Good Work Plan: establishing a new Single Enforcement Body for employment rights

Unite the Union response

October 2019

Introduction:

This submission is made by Unite, the UK's largest trade union with over 1.4 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.

Unite supports the coordinating role of the DLME, but we do not support the creation of a single enforcement body.

Unite notes that in the consultation document at pp. 3 and 4, a range of aims is given for a future single labour market enforcement body. It is regrettable that these do not include as an overarching key goal, the enforcement of workers' rights.

We believe that the enforcement of workers' rights, for all workers, across the spectrum of rights, should be clearly articulated as the main objective for any such body. Instead, the key objectives include closer working with '…immigration enforcement, benefit fraud…'. This confirms Unite's view that the focus of enforcement bodies on labour rights has been diverted to the service of an anti-immigration agenda; and that this would continue in a single enforcement body – with the addition of benefits fraud – with no firewall or 'safe reporting' mechanisms to prevent workers who report labour abuses from becoming criminalised due to their immigration status, and also creating fear and preventing workers suffering exploitation and abuse from coming forward.

Unite also notes that there is only one mention of trade unions in the consultation document, and no discussion of the role of trade unions in the upholding of workers' rights.

Unions have an important and substantial role in enforcing employment rights, preventing abuse, and being a first port of call for workers suffering exploitation. The government is obliged to encourage this role to comply with its legal obligations to promote trade unions and collective bargaining under the UN ILO Conventions 87 and 98. This is missing from the consultation document. As Unite state in its response to the Taylor Review on this issue, enforcement of employment rights should be encouraged by the government as part of its legal obligations under these ILO Conventions.

In support of the argument for a single enforcement body, the document cites ILO Convention 81; that labour inspection should be under a central authority. But Convention 81 also says inspectors should be properly resourced. This is not mentioned in the consultation document. The government cannot cherry-pick the parts of an international obligation that suit its agenda. ILO Conventions do not support close working of labour rights enforcement with immigration and benefits

enforcement[1]. Far from it. Research by Focus on Labour Exploitation and others notes that joint working between labour inspectorates and immigration enforcement in the UK undermines the efficacy of UK labour market enforcement with regard to migrant workers.[2]

Section 1. Reforming the current system

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

No. Enforcement bodies face capacity issues at a time when the nature and scale of labour exploitation across the spectrum of abuse is intensifying, while business models used by exploiters are agile and highly responsive to demand. Unite supports measures to encourage better enforcement by state bodies that are properly resourced to do the job, along with additional awards and penalties and including naming schemes.

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

No. There is no guarantee that a single body would be more effective. Effective enforcement requires political will and the resources to match and that will not change with the creation of a single enforcement body.

Measures could be taken that would make the current system more effective. These would be less disruptive and less costly than setting up a single enforcement body together with the consultation's proposed shadow body, a massive expenditure that could be better spent on the existing enforcement bodies.

In the first instance, the government could follow through on its appointment of the DLME by acting on the former DLME's recommendations. Some of the elements that the consultation argues could be delivered with a single body are already being undertaken, such as the pooling of intelligence on exploitative employers.

The proposal for a single body comes at a time when years of public sector cuts have left acute capacity issues in state bodies, including amongst the labour enforcement bodies. The proposal is also being made at a time when Brexit is causing unprecedented economic, political and industrial chaos already. The major upheaval of a merger would be a lengthy additional distraction from work on enforcement because of 'turf wars', redundancies, and a loss of focus. We also draw attention to the experience of funding insecurity of the then GLA at the time of transfer of this body from DEFRA to the Home Office which caused great additional strain. Time

[1] https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C081
[2] Focus on Labour Exploitation, 1 October 2019

should be allowed for these organisations to bed down in terms of their duties – already massively expanded in the case of the GLAA, amongst others – and of the former DLME's strategic plan.

In Unite's view, a single enforcement body is likely to be seen as an opportunity to save money. On page 14, the consultation document states that a single enforcement body 'would mirror other recent organisational transformations'. (Mirroring is not in itself an argument for further 'organisational transformations'.) It then invokes the example of the creation of the National Crime Agency, as 'designed to address the fragmented approach to tackling crime that had resulted from a proliferation of specialist organisations'. However, this particular organisational transformation led to a budget for the NCA that was half the combined budgets of the bodies it incorporated [3],[4].

