

**Labour Market Enforcement Strategy 2023 to 2024:  
call for evidence**

Submission to the Home Office/Department for Business, Energy & Industrial  
Strategy



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## **Background**

The CIPD is the professional body for HR and people development. The not-for-profit organisation champions better work and working lives and has been setting the benchmark for excellence in people and organisation development for more than 100 years. It has more than 160,000 members across the world, provides thought leadership through independent research on the world of work, and offers professional training and accreditation for those working in HR and learning and development.

Public policy at the CIPD draws on our extensive research and thought leadership, practical advice and guidance, along with the experience and expertise of our diverse membership, to inform and shape debate, government policy and legislation for the benefit of employees and employers, to improve best practice in the workplace, to promote high standards of work and to represent the interests of our members at the highest level.

As the professional body for HR and people development, our members are highly unlikely to be based in organisations operating in high-risk sectors at the more exploitative and deliberate end of the non-compliance spectrum, as many of these won't have a HR function. We therefore confine our responses to those questions where we can bring an informed and evidence-based view based on the insights and experience of our membership.

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

The enforcement of employment rights has become more critical, but also more difficult to achieve, in our contemporary, fast-moving and varied UK labour market. While the structure of employment has changed surprisingly little over the last two decades, the growth in employment overall over this period has seen increasing numbers of people working in low-paid, lower-skilled roles and in non-permanent employment. This has meant there is a growing cohort of working people with little bargaining power in the labour market who are most vulnerable to exploitation.

The challenges of enforcing employment rights have been significantly exacerbated as a result of the pandemic with employers facing a whole range of complex employment relations issues, such as retaining staff, returning staff safely to the workplace and having to make redundancies. Many employers – particularly smaller employers – will struggle to manage these issues and comply with employment law, because of a lack of resources or expertise or both, meaning there is likely to be a surge in the number of workers whose rights are breached. This will lead to further pressure on the UK’s labour market enforcement bodies, tribunals and an increasing proportion of workers who have been treated unfairly and don’t have access to justice or compensation. The pandemic and cost of living crisis is having an unequal effect on many employee groups and individuals at work, particularly those who are already the most disadvantaged.

The CIPD policy paper ‘Revamping labour market enforcement’, published in October 2020, examines these issues in more depth. It draws on a wide range of interviews with expert stakeholders including academics, employers and representatives from employer bodies and trade unions to consider these issues and make recommendations for improving the UK’s system of labour market enforcement.

## **2 & 3) Workforce and Workforce Engagement**

The CIPD [Good Work Index](#) provides an annual snapshot of job quality in the UK, giving an insight into driving improvement to working lives. Each year, we survey around 6,000 workers across different sectors and occupations about key aspects of their work and employment. Data from the 2022 survey, not yet published, shows that:

- Half (49%) disagree and 22% agree with the statement that ‘*I have strong bargaining power as an employee*’ (29% neither agree nor disagree).

## **4) Business engagement**

CIPD cannot comment on the named initiatives set out in the call for evidence but it has worked closely and supported a number of Good Employment Charter type initiatives including those established in London, Manchester and most recently Liverpool. These are well intentioned and can highlight the importance key local stakeholders place on raising good employment standards. However, such initiatives require very effective marketing and to work closely with business support services to



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boost wider uptake and impact beyond the 'good' employers that are naturally attracted to such initiatives<sup>1</sup>. The other issue is that even where employers do engage with these types of charters or standards, there is limited evidence on the extent they help improve practices, particularly where signing to them up is voluntary and/or accreditation is not rigorous.

There is a danger that they can create the impression that action is being taken to raise employment standards when in reality a tiny proportion of the small and medium sized employers that most need to improve how they manage and develop their staff, engage with them or are even aware of their existence.

CIPD's view, based on a number of pilots it has run in different parts of the UK, is that SMEs need access to high-quality bespoke, face to face advice and support on HR and people management if they are to improve their practices in these key areas.

CIPD's pilots showed that the level of people management capability in most small firms is very poor with most struggling to comply with some aspect of employment regulation. It also showed that the transactional people management support typically needed by small firms (such as ensuring there are written terms and conditions of employment or job descriptions in place) can have a positive impact on performance. For example, owner-managers were more likely to report their organisation being better or much better than similar firms in their sector on measures of workplace relations, labour productivity and financial performance after using the People Skills HR support service.

The People Skills service (which provided up to 2 days of free support per firm) was also flexible, providing both transactional and more transformational support (such as management training) depending on what intervention/s were needed in relation to the maturity of the firm. The [evaluation of the pilots](#) suggested that participating firms were more likely to subsequently take action and invest in improving their HR/people management capability as they now understood why this was important to the success of their business.

