

Response ID ANON-R4M6-9J1J-7

Submitted to **Good work plan: establishing a new single enforcement body for employment rights**

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About you

P1 What is your name?

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P3 What is your organisation?

Organisation:

Work, Informalisation and Place research group at Nottingham Trent University

P4 Are you?

Other

If other please specify:

Representing a university research group

P5 Are you happy for your response to be published?

Yes

P6 Would you like to be contacted when the consultation response is published?

Yes

Current state enforcement landscape

1 Is the current system effective in enforcing the rights of vulnerable workers?

No

Please explain your answer:

The current mix of compliance and enforcement approaches mean that in some cases and in some sectors there is a permissiveness towards exploitation. This is clear in the sector we know most about hand car washing. We feel that there is systematic routine labour market exploitation in terms of remuneration and abuse of statutory terms and conditions of employment, however, the GLAA's current approach to regulation misses the vast majority of hand car washes. Regulation of hand car washes on supermarket car parks covers in our estimation less than 10% of the total number of sites in England and Wales. Many of these may be lawful businesses that choose not to employ workers appropriately. Moreover, the GLAA scheme operated in conjunction with the downstream fuel association via the responsible car wash scheme is not a form of licensing that accords with the four typologies laid out in the DLME's strategy document in 2018. Rather than licensing of a business and a workplace, it is a voluntary accreditation scheme for businesses.

A key problem in enforcing the rights of vulnerable workers is the absence of data for England and Wales on the number, location, forms and types of hand car washes. We are currently working on this with the GLAA. We have built quantitative tools based on detailed empirical work in the East Midlands that enable us to predict the location of hand car washes in other regions. We aim to be able to use these tools/methods to understand/map other types of informal employment.

So to summarise the answer is no and this results from permissiveness, intelligence-led approaches and the absence of full data in some sectors.

A Single Enforcement Body

2 Would a single enforcement body be more effective than the current system?

Yes

Please provide reasons for your answer:

It may be. The key bodies in the current system often overlap with one another in particular cases, but moreover some of the definitions in use are unclear, for example, modern slavery is a very elastic term. As far as we are concerned it covers any form of coercion in the workplace so can cover wage theft, denial of benefits and holiday pay, forms of bondage often gentrified as payments to intermediaries and or community and family members and restricted movement. So modern slavery can cover many diverse situations. For example, interns working at London Fashion week with designers (who to get the gig have to find their

own accommodation, cover their own travel costs to London and receive no pay but instead earn contacts and networks. Similarly, through to workers who live on site at hand car washes or small unit garment manufacturers who are underpaid, not paid, paid in kind or who work for favour or familial support.

A single body may be able to work more effectively across the current enforcement and compliance functions associated with the GLAA, HMRC, IASC and EAS where the definitions used are common to all parts of the enforcement body. Moreover, different wings of a single body can more effectively cross-reference than having to go outside a particular individual agency. For example, in our own work on hand car washes we initially found the GLAA less convinced about our research and the significant presence of hand car washes beyond supermarket car parks. In contrast to this, we received significant support from the DLME and the Environment Audit Committee; both bodies draw on our work and each met with us for briefings on our research. We do not think this was necessarily a fault or error by the GLAA rather that different agencies and institutions in the state apparatus taking different approaches. This challenge can be in part be rectified by a single body where internal coordination will be more easily affected, particularly if the leadership and their advisors seek to overcome silo mentalities.

3 What do you think would be the benefits, if any, of a single enforcement body?

Please type your answer:

Our view would be that a single body should reduce duplication of effort and enhance the sharing of information for staff within the organisation. We also feel that a better coordinated one-stop interlinked website may prove valuable for citizens and victims. This will enable users to cross-reference material and enable the body to better present itself and its coverage across all aspects of labour market enforcement. A unified presence also has the potential to provide employers and the public with a single point of contact for information to ensure everyone is aware of who deals with labour market abuses.

4 What do you think would be the risks, if any, of a single enforcement body?

Please provide your answer in the box:

Visibility of each component part of enforcement and the prevention of internal silos –this will require strong leadership and better data and more engagement with academics who work in these areas, something that we think could be greatly improved.

Expansion of licensing scheme under the Gangmasters Labour Abuse Authority

5 Do you think the current licensing scheme (for supply or use of labour) should be expanded to other sectors at risk of exploitation by gangmasters?

Yes

Please explain your answer:

Yes, for example, in parcel and home delivery services, painting and decorating and parts of sub-contract construction.

