appropriate health and safety equipment by their employers who are legally required to do so.

**Issues like these have previously been reported by Unite to DLME and to GLAA.**

Preceding the Defra/BEIS report, in March 2021 a more detailed, geographically specific, and worker-focused report on the pilot was launched by Caroline Robinson through FLEX, with the Fife Migrants Forum. <https://www.labourexploitation.org/news/new-report-highlights-risks-human-trafficking-uk-seasonal-workers-pilot>

This identified the risks of temporary migration programmes, such as the SWP, are associated with increased risks of labour abuse and exploitation. They include:

- Debt bondage due to upfront migration costs and illegal recruitment fees
- Deception in recruitment
- Barriers to changing jobs or sectors
- Discrimination
- Temporariness and lack of pathways to permanent residence
- Multiple dependencies
- No recourse to public funds
- Barriers to accessing justice
- Lack of guaranteed working hours

Interviews with agricultural workers including nearly 100 on the SWP found:

1. **Risk of unfree recruitment** based on a discrepancy between information workers received about the nature of the work and the reality upon arrival, the lack of translation of documentation, and pressure to sign contracts. In addition, 62% of workers reported incurring debts to travel to the UK to work, which places workers in a more vulnerable position and at risk of accepting work they might otherwise not have accepted.
2. **Risk of work and life under duress**, with workers reporting threats of penalties, unsafe housing in caravan accommodation, and excessive dependence on employers due to the use of zero hour contracts coupled with payment by piece rates. 66% of Seasonal Worker Visa (SWV) workers reported receiving threats of loss of work and 17% reported threats of deportation from their employer.
3. **Risk of impossibility of leaving an employer** with 62% of those interviewed reporting being refused transfers to alternative employment. Coupled with the high debts workers reported having to repay as well as risks of homelessness or deportation, this resulted in workers having reduced freedom to terminate their employment contract.

The Bureau of Investigative Journalism have released a major study on migrant workers' abuse in the fresh produce sector, which focusses on many of the issues that Unite has raised in previous submissions:

<https://www.thebureauinvestigates.com/stories/2022-05-27/migrant-fruit-pickers-charged-thousands-in-illegal-fees-to-work-on-uk-farms>

### **3. Workforce Engagement**

*Looking at evidence of how workers gain understanding and enforce their employment rights.*

3a. What examples can you share of initiatives that have assisted workers to understand and enforce their rights – particularly as regards harder to reach workers?

#### **4. Business Engagement**

Various mechanisms initiated or supported by the enforcement bodies encourage, influence and embed good practice, eg Responsible Car Wash Scheme, Construction Protocol and the Apparel and General Merchandise Public/Private Protocol, The National Minimal Wage Naming Scheme and the Good Business Charter.

4a. What impact do you think these interventions have had? ie are they effective?

4b. Why? What would make them more effective?

4c. Are there any other examples of good practice? These can be drawn from across the regulatory landscape.

#### **5. Recruitment**

5a. What changes have you observed to recruitment patterns and practices. For example, online recruitment and offshore recruitment.

5b. Do any of these trends you observe raise concerns about compliance?

5c. Do you have any evidence to share in respect of recruitment fraud?

#### **6. Employment models**

What evidence can you present as regards compliance of newer models of employment – for example gig economy workers, employment through umbrella companies\*, joint employment models\*\*

6a. Do you have evidence of these being associated with worker exploitation?

6b. Do you have evidence of other employment models that might give rise to compliance concerns?

*\*Umbrella company is a term used for company that employs a temporary worker (an agency worker or contractor), often on behalf of an employment agency. The agency will then provide the services of the worker to their clients. Umbrella companies do not find work for the workers they employ.*

*\*\*Joint employment model: An example of this is an employee formally employed by one employer the (primary employer) may be deemed constructively employed by another employer (secondary employer) for example an employer and a contractor or subcontractor performing services for the employer or a staffing agency providing employees to the employer.*

In construction we are concerned that the changes to IR35 and blanket status determination is seeing more and more construction workers pushed towards working through exploitative Umbrella Companies; the necessary resources aren't in place monitor umbrella companies' employment practices placing workers in even more precarious employment situations.

Our response to the call for evidence on the umbrella company market, run by HM Treasury, HMRC and BEIS, included the following points:

### 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 members' experiences of working through umbrella companies and the issues that arise from them 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 up<sup>1</sup>.
- 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

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/679831/2018-02-06\\_Agencyworkerconsultationdoc\\_Final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/679831/2018-02-06_Agencyworkerconsultationdoc_Final.pdf)

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.