These pilots highlighted that a flexible, consultancy model of business support is particularly valued by owner-managers of small firms because:

- it's easy to access
- it provides a bespoke diagnosis of the key business challenge small firms face
- it develops targeted, context-specific support or training. In contrast, off-the-shelf business support offers with fixed curriculums and/or those requiring lengthy time investment on the part of business leaders and managers (to either access or benefit from) are unlikely to be as attractive.

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<sup>1</sup> <https://www.mmu.ac.uk/media/mmuacuk/content/documents/business-school/decent-work-and-productivity/GM-Charter-Evaluation-Interim-Report-June-2021.pdf>

## 5) Recruitment

The CIPD [Resourcing and talent planning survey 2021](#), produced in partnership with Omni, explores the impact of Covid-19 and Brexit on resourcing activities. In total, 1,018 UK-based HR/people professionals responded to the survey. The findings show how recruitment difficulties have been exacerbated by the pandemic as well as a sharp drop in the availability of overseas workers. More than a quarter of organisations also report logistical challenges in facilitating socially distanced recruitment processes, for example.

Despite these factors and the growth in unemployment, almost half (45%) of employers believe that competition for well-qualified talent has increased, and a similar number of employers who attempted to recruit had difficulties attracting suitable candidates. The labour market has changed dramatically in recent months, and we are now seeing a growing crisis in hiring, with very significant skills and talent gaps across many roles. Our 2022 UK Working Lives survey of employees shows a level of confidence about career opportunities among a significant proportion of the workforce with more (49%) disagreeing than agreeing (31%) with the statement *“I’d like to quit my job but I feel I have too few options to consider leaving the organisation.”*

Fewer than half (46%) of organisations have a workforce planning strategy based on a robust understanding of current and future workforce needs; 43% tend to take an ad hoc approach to recruitment. Organisations vary considerably in how far ahead they look when planning and taking action on current and future workforce requirements. 28% don’t look beyond six months, while only 13% are planning for over three years into the future.

Other key findings in recruitment trends and practices include:

- A quarter of organisations report it’s more difficult to recruit employees as a consequence of leaving the EU.
- Two-fifths have lost EU employees at least to a small extent.
- Just over a fifth (22%) have responded by reducing their recruitment of EU staff, while 12% have increased virtual working to combat border problems.
- Just over a fifth report, they are reducing their use of contractors due to IR35 legislation.

### **Online recruitment and use of technologies**

Three-quarters of organisations who used technology in recruitment report their use has increased due to the pandemic – 26% to a great extent. 54% use video interviews, 28% online induction processes, 27% online tests/assessments, 24% applicant tracking systems, and 20% onboarding platforms. Those using technology report a number of benefits, the most common being increased accessibility for candidates, although for some this meant increased applications from unsuitable as well as suitable candidates.

Considered use of appropriate technologies can help organisations process high volumes of applicants efficiently, while simultaneously improving the candidate experience and the quality and diversity of hires. Technology should not be

implemented for its own sake, but our findings suggest that there is considerable scope for more effective use of technologies in recruitment. People professionals need to ensure technologies adopted meet the needs of the organisation, have been robustly tested, and provide a fair and inclusive candidate experience.

## 6. Employment models

How to clarify and simplify employment status was one of the key areas of focus for *The Taylor Review of Modern Working Practices*. But it is the issue where the least progress has been made since its publication in 2017.

The CIPD 2020 policy and research paper [Reforming employment status: Building a stronger foundation for employment rights](#) finds that the three categories of employment status undermine people's employment rights and cause confusion for both individuals and employers. It is an overly complex framework, with an excessive reliance on the individual to navigate the confusion and to try to seek redress if necessary through an overworked tribunals system. The evidence presented in the report demonstrates that the negative impact of this dysfunctional situation now outweighs the risks of change. The number of self-employed and so-called 'gig workers' in the UK has grown by over 50% in the past 20 years to around 5 million, with some employers possibly pushing workers into (and misclassifying them as) this form of work. Up to 15% of self-employed are wrongly categorised at the moment, with the most vulnerable being most likely to be misclassified and denied their rights. The loss of rights from employment status confusion had become even more acute in the previous months (up to November 2020). A series of tribunals and court rulings in the UK against 'gig economy' companies such as Uber, City Sprint and Hermes have found that their self-employed drivers in fact fall under this worker category.

A key issue is the difficulty in defining who falls under which category, with a 'grey area' over how to distinguish between self-employed and worker status in particular. The only method of recourse in the event of disagreement currently is for the individual to make a claim for wrongful status and denial of employment rights into an already overburdened employment tribunals system. A CIPD survey found a majority of gig economy workers don't know what their rights are, and 40% don't know where to go to register a complaint.

It is not only workers who are uncertain about the issue of employment status and rights.

According to The HR Dept, which provides HR support to small and medium size firms via a franchise model, most owner managers don't recognise or understand worker status and only use either self-employed contractors or engage people as employees.