It is also important for regulators to have access to and understand of better data and insights. We believe this can come from a deeper engagement with academics who work in these areas who can offer fresh ideas and information to a single labour market enforcement body.

6 Are there any at risk sectors where you think enforcement of existing regulations could be strengthened to drive up compliance in place of licensing?

Yes

Please provide examples:

Yes, hand car washing, nail bars, 'Turkish' barbers, vape shops, parcel delivery and sub-contracting of home delivery riders.

Part of the problem of enforcement is the number of businesses that operate in the informal economy. The informal economy produces about 12% of British GDP and around 600,000 workers experience some form of informalization at work.

1. IAW (Institute for Applied Economic Research) (2018) 'Countries with the largest shadow economies', the University of Tübingen, Germany.

TUC (2017) 'The enforcement of employment rights: TUC response to enforcement of rights consultation' TUC, London.

<https://www.resolutionfoundation.org/> from rights to reality video and data summarising

Tough enough? Enforcing Britain's labour market rules, Monday 16 September 2019 at the Resolution Foundation, London.

Relationship with other areas of enforcement: Sick Pay

7 Should a single enforcement body take on enforcement of sick pay if this process is strengthened?

No

Please explain your answer in the box:

New regulations will soon be in force to provide for itemised payslips, payslips will also identify recipients' as workers or employees who are both in specific circumstances entitled to Statutory Sick Pay which can be enforced through existing channels. Loading this onto the new body will be a diversionary inclusion.

Relationship with other areas of enforcement: discrimination and harassment in the workplace

8 Should a single enforcement body have a role in relation to discrimination and harassment in the workplace?

No

Please explain your answer in the box. If yes, what role should it have?:

As above – there is an existing machinery for enforcement of sex, race, age, disability discrimination and harassment.

Relationship with other areas of enforcement: enforcement of employment tribunal awards

9 What role should a single enforcement body play in enforcement of employment tribunal awards?

Please provide your answer in the box:

Only via the BEIS scheme that can be linked via the website.

Relationships with other areas of enforcement

10 Do you believe a new body should have a role in any of the other areas?

Yes

If yes, please explain your answer in the box:

Yes but only research on new areas of employment and migrant diffusion that are likely to lead to exploitation, e.g. 'Turkish' barbers, Vape shops and some forms of food outlet and restaurants.

The new body can usefully liaise with academics and/or commission research from leading academics within these areas. Our work bringing an inter-disciplinary approach has helped provide fresh insights and perspective on informalised workplaces. We believe this research and other areas can help a new enforcement body as a critical friend.

11 What synergies, if any, are there between breaches in areas of the 'core remit' and the others areas referenced above?

Please provide your answer in the box:

Precarious workers who are subject to labour market exploitation may also be subject to discrimination and harassment – we see this in car washes where on some sites workers wages vary differentially depending on nationality, EU status and migration status. These are important areas but are of secondary and derived importance flowing from up-front labour market exploitation that the new body and current bodies aim to counter by enforcement activities.

The approach to enforcement

12 Should enforcement focus on both compliance and deterrence?

Yes

Please explain your answer in the box:

Enforcement is the key issue, compliance is a softer route to enforcement where employers are doing things wrong but not wilfully. We think both approaches should be used but are concerned about the methods employed.

During our research into hand car washes we have interviewed informalised hand car wash entrepreneurs who have no fear of enforcement because they are in their words 'never controlled', we identified that many employees have back-up stories where workers were given/repeated 'legends', that is stories that may or may not accurately describe their journey to the UK. Whilst many businesses in this sector are moving towards legitimate business practices many felt there was no requirement to do so. We believe fresh approaches need to be considered for challenging bad practice in the informal economy.

In the hand car wash sector enforcement is a complex issue where many agencies and institutions with a regulatory commission fail to take action, e.g. planning and local councils, water, electricity, the environment agency, the GLAA etc. Our research and evidence given by the EA to the Environmental Audit Committee highlighted the lack of agency to tackle the failure to comply with planning regulations and water company permit use. In Leicester in relation to garment manufacturing, what the literature terms 're-shoring' we found a permissive attitude all the way up to the council where the focus was on what would have to be done if small unit garment manufacturing was controlled.

In the UK we have to be clear: Do we want the spread of informalisation normalised and only enforced at the margins because of intelligence or extreme cases?

Alternatively, are we prepared to enforce informalisation rigorously? To get good work for all we feel we need to challenge the current system.