### **Realities of working through an umbrella company**

- 4) The Freelancer and Contractor Services Association (FCSA)<sup>2</sup> 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 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,***

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

***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 exploitation<sup>3</sup>.
- 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.

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

### 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 market<sup>4</sup>:

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



*“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**”?*

### **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”**<sup>5</sup> 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 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;

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

- 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:**

#### **Bogus 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 Ltd<sup>6</sup>.

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 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.***

For further information please contact:

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

## **7. Enforcement resourcing**

*All 3 enforcement bodies engage in educational activity, promotion of compliance, enforcement and support to workers.*

*7a. What assessment do you make of how these 3 bodies operate?*

*7b. Provide evidence and examples of best practice to address labour market non-compliance that you would like to highlight to the Director?*

## **Other issues**

*8. Over and above the issues raised above, are there any other relevant issues you would like to bring to my attention for this strategy? For instance, effectiveness of labour market enforcement and how this could be improved, allocation of resources and good practice that can be drawn from across the regulatory landscape.*

## **MIGRANT DOMESTIC WORKERS**

**Ending exploitation of vulnerable workers:** The tied domestic worker visa fosters an environment for exploitation. Many migrant domestic workers are being wrongfully denied the minimum wage and are being exploited in domestic servitude. Migrant domestic workers are not only subject to non-compliance of the National Minimum Wage and Working Time Directive, but highly exposed to verbal, physical and sexual abuses.

Section 57(3) of the NMW regulations 2015 has created a significant barrier for vulnerable and marginalised migrant domestic workers (MDWs) to seek and assert their legal rights and protection from exploitation. Migrant domestic workers work in total isolation, this isolation is often further compounded by language and cultural barriers.

Migrant domestic workers are often women and as such the exemption has been ruled discriminatory, as reported in Puthenveetil v Alexander, George & Secretary of State for Business, Energy and Industrial Strategy 2361118/2013. These workers are often from the global south and from poor families. MDWs are at greater risk of labour exploitation and abuse than workers in most other occupations. They are subject to wrongful non-compliance of the National Minimum Wage, long working hours as well as verbal, physical and sexual abuses and are at high risk of modern slavery<sup>7</sup>. The modern slavery risk for MDWs has dramatically increased during the Covid-19 crisis as they are not entitled to furlough pay and not registered as self-employed. During the outbreak we have seen how the care economy has acted as a 'shock absorber'. While health-care workers have been rightly recognized during the Covid-19 crisis, domestic workers have remained a hidden and unrecognized workforce. Unite calls for better safeguarding of domestic workers and tough penalties for employers who abuse their domestic workers indiscriminative of workers' immigration status.

Unite has long argued over the incorrect application of the 'family worker' exemption to migrant domestic workers in relation to NMW. The Overseas Domestic Worker Visa is clear that they are workers and not family members. Unite has again heard harrowing testimonies of abuse, destitution, significant underpayment of the minimum wage, and recurring exploitation. These include:

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<sup>7</sup> The Voice of Domestic Workers, 2016. '6 years on from the Tied Overseas Domestic Worker Visa'. [Link](#)

- Many MDWs being infected with Covid-19 because they were having to work without PPE and the NRPF<sup>8</sup> conditions meant they weren't able to access free healthcare.
- Working up to 16 hours a day, 7 days a week for up to £250 per week.
- Being 'asked' not to exercise their day off and threatened with being made homeless if they do.

Unite believes migrant domestic workers should have the right to leave their employer without prejudice from draconian immigration policies. Unite calls for the removal of Section 57(3) from the NMW Regulations Act 2015 which is wrongfully used to exempt migrant domestic workers from NMW regulations. Migrant domestic workers are not family members as the Overseas Domestic Workers Visa makes clear. Unite also call on this Government to do the right thing and ratify ILO Convention 189, for decent work for domestic workers.

## **FREEPORTS**

### **Freeports: The need for robust labour market enforcement**

The eight new freeports created across England in 2021/22 are soon to be followed by three additional freeports in Scotland and Wales. If freeports are to succeed in 'levelling up' – or merely not levelling down – their regions a robust programme of inspection and enforcement of labour market conditions is needed. Unite identifies two types of threat; those which are inherent to freeports if not addressed, and threats inherent to the types of jobs most likely to be created by freeports.