Many small and medium business owners rely on advice and guidance from trusted business advisors such as their bank manager or accountant who are also too often unaware of the complexities of employment status and will often direct towards engaging on a self-employed basis, oblivious to the worker status risk.



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This view is supported by data from the CIPD's 2019 Summer Labour Market Survey of 2,000 employers which found that, just 11% of micro firms and 21% of small firms report they employ one or more people on worker status.

Consequently, CIPD has advocated abolishing worker status as a way of clarifying employment status and rights. It would also align status for the purposes of both employment and tax – a Government objective.

Covid-19 and the Government's response to it, including the Coronavirus Job Retention Scheme to help protect employees from redundancy, as well as similar protection to cover the earnings of the self-employed, have further highlighted the inconsistencies and confusion in the definitions of the different types of paid work. This is particularly evident at the lower-skilled and lower-paid end of the labour market as well as in the associated taxation arrangements.

The pandemic has also highlighted the economic insecurity and poverty of millions of low-paid people, irrespective of their legal status. Over 5 million employees and workers earning the minimum National Living Wage (NLW) had only statutory sick pay (SSP) at £96.85 per week to fall back on if they were sick or needed to self-isolate (with the Chancellor's welcome, if temporary, employer rebate introduced in his package of Covid-19 measures). Many female, part-time workers don't even qualify for SSP as their earnings fall below the minimum earnings limit.

## 7. Enforcement resourcing

The CIPD policy paper '[Revamping labour market enforcement in the UK](#)' (October 2020) highlights evidence which finds that the UK has one of the worst labour inspectorates in Europe and that there is a need to boost the number of inspectors and increase the focus on proactive inspection. The paper also emphasised the need for a much stronger focus on supporting employer compliance to help organisations – particularly SMEs - to comply with employment regulation and to drive up employment standards.

At that time, it was assumed the UK would be moving towards the creation of a Single Enforcement Body (SEB). The Government's [June 2021 Response](#) to its consultation confirmed its commitment to create such a body, stating how it '*will make us even better placed to deal with changes in the labour market, through greater flexibility in how to deploy resource and a more intelligence led approach.*' The Government since indicated that the Bill will be forthcoming "when parliamentary time allows" but it was noticeably absent from the 2022 Queen's speech. In the CIPD's view, this omission is [a missed opportunity to better protect workers' rights](#), including by improved labour market enforcement through the creation of a well-resourced Single Enforcement Body.

The CIPD policy paper '[Revamping labour market enforcement in the UK](#)' makes a range of policy recommendations to strengthen the UK's enforcement regime, including in respect of effective resourcing, which remain relevant:



## **Strengthen state and individual enforcement**

- Introduce a well-resourced single enforcement body (SEB) as proposed in the Government's consultation and announced in June 2021.
- Increase the number of labour market enforcement inspectors to one per 10,000 workers.
- The inspectorate function should be set the objective of ensuring 60% of inspections are proactive and 40% reactive, based on an assessment of highest risk workplaces.
- Government should take full responsibility for compensating employees and taking action against employers for non-payment of employment tribunal awards.
- The SEB should be adequately resourced and have the power to make decisions on a range of areas such as employment status where this is in dispute, with Acas tasked to mediate between parties where required.
- Introduce joint responsibility measures to help enforce employment rights in a supply chain. This would mean that the brand name (at the top of the chain) bears a level of responsibility for non-compliance with employment rights found further down its own supply chain.

## **Boost compliance and raise employment standards**

- Double Acas' budget to boost its ability to advise small employers and individuals on people management, workplace conflict and employment rights. Have SEB inspectors allocated on a regional as well as sectoral basis to work locally with Acas and local business advisers, for example, accountants to ensure that local employers and their staff are made fully aware of relevant employment legislation and rights and are supported to deliver them effectively.
- Give Acas the resources to provide a free annual HR 'MOT' to small firms with fewer than 50 staff. This could potentially reduce their liability in any subsequent claim against them at an employment tribunal. However, this would need to be consulted on and developed.
- Government should reinstate the ability for employment tribunals to make wider recommendations to employers to improve their people management practices but this should cover all aspects of employment rights not just equality issues. The employer would be required to work with Acas or professionally qualified HR advisers to improve their people management practices. The SEB or other relevant enforcement bodies such as the HSE or EHRC would be responsible for following up these orders to monitor compliance and have the power to fine employers not meeting their obligations.
- Invest £13m a year in England to provide high-quality HR support to small firms via the Local Enterprise Partnership/Growth Hub network to support efforts to improve compliance and boost job quality and workplace





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productivity at a local level. Provide proportionate funding to Scotland, Wales and Northern Ireland to improve the availability of accessible HR support for small firms across the UK.

- Amend the Employment Rights Act 1996 to enable CIPD qualified HR consultants to sign settlement agreements so as to increase the availability of professional advisers qualified to do this and to lower the cost for individuals.