Supporting Compliance

13 As a worker, where would you go for help if you had a problem with an employment relationship? (Check all boxes that apply)

Trade Union, Citizens Advice Bureau, Other

If other, please provide details in the box:

Family is traditionally the first point of call. Research by colleagues at NTU on financial insecurity and stigma (Stevenson, Bowe, Wakefield and Kellezi) highlights that most people turn to family in the first instance. Only in extreme cases are they likely to reach beyond this support network turning to friends and colleagues.

External agencies are next with groups they hold ties with being important such as Roscoc (<http://rosoceastmidlands.co.uk/index.html>) and other self help ethnic groups, Local Government and smaller independent advice organisations also provide support and guidance. Within Nottingham, we have a network of advice centres located within each area of the city. There is also a Refugee Action Forum which acts as an umbrella organisation for groups such as Roscoc.

14 As a worker, how would you like to access help?

Single Enforcement Body

Please explain your answer:

If I was a worker who went for help I would like to be able to use a single body that I know would help me and direct me internally and not just pass me on to another body via links etc. Our research highlighted the lack of interest in reporting bad practice; accordingly, any attempt to report bad practice must consider this context from workers.

15 As an employer, where would you go for support on how to comply with employment law? (Check all boxes that apply)

Acas, Business Association, Consultant, Lawyer

If other, please provide details in the box:

Medium and larger firms have their own HR departments which should do things correctly, in these cases if they don't it is likely that employees will go to the ET service or any recognized Trade Union (more likely in the public sector). ACAS and the CIPD issue codes of practice but many others use consultants, as they want to be ahead of the curve.

16 As an employer, how would you like to access help?

Not Answered

Please explain your answer in the box:

Across a variety of platforms and systems. To ensure you create a broad reach you need a mixed-methods approach to help employers because they access and deal with information in different ways.

We think smaller compliance seeking employers would use a single body but we do not think the single body should focus on doing the work of employers. Compliance is part of the responsibility of a business, the government can provide advice but at the same time, an employer should know that if they fail to comply they will be subject to enforcement rather than being safe in the knowledge, they will not be subject to enforcement control.

17 Is there enough guidance and support available for workers/employers?

Not Answered

If no, please provide details on how it could be improved:

For workers but not particularly migrants. As with material on forced marriages, there should be better information at airports, on planes and in ports, bus stations and ethnic community centres in appropriate languages. We have provided some information as part of our research via specific migrant self-help groups where we found that no one had supplied them with relevant information before we engaged them.

For employers in some cases it will make no difference if the business model centres on informalisation and exploitation. Moreover, for businesses that are more legitimate there may be specific failings and oversights but we should assume that all businesses whilst they seek to minimize cost and exposure operate in a best-practice mode and seek to comply with the law.

Ergo, the body should focus more on workers not employers.

18 Should a new single enforcement body have a role in providing advice?

Yes

Please provide your answer in the box below:

We believe so alongside other agencies and parts of government and civil society. We believe a holistic series of campaigns and programmes should be developed to act as both carrot and stick for employers. We do feel that this is a secondary aspect of the agencies role because enforcement of bad practice/illegal activity should be the priority.

Our research has highlighted the challenge government agencies face when dealing with hard to reach communities. Interviews with self-help groups identified that an element of collusion was assumed between agencies like the GLAA and Immigration/Border Force so illegitimate workers were unlikely to engage.

Any work providing advice should be taken with these issues in mind.

A greater deterrence

19 Would a single enforcement body make it easier to raise a complaint?

Yes

Please provide your answer in the box:

If it is appropriately profiled it should do so.

Complaints should lead to enforcement if there is exploitation and transparency. We need to highlight the scale and depth of challenges to educate the public, employers and workers. Having one body to share data, insights and resources should ensure a more focused approach to tackling non-compliance and illegal behaviour.

20 Would a single enforcement body improve the ability to identify the full spectrum of non-compliance, from minor breaches to forced labour?

Yes

Please explain your answer in the box:

If designed correctly and given appropriate focus and support. We don't see why not, but again our view is that compliance and then enforcement are the key issues. These two are not just issues of intelligence and data but clear critically focused information, it is appropriate to gather this material in partnership with academics who specialise in researching these issues.

Currently, the agencies are restricted and additional and critical perspectives need to be brought in from academia and elsewhere to support evidence-based activity.

21 What sort of breaches should be considered 'lower harm' and should these be dealt with through a compliance approach?

Not Answered

Please explain your answer in the box:

Low harm breaches could be a failure to up-grade NMW payments immediately or minor health and safety breaches related to work wear. Compliance approaches are useful and in many cases where an employer is a legitimate business lead to enforcement on a voluntary basis. It is important to remember the human impact of these issues and we would stress that low harm is a subjective term. The failure to pay on time and appropriately or not provide adequate PPE can have large and long-lasting impact for individuals and families.