Unite is in ongoing dialogue with all freeports, either through the new governing boards, the Local Authorities or directly with principal employers. It is Unite's experience that following the headline announcements the implementation of the freeports is being hammered out in discussions behind closed doors between the employers and local authorities on the governing boards and central government departments. As a result freeports are becoming operational on a disjointed, phased basis. The approval of business cases has allowed sites to receive tax benefits and this is soon to be followed by new customs arrangements, which are yet to be clearly defined.

To give one example, *Freeport National Insurance Contribution* (NIC) relief is available to employers employing workers in the specified tax zones. Employers can claim this relief for every 'new starter' paid over £25,000 p/a<sup>9</sup>. However, it is unclear if 'new starter' status could extend to workers who are transferred to third parties on lesser contracts or even workers who are 'fired and rehired' on new contracts.

This secretive approach does not help overcome risks which are inherent to the project. In 2016 Rishi Sunak called for freeports in the UK to replicate the free trade zones found in the US and cited the free zone in Smyrna, Tennessee as an example.<sup>10</sup> As TUC research has shown, working rights have been attacked in these US zones, with employers deploying union-busting tactics "with immunity due to lower levels of oversight by labour authorities." Unions have also reported that workers in the free trade zone are subject to a high level of surveillance by employers which is used to intimidate and exploit workers.<sup>11</sup>

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<sup>8</sup> No Recourse to Public Funds

<sup>99</sup> Westminster Forum Event: Freeports, April 2022

<sup>10</sup> [The Free Ports Opportunity - The Centre for Policy Studies \(cps.org.uk\)](https://www.cps.org.uk/publications/the-free-ports-opportunity)

<sup>11</sup> [DIT Freeports consultation TUC response final.pdf](#)

This concern adds to evidence from the European Union<sup>12</sup> and the Centre for Financial Crime and Security Studies<sup>13</sup> of criminal activity within freeports from money laundering, tax evasion and labour exploitation. It is Unite's experience that freeport governing bodies are working with HMRC and relevant authorities on the first of those two issues - money laundering, tax evasion – but not labour exploitation.

Unite is currently demanding trade union access to all new freeport sites – from construction to operation - and for freeport authorities and employers to sign up to minimum standards agreements. This must include ongoing auditing of all freeports sites for cases of labour exploitation as a critical safety net for workers.

Such a safety net is needed as Unite believes the majority of jobs which will be created by freeports will be in warehousing and logistics. This is already ranging from portside logistics and supply chain hubs to mega warehousing units. Examples include Gateway 14, the largest project of its type in Eastern England at 2.36 million square feet,<sup>14</sup> to DP World London Gateway Logistics Park and the East Midlands Intermodal Park.

Low pay, insecure work and exploitation are rife across the warehouse sector – as they are in the construction work required to build them and in the road haulage operations moving goods in, out and between them.

Unite believes employers are not locating these new warehouses in low income areas in order to 'level them up,' but because they can get away with paying unorganised workers below national averages, while taking the tax breaks offered by the freeport.

In several cases Local Authorities involved in the freeport business cases have adopted principles for the sort of investment they wish to attract and the sort of jobs they wish to see created. However, Local Authorities have not accepted their role in auditing or enforcing these principles, any standards or the behaviour of employers receiving the financial benefits.

This is very concerning as Unite members working for several employers already within and directly involved in the new freeports have been forced into industrial disputes over attempts to sack workplace representatives or impose pay freezes or real terms pay cuts. This has included workers in docks, manufacturing, construction and refineries. Such cases do not inspire any confidence that employers involved in the freeports are committed to 'levelling up' workers' pay and conditions.

The case of P&O is the most egregious assault by an employer linked to the freeports to date. P&O's parent company DP World operates two freeports (Thames and Solent), while the firing of the 800 P&O workers took place within the Humberside and Liverpool freeports.

P&O shows very clearly that – as with the US example- employers within the freeports will act as aggressively as they believe they can get away with, irrespective of the law, while still receiving the financial benefits of the freeports.

Unite believes there is an urgent need to establish inspection, auditing and enforcement of labour market conditions across each new freeport and the trade union must play an essential role in this work.

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<sup>12</sup> [EPRS\\_STUD\\_627114\\_Money\\_laundering-FINAL.pdf \(europa.eu\)](#)

<sup>13</sup> Centre for Financial Crime and Security Studies, [URL](#)

<sup>14</sup> <https://gateway14.com/scheme/>),

## UNITE HOSPITALITY SECTOR

### **HMRC National Minimum Wage/National Living Wage (NMW/NLW)**

#### **Underpayment/non payment of NLW/NMW**

Unite hospitality sector is aware of widespread underpayment the national living wage/national minimum wage which not only impacts hourly paid workers but also workers on salaried contracts who end up being paid less than the minimum wage.