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

One argument made in the consultation document is that it would provide a single point of access for workers. However, that already exists in the form of the ACAS-run Pay and Work Rights Helpline, though it is under-resourced and under-promoted.

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

In Unite's view a key risk would be the dilution of the distinct and expert roles of the enforcement bodies.

The merger of the three equality commissions – the EOC, CRE and DRC – to form the Equality and Human Rights Commission (EHRC) created a damaging upheaval. It led to a loss of expertise and in-depth knowledge of specific areas. The three bodies became subsumed into a Commission with a more generalised approach to discrimination, with a loss of distinct 'voice' with regard to sex discrimination, gender, race and disability.

The Commissions had greater and deeper engagement with a broad range of stakeholders, including trade unions; in Unite's case, officers served as Commissioners on the Equal Opportunities Commission and the Commission for Racial Equality, and on the ministerial Advisory Committee on Disabled People.

In 2008, in our response to the consultation on the EHRC's strategic plan, Unite observed that the three former Commissions had been the first port of call for authoritative information and expertise for us and for many others. We noted that this was no longer the case; that the expertise of the Commissions had not

[3] https://www.theguardian.com/uk-news/2018/nov/22/uk-organised-crime-can-police-catch-up-national-crime-agency-lynne-owens

[4] https://publications.parliament.uk/pa/cm201213/cmhansrd/cm130213/debtext/130213-0002.htm

transferred effectively to the EHRC. In a separate response that year to the Select Committee Inquiry into the Equalities Bill, we noted that it was essential that every area of equalities be adequately resourced within the EHRC: "Nothing could be more detrimental to the equalities agenda than competition for resources…". We also raised our concerns about the lack of trade union representation in the EHRC's disability committee.

As suspected, not only was every area of equalities in the new Commission inadequately resourced but also the whole Commission was almost decimated by a cut to its budget of nearly 70%, to the detriment of the equalities and human rights agenda. As a result the EHRC became almost the same size as the DRC, just one of the former equality commissions.

Unite does not support this proposal for a single enforcement body as we do not want to see a repeat of the dilution of the distinct and expert roles and the cuts in funding as were forced upon the EHRC, the National Crime Agency and other merged bodies.

We would note also that in an organisation created out of multiple partners, one agency may become dominant in terms of culture, approach, leadership and staffing, leading to a loss of expertise and differentiated approaches. This would be especially the case with a single enforcement body given the diverse organisations involved.

If the government is serious about the enforcement of workers' rights it should sufficiently fund and grant enforcement powers to existing bodies to carry out their functions as intended.

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. Through responses to the DLME and the GLAA Unite has suggested sectors that we believe should be covered by the licensing scheme, and provided evidence in support.

However, the GLAA worker/NGO liaison group was told in 2016 by senior GLAA personnel that new sectors could be licensed only if currently licensed sectors were taken out of the licensing regime – this was described as 'dial up, dial down'. Unite cannot support this.

In our experience, the sectors currently under the licensing regime may remain prone to high levels of labour abuses, for a range of reasons, and this vulnerability is likely to increase amid the chaos of a no-deal Brexit. For example, agriculture and horticulture are sectors licensed under the GLAA due to the high levels of exploitation in the sector. Since the Brexit referendum farmers and growers have become desperate for labour as arrangements built up over years with other EU

countries have fallen apart in the post-referendum climate. The labour shortage increases the possibility of exploitation and abuse in these sectors, despite the licensing scheme. The former DLME rates agriculture as high-risk, despite being a licensed sector, and it remains a sector with a high level of abuse and exploitation.

Unite believes there is a case for extending licensing into new sectors. We take the point made by the DLME in discussions that a sector such as construction has a different structure, with a much smaller percentage of gangmaster operation than in agriculture and horticulture.

But exploitation and labour abuses in sectors such as social care, cleaning, hospitality and construction is endemic, and the cost-cutting abusive practices of exploiters are undermining better employers, as well as having devastating consequences on clients or service users in the care or education sectors. The licensing system in food and agriculture is viewed by stakeholders as having contributed towards a level playing field amongst providers. Other sectors now urgently need the licensing framework and the enforcement powers that go with it.

Unite would welcome the extension of licensing to other sectors. But not at any price – increased enforcement for new sectors cannot be at the expense of 'dialled-down' scrutiny for existing licensed sectors that are still not wholly compliant.