As a matter of course failure to comply will lead to enforcement and this should not be an idle threat. The 'broken windows' theory should be applied, that is, there should be no tolerance of low-level breaches, once they are identified they should be enforced. The new body should aim to change the culture on compliance by its actions and the visibility of these to stakeholders.

22 Which breaches should be publicised?

More serious breaches above a specified threshold

If other, please explain your answer in the box:

Significant wage theft, modern slavery and associated coercion in legitimate businesses e.g. inappropriate use of interns and volunteers right through to more coercive forms of slavery based on bondage. However, there should be some form of natural justice; offences should be publicised once an employer of whatever type has failed to comply not before an employer chooses to ignore this possibility.

We recognise that evidence of publicity campaigns is not strong but we believe there could be alternative methods and delivery vehicles to improve the use of such campaigns.

Again, properly researched, developed and evaluated action is required.

Powers

23 Do the enforcement powers and sanctions currently available to the existing enforcement bodies provide the right range of tools to tackle the full spectrum of labour market non-compliance?

No

Please explain your answer in the box:

The tools and legislation are sufficient but the key issue is that enforcement is not full enforcement. In our view, the intelligence-led approach effectively condones significant numbers of offender behaviour; in our research, we call this permissive visibility.

24 Should civil penalties be introduced for the breaches under the gangmasters licensing and employment agency standards regime that result in wage arrears?

Not Answered

Please explain your answer in the box:

25 If yes, do you agree with the proposed levels set out in the consultation?

Not Answered

If you disagree with the proposed levels, what levels should these be set at? Please provide your answer in the box:

Supply Chains

26 Should a single enforcement body have a role in enforcing section 54 of the Modern Slavery Act?

Yes

If yes, please explain your answer in the box:

We think so – this was a central factor in Tesco getting rid of informal hand car washes on their car parks. In textiles, it is more complicated because of the complex contractual arrangements that suppliers and buyers put in place.

27 Would introducing joint responsibility would encourage the top of the supply chain to take an active role to tackle labour market breaches through the supply chain?

Yes

Please explain your answer in the box:

Yes, it would but it will impose costs that producers will pass on to the consumer. Take Paul Smith for example, there is a reason why one of his shirts costs £100+ it is not just profiteering rather the firm intimately knows and oversees the supply chain all the way down to individual textile operatives in Italy.

28 Do you think it would be fair and proportionate to publicly name a company for failure to rectify labour market breaches in a separate entity that it has no direct relationship with?

Yes

Please explain your answer in the box:

Here we feel that it is fair and proportionate if the separation of the entity is actually artificial and constructed to protect a firm at the front of the supply chain. Here we can draw lessons from the research and publications on the collapse of BHS under investment vehicles overseen by Phillip Green and Dominic Chappell. These vehicles and the separation of entities within them aimed to enable the Green family and Chappell to extract value from BHS and undermine its business.

3. Clark, I. (2019) 'The British Home Stores pension scheme: Privatized looting?' Industrial Relations Journal published on-line first, August 6th
<https://onlinelibrary.wiley.com/doi/epdf/10.1111/irj.12261>

29 Should joint responsibility apply to all labour market breaches enforced by the state?

Not Answered

Please explain your answer in the box:

It is too complicated to answer a hypothetical such as this one.

30 Would it be effective in all sectors?

Not Answered

If no, which, if any sectors would they be effective in?:

It is too complicated to answer a hypothetical such as this one.

31 Do you think there should be a threshold for the head of supply chain having a responsibility for breaches at the top of the chain?

Not Answered

Please explain your answer in the box below:

As above – here the contract can act as a metric.

32 Do you think embargoing of hot goods would act as an effective deterrent for labour market breaches?

Yes

Please explain your answer in the box:

Yes but embargoes depend on active enforcement across the board, particularly in textiles etc.

33 Would embargoing of hot goods be effective in all sectors?

Yes

Please explain your answer in the box:

Yes but embargoes may be of less utility where goods are perishable unless they are given away to food banks.

34 Should embargoing of hot goods apply to all labour market breaches enforced by the state?

Not Answered

Please explain your answer in the box:

Too complex to produce a single view on in relation to a potentially varied hypothetical.

35 Are there other measures that the state could take to encourage heads of the supply chain to take a more active role in tackling labour market breaches?

Yes

Please explain your answer in the box:

Let them know that enforcement is not a matter of chance and raise the visibility of supply chain relations for the general public, get them interested in where and how goods are produced.