There is also a growing trend of online training and training apps which workers are expected to participate and complete in their personal time without being paid.

#### **Tip theft**

Unite remains concerned about the lack of legislation on tips to monitor tronc systems (LPC). Unite has received complaints and seen evidence from hospitality workers in the food and beverage sector who have been formally asked by their employers to accept a cut in pay for a share of the tronc (tips). Unite is concerned some unscrupulous employers are saving themselves millions of pounds by taking advantage of a national insurance tax exemption on tips paid via a tronc. It is troubling that many of these companies with off-shore structures are profiting from this unfair tax break at the expense of their lowest paid workers and the UK treasury.

The Tronc system should be completely independent from the employer as tips are earned by waiting staff through hard work in often stressful working conditions; it is a reward given freely by customers.

We wouldn't accept or expect individual bonuses earned in other, higher paying sectors, to be taken from employees and shared with the rest of the workforce, yet the practice of stealing tips through controlling what is meant to be an independent Tronc system is rife in the hospitality sector.

#### **Case study 1 – Ivy Restaurant**

Unite members at The Ivy in Glasgow have lodged a collective grievance<sup>15</sup> to their employer (Ivy Collections) over, amongst other things, the lack of transparency in their tipping system which sees less than a third of the 12.5% gratuity actually go to the workers who earned it.

“Commission”, as the company refers to it, is being used to top-up the salaries of the most senior managers in order to save the company thousands in wages. When the NMW was increased to £8.72 in April 2020, the “commission” was reduced accordingly, meaning that staff saw no real increase. The company refused the collective grievance on a collective basis and has asked each and every signatory to submit individual grievances without providing assurances around protection from victimisation.

#### **Case study 2 – Pizza Express**

In August 2020 casual dining chain Pizza Express fired 2,500 workers who could have been furloughed as it made plans to permanently close 67 restaurants across the UK in response to the coronavirus pandemic. As restrictions eased and restaurants reopened, Pizza Express increased its tip deductions from waiting staff from 30% to 50% in order to boost the wages of kitchen workers by depriving minimum wage waiting staff a significant chunk of their income.

A few months after announcing redundancies, the company sought to recruit 1,000 workers. Rather than pay kitchen staff competitive wages to attract applicants, Pizza Express is boosting back of house pay by depriving its minimum wage waiting staff of their hard-earned tips.

### **Worker testimony – Pizza Express**

*I am a member of staff at Pizza Express and a member of Unite in a class action grievance letter. Before the lockdown tips were half of my earnings. Since May 17th they are approximately 7 - 10% of my earnings. In the space of a week, restaurants have been made cashless and payments are encouraged to be faceless and online via an app, which circumvent tipping altogether. Pizza Express also fudged Tronc guidelines in having an unelected committee contrive to vote in favour of splitting the credit card tips equally between front of house (FOH) and back of house (BOH) instead of the previous 70/30 split, so as to avoid having to pay greater wages to attract more employees. BOH are paid more than FOH per hour.*

*The reduction to earnings is approximately 40% in my case. Living in London that is untenable now. And It's not as simple as 'get another job' as I am midlife and have dedicated my life to service and don't have some essential other skills/ sets or experience to fall back on in the short term. Other restaurants are no better at handling servers' gratuities.*

*The scandal for me is that the committee decision was shaped and manipulated purposefully. The Tronc committee is supposed to be 'separate' to Pizza Express so that it can't be influenced. But the committee were asked to consider leading and incomplete questions that excluded a variety of factors that would have led to a fairer decision/result. The committee didn't canvass employees at all. All meetings were behind closed doors, no minutes of the meetings and no information about the committee who represent us! We get a stone wall of denial and odd deflection/rationalisations. Out of 8500 staff it is estimated that a small handful of less than a dozen knew of the upcoming meetings because only two notices were placed obscurely to satisfy 'guidance' so effectively no one took part. The outcome has been blatantly coerced. Now the language that is used to defend the 50/50 splitting of tips states we are all equal and it is fair.*

*A customer's relationship with their server primarily determines if a tip is left. The previous split of 70/30 acknowledged BOH contribution. The whole Tronc decision making process does not consider what a customer leaving the funds 'wants', therefore the customer has some expectation about how much of their £5 credit card tip goes to their server and the vast majority are shocked to know it's approximately £2.*

*The cashless restaurants; faceless online payments; and 50/50 Tronc 'heist' leaves a huge swathe of people struggling with financial commitments they can't meet. There are now far fewer tables in a section due to social distancing measures which may not ever change back.*

### **Employment Agency Standards (EAS)**

**Outsourcing/Sub contracting** in the sector has led to race to the bottom practices by housekeeping agencies, the whilst the current recommendation is for agency work to be invoice by the hourly rather piece rate Unite is aware that many hotels are still using piece rates in their contracts leading work intensification where housekeepers are being dangerously overworked.