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?**

No. Enforcement of existing regulations in an at-risk sector cannot be instead of licensing. Enforcement of existing regulation needs to be strengthened across all sectors, and there are strong arguments for licensing sectors by extending (not dial up, dial down) across sectors already identified by trade unions such as Unite.

Section 2. Relationship with other areas of enforcement

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

Unite does not believe there should be a single enforcement body.

In section 2.1 of the consultation document, on SSP, it discusses how the HMRC sick pay process has a high success rate. It goes on to say that the system relies on workers being aware of their SSP entitlement, and that there is no proactive enforcement; and that DWP are considering reforms, including options to strengthen enforcement, but it doesn't say what these options are, so without details of this it is not possible to answer this question.

However, the point made in 2.1 about worker awareness of entitlement fits with Unite's experience, that workers' lack of awareness of sick pay and also holiday pay prevents them from taking action on their rights. An additional factor is fear, for example, of losing work or the job if the worker raises the issue. This is a major factor for agency workers and workers on zero hours contracts, according to ACAS[5]. Unite's evidence finds this is the case across sectors, including the public sector amongst outsourcing companies. For the May 2018 consultation on enforcement of employment rights Unite collected numerous examples from its officers where workers were not receiving sick pay for a range of reasons including lack of awareness that they had been deemed to be self-employed and thus not eligible for SSP. This Unite response is attached with this consultation response for reference. The response highlights that the earnings threshold for SSP excludes many workers do not qualify, especially those in insecure employment where income can fluctuate and may not reach the £116 average per week threshold for eligibility.

More publicity about workers' rights is possible without having to set up a single enforcement body. Not only would it mean that workers have more knowledge of their rights, but it would also put on notice those employers who use the absence of information in the public domain to deprive workers of those rights. This applies to SSP. In our view the enforcement on SSP should remain with HMRC to benefit from their accrued knowledge and expertise. Resources for HMRC for widespread promotion of workers' rights to SSP would help raise awareness.

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

Unite does not believe there should be a single enforcement body.

Discrimination and harassment in the workplace needs to continue to be dealt with by the EHRC. As has already been established in this consultation response, current labour rights bodies are already struggling with capacity issues with their existing remits.

Existing enforcement bodies already have a role with regard to discrimination and harassment in the workplace for all protected characteristics. For example, enforcement bodies need to develop heightened awareness of sex discrimination and gender issues with regard to highly feminised sectors such as cleaning, the care sector, hospitality and domestic work. Women in these sectors face specific labour market risks of exploitation, sex discrimination and gender-related abuse and violence that can lead to exploitation; for example, in connection with pregnancy. [6] As part of a five-point plan on women workers, Focus on Labour Exploitation note

[5] www.acas.org.uk/index.aspx?articleid=5234

[6] https://www.barrowcadbury.org.uk/wp-content/uploads/2018/03/FLEX-5-Point-Plan.pdf

that to make gender a strategic priority within an enforcement body, women should be represented at all levels of the organisation, including on the front line and at decision-making level. This may be a particular challenge for enforcement bodies where recruitment has increased from male-dominated organisations.

These tensions within the current enforcement structures have been under-explored, in our view, and there may be an argument for more work on equality issues within the existing bodies. This would suggest that at this point existing enforcement bodies do not have the capacity, expertise or experience to take on the duties currently undertaken by the EHRC, a role carried out extremely effectively by the previous Equal Opportunities Commission, which is now part of this body.

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

Unite does not support this proposal for a single enforcement body.

Unite made a number of recommendations on enforcement of ET awards in its 2018 response to the consultation on employment rights linked to the Taylor Review.

In its response Unite noted the parlous state of the payment of ET awards, based on the 2013 IFF study for BIS. [7]

The study found that:

- only around half (49%) of claimants had been paid in full
- a further 16% had been paid in part
- 35% had not received any money at all
- just over half (53%) of claimants received full or part payment without having to resort to enforcement
- the most common reason for non-payment was that the employer in question was now insolvent (37%). But more than half of claimants giving this reason for non-payment believed the company they had worked for was not trading with a different name or location.

It is difficult to see how a single enforcement body, in and of itself, would improve the payment of ET awards in the circumstances described above.

