



Unite response to HM Treasury, HM Revenue and Customs, Department for Business, and Trade Consultation: Tackling non-compliance in the 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

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.

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.

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, deducting employers' pension contributions, reducing hourly rates of pay and skewing working relationships in favour of employers and agencies.

Realities of working through an umbrella company

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.”

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.

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 extracting profit from labour.

Unite 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.

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

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

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 no regular employee would be charged.

A Unite member working in Scotland's rail system on a public sector contract summed up 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 employer's and employee's NI contributions.

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 (EAS) 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 EAS inspectors it is difficult to imagine this having a major impact in preventing exploitation³.

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.**

Abuses are widespread and not helped by the make-up of certain sectors in 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.

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

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

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.

Unite members are **committed to a ban on the use of Umbrella Companies in the labour market**. In our experience they serve no positive purpose and we believe that this exploitative practice to end, and for the eradication of all forms of false self-employment and for positive employment rights to be applied to all workers, including the introduction of a simple form of employment status, **where those in work are either an employee or genuinely self-employed**.

Unite's construction members have found that umbrella companies exist solely to deny workers even the most basic employment rights such as holiday pay, sick pay and mean workers can be dismissed without warning. Consequently workers are less likely to collectivise and join unions through fear of being dismissed. This leads to a severe adjustment in the relationship between worker and employer. A worker engaged through an umbrella company has no recourse to challenge bad working conditions, poor health and safety or how work is organised for work life balance, these are all symptomatic of a lack of equality in workplace employment relations.

Umbrella companies can often be the most perverse form of self-employment as workers are **forced to pay an administration fee** to receive their wages along with deduction of the employers national insurance and pension contributions.

Unite is committed to campaign at all levels to ensure that legislation is introduced to end the role of umbrella companies in all their guises in construction and all other industries.

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. It should be clear that **the organisation that substantially determines the terms on which the individual works is the employer**, and an even better option would be to **have joint and several liability**.

Unite is clear there is a need to **develop legislation that ensures where main contractors have a responsibility for the supply chain** they contract to deliver works or services so that those same companies seeking to profit from **construction have a clear responsibility to those workers within the supply chain whose skills and ingenuity underpin the work and create profits.**

There is merit in examining the **appropriate level of responsibility these main contractors should have across their supply chain in construction** and how to ensure liability and responsibility for the **financial cost of exploitative, non-compliant umbrella companies.** The best option remains an outright ban.

Consultation Questions

We will answer all questions, but provide responses to those most relevant to our members

Which of the options would be the most effective way to define umbrella companies to ensure only they are brought in scope now and ensure future regulations/standards can be targeted to the right business in the supply chain? Please explain your answer.

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.

We note reference is made within the consultation to companies arguing that there is a need for umbrella companies as payroll is difficult and complex to run. In a modern economy with numerous electronic and digital payroll solutions used by businesses, arguments about being unable to run a system are difficult to accept. The very fact that umbrella companies are paying kickbacks to agencies in order to be used by them identifies the monetary angle of the relationship and the fact that it is the workers that suffer financial penalties using these companies. A useful rule of thumb being if umbrella companies did not exist in our labour market would any government think about creating a role for them?

What aspects of the umbrella company's role in the supply chain should the regulations cover?

While Unite is steadfast in our demand for an outright ban on perfidious umbrella companies, if regulations are established then clearly all aspects of umbrella companies' involvement in the business supply chain will need to be considered, from their engagement by agencies or end users down to how they work with individual employees or those categorised as self-employed. No area of umbrella company involvement in the supply chain should be off the table

Is there a rationale for starting with limited regulations and reviewing them before potentially expanding them to cover other areas of umbrella company involvement? Please explain your answer and illustrate with examples.

Unite supports an outright ban on umbrella companies. Over many years Unite and our heritage unions, particularly UCATT, has provided evidence of the ill treatment suffered by workers engaged through umbrella companies. We believe that the Government is

sufficiently informed to be more than aware of the necessity for prescriptive regulations in the absence of an outright ban.

Are there reasons that the Employment Agency Standards Inspectorate should not enforce umbrella company regulations? And if so, are there other bodies or approaches the government should consider?

Unite supports an outright ban on umbrella companies in the labour market. In terms of the role of the Employment Agencies Standards Inspectorate then there are real concerns around the resources available to enable the body to enforce regulations. We note from the annual reports that in 2021 to 2022, an approximate increase of 19% in the number of complaints received from the previous year. A high proportion of breaches related to the incorrect use of the key information document.

The budget for 2021 to 2022 of £1.525 million remained static and EAS⁴ has only 18 frontline inspectors. The growth of workers being coerced into working through an umbrella company means that in order to enforce any regulations and provide a meaningful deterrent by way of inspections and acting on intelligence, the body requires a substantial increase in staff and financial resources.