**Furlough pay during the pandemic;** Unite is aware of many cases during the pandemic where hotels were not giving work which meant agencies were not paying furlough. Unite supported a housekeeper who worked for a global hotel chain under a sub agency and between October 2020 to March 2021 she was not paid any wages or receive furlough. Unite took this to employment tribunal and she received redundancy plus 4 months wages.

Unite also received reports from agency workers who worked as housekeepers and were told to change status to zero hours and as such they didn't receive furlough, when restrictions eased these workers were not returned to contracted hours.

- **views and ideas on how some of these challenges may be overcome**

Unite suggests a number of proposals in its submissions to the DLME calls for Evidence, the Taylor Review, and to previous LPC consultations. **Unite notes the interplay between a range of factors behind effective enforcement. These include:**

- **Ban zero hours contracts;** workers on zero-hour contracts are more than twice as likely to work night shifts and are paid a third less an hour than other workers. The proliferation of zero-hour contracts, bad jobs and economic insecurity has left a large segment of hospitality workers struggling, living hand to mouth and not knowing if they will have enough money to pay their rent and utilities or even have food to eat, this has particularly intensified in with the current cost of living crisis. Unite repeats its call for an end to the one-sided flexibility of zero hour contracts. All workers should have an employment contract that reflects an individual's normal hours of work, a statutory minimum contract of at least 16 hours, and a day-one right to a written statement setting out pay and conditions. There should also be a right to reasonable notice of shifts, and payment if shifts are cancelled. This would make flexible working arrangements fairer and protect workers from one-sided and exploitative practices.
- **The fundamental right to pursue a collective grievance to pursue rights in the workplace;** the law as it stands runs contrary to the fundamental right to Freedom of Association as it seems to suggest that workers can only effectively freely associate in order to pursue minimum wage or employment law matters directly with their employer if there is a collective bargaining agreement in place. Without this they are left in the vulnerable position of being forced to individualise every complaint. Unite would like to see a situation whereby a trade union can make a representative action on behalf of a group of workers to an employment tribunal. Unite believes this can be addressed by means of an amendment to the primary legislation and the accompanying ACAS Code of Practice to allow for collective grievances and representation to recognised in law.
- **Trade union access to unrecognized workplaces;** enforcement of the minimum wage would be greatly improved were trade unions to have access to workplaces. Improved access would allow unions to inform workers of their rights and critically encourage efforts to ensure the enforcement of those rights. Trade union representatives save both time and money for improving workplace relations and enforcing best practice. **An important step forward for the role of trade unions would be the reinstatement of trade union representatives on the GLAA Board, amongst other steps.** In addition to strengthening workers' ability to organise and bargain through trade unions, the Government must also strengthen other economy-wide mechanisms for enhancing worker voice. This includes requiring companies to include elected worker representatives on boards.

- **Better resourcing of enforcement bodies;** there is an urgent need for fully resourced and strengthened labour market enforcement bodies, and regular monitoring; The UK is in need of better funding of the state-led enforcement system. Long-term, sustained funding would allow enforcement bodies to recruit and train proper workplace inspectors, inspect more workplaces, and prosecute unscrupulous employers. Currently the UK has insufficient inspectors; there are roughly 40,000 employment agencies operating in the UK, but we only have 19 EAS inspectors.

As noted in the Director of Labour Market Enforcement's Strategy 2018/19, HMRC's minimum/living wage enforcement capacity is so under-resourced that "*the average employer can expect an inspection around once every 500 years*". This degree of under-resourcing brings into further question the Government's commitment to tackling labour exploitation of which wage theft is a significant part. Lack of resources for this key agency exemplifies how the current labour inspectorate system is structurally inadequate to the vast scale of labour rights abuses. What is needed is a strong and well-resourced system of enforcement to adequately enforce against the increasingly fragmented labour market with increased use of outsourcing, complex supply chains and a range of labour intermediaries and 'race to the bottom' employment practices which are enabling underpayment of NMW/NLW and exploitation of workers by allowing unscrupulous employers to 'outsource' employment rights obligations

- Fragmentation of employment relationships (outsourcing, franchising, use of labour market intermediaries) has made it even more difficult for many workers to enforce their rights. Workers can struggle to identify their employer due to complex supply chains. Economic employers are using a range of strategies to transfer accountability to other parties, meaning they have little legal responsibility for the people who work for them. **Unite advocates the strengthening of the Modern Slavery Act to include tougher enforcement and accountability in supply chains.**
- **Sector wide collective bargaining;** along with proper employment protection, can help address undercutting and exploitation in labour markets and the unfair treatment of migrant workers and agency workers. Enforcement agencies cannot effectively 'police' against labour abuses. Trade unions and collective bargaining are an important part of addressing the imbalance of power that exists in the world of work. Trade unions need to be part of the policy response in addressing the challenges of the modern economy.

## Section 2 - Key areas

### 1. Recent changes in how UK labour market is operating

**For instance since the end of the Coronavirus Job Retention Scheme (CJRS), changes in employment status (eg, the shift away from self-employment following IR35 rules changes) increases in job vacancies.**

In the Hospitality sector Unite has witnessed the impact of the pandemic being largely passed on to workers and Unite has found the response from a significant section of employers to be knee-jerk redundancies, lay-offs for undefined periods of time and cutting of pay and working conditions through 'fire to rehire' measures.

Pre-pandemic, despite the continued growth, the industry has lagged behind many other sectors in terms of fair employment practices. In April 2020, workers in the sector earned a median hourly rate

of £8.72, compared to £13.65 for all workers in the UK. Precarious working conditions and exploitative practices are endemic in the sector where 43% of the workforce is employed on a part-time basis; 11% on a temporary basis; 25% of employers use zero hour contracts (three times higher than the national average of 9%<sup>16</sup>). Unpaid trial shifts, pressure to opt-out of working time rights, unpaid overtime, sexual harassment and unfair tipping practices are issues quickly becoming the norm for a majority of the workforce in this sector.

Reflecting on the Union's involvement and campaigning during the pandemic, we can report that these exploitative practices were intensified by the impact of the pandemic during which period Unite received evidence of workers being forced onto inferior terms and conditions of employment in the face of threats of redundancies. For example Luxury hotel group, Radisson Edwardian, significantly reduced hours and pay and dismissed staff who refuse to sign the new terms. Below is what Radisson Edwardian asked staff to sign.

- 20% reduction in salary
- 50% reduction in contracted hours
- Right of the company to lay off staff without pay or place workers on less hours (which have already been significantly reduced) without notice or consultation.

Those who did not sign were issued notice. Those who did not sign by the end of the notice period were dismissed. Unite is also aware of other hotel chains using the right to lay off without pay as a pre-condition for workers to receive furlough pay made permanent, resultantly we now have a situation in the sector where workers are vulnerable to lay off without pay if there is another disruption to business.

### **1a. What changes have you observed or experienced?**

#### **Labour shortage in the hospitality sector**

Following the mass job losses suffered during the pandemic, the hospitality sector now faces an unprecedented recruitment crisis which had already started following the huge number of migrant workers who left the sector after the Brexit referendum and the toughening migration rules introduced in the years which followed. A 2021 survey conducted by UK Hospitality identified a vacancy rate across the sector of 9% - which implies a shortage of 188,000 workers<sup>17</sup>. According to more recent (April 2022) figures from the ONS there are now 400,000 hospitality vacancies across the UK<sup>18</sup>.

This has meant the remaining workforce or those who were brought back into the industry (via fire and rehire) are having to do a huge amount of overtime which they aren't being paid for because they are salaried workers. It is common place for a supervisor or junior kitchen worker to be salaried on say £20k per year, based on a 40 hour contract where they will regularly go over that without extra recompense.

### **1b. How might these changes impact non-compliance and is this likely to grow or subside over the coming year (2022 to 2023)?**

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<sup>16</sup> ONS Labour Market Overview 2019

<sup>17</sup> <https://www.ukhospitality.org.uk/news/567435/UKHospitality-warns-sector-faces-staffing-crisis-and-calls-on-Government-to-stick-to-roadmap.htm>

<sup>18</sup> <https://beertoday.co.uk/2022/02/16/hospitality-staff-shortage/>

As more and more salaried workers are expected to fill the gaps in labour left by the pandemic and Brexit, the hours needed from these workers has grown exponentially to 60+ hours per week becoming the norm in kitchens.