Does the Employment Agency Standards Inspectorate have sufficient enforcement powers to regulate umbrella companies or would changes need to be made?

Powers without the necessary financial and human resources to implement them are meaningless.

Should EAS mirror its current enforcement approach for employment agencies and employment businesses if it enforces umbrella company requirements? Please explain your answer.

There is a requirement for a major extension in the reach of the Employment Agency Standards Inspectorate. The size and influence of umbrella companies within the UK employment agency market means that a significant level of both financial and human resource is necessary to make an impact

Do you agree that a requirement to undertake due diligence upon any umbrella companies which form part of a labour supply chain would reduce tax non-compliance in the umbrella company market, and to what extent?

No, not in itself. While Unite supports an outright ban on umbrella companies, should any due diligence requirement be enacted then there have to be appropriate penalties and measures in place to deal with those employment businesses and end users that fail to follow regulatory requirements. The use of umbrella companies within the construction supply chain is currently a green light for pay and conditions undercutters, attacks on collective bargaining rates of pay and the collective organisation of workers.

⁴ <https://www.gov.uk/government/publications/employment-agency-standards-eas-inspectorate-annual-report-2021-to-2022/employment-agency-standards-eas-inspectorate-annual-report-2021-to-2022-html-version>

Would a mandatory due diligence requirement focused on tax non-compliance also improve outcomes for workers engaged via umbrella companies?

To improve the outcomes for workers currently engaged by umbrella companies an outright ban on their use is needed. A requirement that means only the assignment rate advertised is the rate paid to the worker is an urgent requirement. Too often the rates are driven down by payments which the worker is unaware of when agreeing to undertake work. Additionally, the idea that workers have a choice in selecting a means of employment through umbrella companies is just not reflective of how industry operates particularly for our members in the construction sector where a 'take it or leave it' approach is the norm.

Which parties in a labour supply chain should be required to comply with a due diligence requirement?

Unite's position is for an outright ban on the use of umbrella companies in the UK labour market. In the absence of this, it is critical that each layer of the supply chain involving umbrella companies: end user, agency and umbrella company, should be required to comply with a due diligence regulatory requirement. There should be joint and several liability within the supply chain so that both employment businesses and end users (often construction contractors) have clear responsibility and sufficient penalties implemented for those found to have erred on these. Ultimately end users should be held responsible for the supply chain that they engage.

Which due diligence checks are most effective for identifying potential tax non-compliance in labour supply chains?

Unite supports an outright ban on umbrella companies, however in the absence of this then clear due diligence regulations must be enacted through statutory regulation, not guidance, so that each organisation in the supply chain understands unequivocally what is required. Unite believes these must be prescriptive and government must show leadership in developing the necessary regulations that prevents the current exploitation in terms of employment rights, undercutting of wages, and limits to tax returns.

What due diligence checks could end clients or employment businesses be reasonably expected to carry out upon umbrella companies within their labour supply chains? Which tax heads should the checks cover (e.g. employer duties, VAT, Corporation Tax, etc.)?

This is a question that should be dealt with efficiently by government tax specialists within HMRC who will have access to the tax returns of employment agencies and umbrella companies. Employers, agencies, and umbrella companies should be subject to rigorous tax inspection to ensure that returns are in line with incomes generated.

What evidence would you expect would need to be retained, and for how long, to demonstrate that a due diligence requirement has been met?

Pay remittances and yearly tax returns.

How could a mandatory due diligence requirement be designed to ensure that compliance burdens remain proportionate?

With suitable penalties that ensure regulations on due diligence are followed by the operators in the supply chain as required.

What would be the appropriate level of penalty to ensure that the requirement is complied with and how should it be calculated?

Unite does not have a policy position on this, however any penalty, financial or otherwise (naming and shaming of rogue operators) must be of significance to ensure that there is a strong deterrent to ensure compliance with any due diligence requirement.

What safeguards, if any, do you think would be required were a due diligence requirement to be introduced?

There would need to be clear and unequivocal regulations that define the duties of each member of the contractual chain.

What impacts would this option have on the labour market and on the umbrella company market specifically?

This could lead to contractors utilising other means of engagement for workers, however there is an urgent need to consider employment status to ensure workers are treated fairly in terms of tax and employment rights. We do not wish to see umbrella company use replaced by equally exploitative engagement terms that means workers continue to lose out on entitlements and reduced tax returns to government.

Would this measure lead users and suppliers of temporary labour to move away from the umbrella company model of engagement? If so, how would end clients and employment businesses engage workers instead?

In construction there is potential that this would be the case. Businesses and end clients in some industries could push workers to false self-employment schemes. The fair solution would be for companies to engage these workers directly under a PAYE contract of employment.