During a recent dispute with a burgeoning restaurant chain based in Scotland, the amount of unpaid overtime expected of the kitchen workers was so high that even the most senior chefs were being taken below the minimum wage. The head chef was owed 260 hours in unpaid overtime, meaning that even on a £34k salary, he was being brought below the minimum wage for the hours that he'd actually worked.

**1c. What response have you observed by the enforcement bodies to identify and address these issues?**

Last year Unite was approached by the HMRC Minimum Wage Enforcement team with proposals to deliver online training for members earning the minimum wage. The purpose of the training was to increase awareness of NMW/NLW for workers and how they can report underpayment to HMRC. Unite supported and publicised this initiative, however Unite remains concerned HMRC E24 guidance does not have any enforcement for workers but rather it is a tax concession for employers. Additionally Unite is also concerned this training is not widely available and given the high number of migrant workers who work in low paying sectors Unite believe training and information should be available in other languages.

**2. Workforce**

**Looking at the experience of people engaged in or available for work, either in a specific geographical location or in a particular firm or industry sector.**

**2a. What has been the experience of workers arising from changes to the labour market? Please provide specific evidence.**

**2b. Have changes in the immigration rules in 2021 impacted on workers' experience and has this differed between migrant or domestic workers?**

**2c. Are these impacts consistent across the board or do they vary by sector? If the latter, then how?**

**2d. Is there any evidence to suggest additional threats to workers associated with labour shortages?**

As well as the aforementioned impact on minimum wage compliance, the unpaid overtime expected of workers during this labour shortage means that many of hospitality employers are rarely in compliance with 4 key obligations afforded by the Working Time Regulations i.e. rest breaks, daily breaks, 24 hours off per week and 5.6 weeks of annual leave.

Our Scottish hospitality organiser recently represented a chef in a restaurant chain who had not had a single break in 8 months. Luckily, we could prove this through electronic log and she successfully challenged her employer to win recompense equivalent to 33 weeks paid breaks.

At a distillery in Edinburgh, those who had worked extra overtime during the pandemic to pack deliveries were told that they would not be able to carry over their missed holidays into the next financial year - despite new rules explicitly allowing for this. These members organised collectively, lodged a collective grievance and their employer was forced to allow them to carry over or be recompensed for the annual leave they were prevented from taking because of excessive overtime.

**3. Workforce Engagement**

**Looking at evidence of how workers gain understanding and enforce their employment rights.**

**3a. What examples can you share of initiatives that have assisted workers to understand and enforce their rights – particularly as regards harder to reach workers?**

Unite has been delivering leadership training carried out by Unite Tutors, this training has been instrumental in building the confidence of branch officials who have gone on to teach other hospitality workers about their rights at work and how to enforce them. In addition Unite has delivered organising training carried out with Spanish, Portuguese and Polish interpreters which has allowed us to equip migrant housekeepers with the knowledge, skills and confidence to challenge non-compliance both legally and industrially.

This is building on our 10 year United Migrant Workers Education Project (UMWEP) program which offers free ESOL, ICT and arts lessons to migrant and vulnerable workers, helping to build a community and empower workers to understand and challenge their employment rights. The English we teach as part of the ESOL program is designed around the language used in the workplace to better equip learners to communicate at work. In addition we offer;

- English for Speakers of Other Languages (ESOL). From Pre Entry to Entry 3
- Information and Communication Technology (ICT) from Beginners to Intermediate
- English Pronunciation
- Numeracy (Basic Learning embedded in ESOL and ICT)
- Therapy Dance Movements
- Art (Includes Drawing, Painting, Sculpture and Photography)
- Drama (Play, Acting)
- Workshops on health and employment rights (delivered by partner charities).

The students and volunteer tutors are from a group of community organisations which are branches or members of Unite the Union.

The organisations are:

- Justice for Cleaners Campaign (J4CC)
- Justice for Domestic Workers (J4DW)
- Chinese Migrant Network (CMN)
- Hotel and Catering (branch 1647)

#### **4. Business Engagement**

**Various mechanisms initiated or supported by the enforcement bodies encourage, influence and embed good practice, eg Responsible Car Wash Scheme, Construction Protocol and the Apparel and General Merchandise Public/Private Protocol, The National Minimal Wage Naming Scheme and the Good Business Charter.**

Unite is critical of the *naming and shaming* scheme. We believe the scheme has been ineffective in stopping employers from underpaying or exploiting workers, rather we see many employers pleading ignorance when called out claiming that if *they don't know they can't be blamed and therefore we shouldn't be held libel*. We need remove loopholes from HRMC guidance and hold companies **accountable**.

Unite is calling for an establishment of a Fair Hospitality Charter as a set of minimum standards for the sector to allow us to identify those employers who wish to do the right thing by adopting:

1. **The Real Living wage**
2. **Guaranteed hours**
3. **Proactive sexual harassment policies**
4. **100% Tips, fairly distributed**
5. **No unpaid trial shifts**
6. **Consultation and sufficient notice**
7. **Paid breaks**
8. **Paid transport home after 11pm (last bus/train/tube)**
9. **Trade Union Access**

Despite many employers refusing to engage positively, we have had some success in getting hospitality employers to sign-up to the charter in adherence with the above and using this as a wedge: see Atholl Arms, Summerhall, New Town Theatre, The Stand Comedy clubs.

**4a. What impact do you think these interventions have had? ie are they effective?**

**4b. Why? What would make them more effective?**

The ongoing issue with such voluntary agreements is enforcement when broken. In the absence of stricter regulation or more explicit legislation only the workers themselves can police these agreements.

**4c. Are there any other examples of good practice? These can be drawn from across the regulatory framework**

As a direct consequence of campaigning around the Fair Hospitality Charter in Scotland, we now have commitment from the Scottish Government that the key elements of the Charter will become pre-requisites for any and all access to public money either directly or indirectly. I.e. if a hospitality firm wishes to bid for a public contract, they must pay the real living wage and ensure secure contracts. This has the potential to positively impact thousands of workers employed through procurement projects funded by public money.

**5. Recruitment**

**5a. What changes have you observed to recruitment patterns and practices. For example, online recruitment and offshore recruitment.**

**Labour shortages;** Unite has seen examples of employers bringing in the minimum wage increase a few months ahead of the official uplift to attract workers but then there has also been a huge increase of excessive hours to fill the labour shortages.

**Bonuses for introducing workers;** Unite is concerned the increasing use of bonuses for introducing workers throws up risks for modern slavery particularly where migrant workers from particular groups are being introduced.

**5b. Do any of these trends you observe raise concerns about compliance?**

**5c. Do you have any evidence to share in respect of recruitment fraud?**

**6. Employment models**

**What evidence can you present as regards compliance of newer models of employment – for example gig economy workers, employment through umbrella companies\*, joint employment models\*\***

**6a. Do you have evidence of these being associated with worker exploitation?**

**6b. Do you have evidence of other employment models that might give rise to compliance concerns?**

\*Umbrella company is a term used for company that employs a temporary worker (an agency worker or contractor), often on behalf of an employment agency. The agency will then provide the services of the worker to their clients. Umbrella companies do not find work for the workers they employ.

\*\*Joint employment model: An example of this is an employee formally employed by one employer the (primary employer) may be deemed constructively employed by another employer (secondary employer) for example an employer and a contractor or subcontractor performing services for the employer or a staffing agency providing employees to the employer.

## **7. Enforcement resourcing**

All 3 enforcement bodies engage in educational activity, promotion of compliance, enforcement and support to workers.

**7a. What assessment do you make of how these 3 bodies operate?**

**7b. Provide evidence and examples of best practice to address labour market non-compliance that you would like to highlight to the Director**

Collective grievances remain the best vehicle (short of industrial action) to address systemic and collective issues such as non-compliance of minimum wage, working time regulations, annual leave, etc. They allow workers to raise legal concerns collectively through a formal process which forces employers to act faster and minimizes the chance of complainants being victimized by their employer.

However, due to the lack of legal recognition in the ACAS Code of Practice, many employers refuse to acknowledge collective grievances attempting to atomize those grievances to prevent workers organising around those issues through their union.

## **Other issues**

**8. Over and above the issues raised above, are there any other relevant issues you would like to bring to my attention for this strategy? For instance, effectiveness of labour market enforcement and how this could be improved, allocation of resources and good practice that can be drawn from across the regulatory landscape.**

Unite is concerned that it has become too easy for employers to dismiss workers with less than 2 years' service despite the protection. We have received a number of cases where employer extend the probationary period then dismisses a worker when they begin to question their employment rights.

**For further information on this response, contact Bridget Henderson, research department, Unite the Union at [bridget.henderson@unitetheunion.org](mailto:bridget.henderson@unitetheunion.org)**