Chapter 4 – Option 2: Transfer of tax debt that cannot be collected from an umbrella company to another party in the supply chain

Do you agree that, were this option to be pursued, it would address tax non-compliance in the umbrella company market, and to what extent?

Unite supports joint and several liability within the supply chain. The ability of HMRC to retrieve tax debt from another party in the supply chain should have some impact on tax non-compliance, however an outright ban on umbrella companies is our best option. It may mean that end users, often construction contractors, reduce the use of umbrella companies as an element of tax risk is transferred to them.

Would this option improve outcomes for workers engaged via umbrella companies?

No, not necessarily. It could mean increasing the level of tax returns paid to the state, however, despite the requirement for a key information document, there remains the potential for disparity in deductions suffered by employees. A better route is to ban the use of umbrella companies altogether.

In what circumstances do you think HMRC should be able to transfer an umbrella company's tax debt?

Where the payment is not received from the umbrella companies, or umbrella company folds, and the contractual relationship between contractor (end user) can be established. One would imagine in the absence of an outright ban, regulations can provide clarity.

Do you agree that the tax debt should be transferred to the employment business which supplies workers to the end client, with transfer also possible to the end client in certain circumstances?

In absence of an outright ban, yes.

Do you agree that this option should apply to employment taxes as set out above?

Yes.

How should the government define the engagements to which this option would apply?

We would expect all engagements where an end user (including company or contractor) engages an agency and an umbrella company provides labour would apply.

Would businesses stop using umbrella companies as a result of the introduction of a transfer of debt? How many businesses would do this and what wider impacts would there be?

This would be a positive outcome, as our experiences of umbrella companies are wholly negative. Financial risk will obviously dictate contractual relationships. However, the whole area of employment status needs to be clarified urgently through legislation.

What safeguards, if any, do you think should be included if this option is taken forward?

Our position is for an outright ban on umbrella companies, safeguards should be that workers are engaged either through a direct employment PAYE contract or bonafide self-employment.

Would this option change behaviour of businesses using umbrella companies in the way that the government expects?

We would expect use of umbrella companies to reduce, however the necessary employment status legislation would need to be passed to prevent other loopholes being used to evade tax and employment responsibilities.

How likely is it that the temporary labour market would move away from using umbrella companies entirely, were this option taken forward?

This is likely and welcome.

Are there any further risks that the government should consider before deciding whether to take this option forward?

No.

Do you agree that, were this option to be pursued, it would address tax non-compliance in the umbrella company market, and to what extent?

The policy of Unite is for an outright ban. It is likely that industry, particularly in construction, would seek other means of engagement of workers.

Were this option to be taken forward, which entity in the labour supply chain would be best placed to be the deemed employer, and why?

The agency would be likely deemed the employer. A preferable outcome would be that the end user engages workers on a permanent direct employment contract with employment rights from day one and tax returns to HMRC.

How would businesses manage their obligations as deemed employers following this change? What could the government do to support them with these new obligations?

N/A.

Would businesses stop using umbrella companies as a result of this change? How many businesses would do this and what wider impacts would there be?

If businesses are subject to financial risk themselves whether they engage umbrella companies or not you would have to question whether they would seek to engage workers by using such services.

Please refer to our earlier responses.

How would the temporary labour market respond to this option being taken forward?

In our experience of construction the temporary labour market would seek to engage workers that have day to day experiences similar to employees, as self-employed sub-contractors. Unite would oppose this and call for an increase in direct employment in industries such as construction where prevalence of umbrella companies and false self-employment is rife.

Would this option improve outcomes for workers engaged via umbrella companies?

The best way to improve the experience of workers previously engaged through Umbrella Companies would be to end the uncertainty in employment status and have a clear distinction between those that genuinely operate as self-employed and those workers that should have full employment rights from day one.

Are there any further risks that the government should consider before deciding whether to take this option forward?

Are there any other options that have not been covered in this chapter that you think could reduce non-compliance in the umbrella company market?

Chapter 5 – Questions about the VAT flat rate scheme and MUC abuse

What more could HMRC do to prevent abuse of the scheme? Are there any specific options that you believe the government should consider?

Remove the right of umbrella companies who act only as payroll for workers to receive any such relief.

Do stakeholders agree, that if this option were implemented, it would help address abuse of the employment allowance?

In the absence of a ban on umbrella companies then we would support the removal of the right of all umbrella companies to access the employment allowance as they only exist as a vehicle for agencies and employers to provide payroll services without any real investment in employees.

Are there any ways in which mini umbrella companies could sidestep these changes, and if so, how could this proposal be strengthened to reduce or prevent this risk?

Mini-umbrella companies should be banned, the controlling minds behind these companies could, as the consultation identifies, sidestep these changes by enticing people to be named directors of businesses with a UK address. One has to question with all the problems identified with umbrella and mini umbrella companies, why government does not implement a ban.

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