But there are a number of proposals that would improve awards payments to claimants and challenge the culture of impunity as displayed by so many employers. Unite gave a detailed view of the role of Employment Tribunals, including with

[7]

[7] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/253558/bis-13-1270-enforcement-of-tribunal-awards.pdf

regard to awards, in its response to the 2018 Consultation on enforcement of employment rights recommendations from the Taylor Review. [8]

Unite's response included the following points:

- the Taylor Review proposed the government should take responsibility for enforcing unpaid ET awards.
- HMRC should have the power to recoup unpaid awards from the tax system.
- There is a need to increase the instance and number of cases where penalties are applied and increased awards should be introduced.
- A state agency, preferably the ET arm of HMCTS, should monitor and automatically enforce unpaid awards, rather than rely on complaints by individual workers.
- Insolvency legislation should be amended to ensure the state fully reimburses workers for unpaid ET awards, where the employer has gone into liquidation.
- Directors of companies that have failed to pay ET awards should be barred in future from the position of Director.
- Naming and shaming of employers should take place at the earliest opportunity to maximise effectiveness. Employment Tribunals should monitor for non-payment and publish names of non-paying employers after 42 days, which is the time for appeal.

All of these actions would improve the payment of ET awards, and could be done with existing enforcement bodies and other state agencies.

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

Unite does not believe there should be a single enforcement body.

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

Section 3. The approach to enforcement

12. Should enforcement focus on both compliance and deterrence?

Yes, and resources for both compliance and deterrence should be increased. It is essential that the approach to enforcement includes measures to <u>prevent</u> labour

[8] https://apps.groupdocs.com/document-viewer/Embed/c6edf81db29aeba25640967652eebd208fdc9c6b772ea21974ece5be9e44acd2?quality=50&use_pdf=False&download=True&print=False&signature=zkFIp5YjxLogSEkY1a1iMDngTUM

rights abuses and that there is a coherent and effective relationship between compliance and deterrence.

13. **As a worker, where would [you] go now for help if you had a problem with an employment relationship?**

Acas, TU, CAB, GOV.UK, HMRC, EAS, GLAA, other, I wouldn't know where to go.

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

Through a single body, through a specialist body, through Acas, TU, CAB, GOV.UK, other

In Unite's experience, if there is a recognised trade union, then workers are able to approach their shop steward/union representative. This is why we believe the lack of reference to the vital role of trade unions is a serious problem with the approach being taken. In a workplace without a trade union, there is a range of sources of support, but we are aware that fear plays a huge part in deterring workers from coming forward. Our experience of organising workers most vulnerable to abuse and exploitation, including migrant domestic workers in particular and migrant workers in general, is that they are most likely to contact trusted community support groups in the first instance.

Unite also notes that the framing of both questions 13 and 14 is confusing: a list of unexplained acronyms (workers may not know of Acas but may know of the Pay and Work Rights Helpline); no explanation that TU stands for trade unions; 'problem with an employment relationship' is more confusing than 'problem at work'; and it doesn't give the option of 'lawyer' which Question 15 does. Question 14 puts the single body response first, perhaps to get more 'votes', has the same issue of acronyms, leaves out current enforcement bodies, and doesn't give a 'don't know' option, which arguably would be popular as the question is a difficult one to answer, particularly as the consultation document is unclear.

15. **As an employer, where would you go now for support on how to comply with employment law?**

Acas, GOV.UK, HMRC, EAS, GLAA, Business Association, consultant, lawyer, other, I wouldn't know where to go.

N/A

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

Through a single body, through a specialist body, through Acas, TU, CAB, GOV.UK, other

N/A

17. **Is there enough guidance and support available for workers/employers**? **Y/N, how could it be improved?**

Unite believes that there is not enough guidance and support for workers. Existing enforcement options have a barely visible presence in workplaces and in public, compared with benefits fraud and immigration offences. Trade unions should be given the right to access workplaces to improve the availability of guidance and support.

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

Unite does not believe there should be a single enforcement body.

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

Unite does not believe there should be a single enforcement body.

A single body would not make it easier to raise a complaint. There are steps that could be taken using the current enforcement regime that would make this easier. These would include: increased promotion of workers' rights with a dramatically increased budget for publicity; making calls to the pay and work rights helpline free of charge, rather than the current rate which can be up to 40p a minute – a prohibitive cost for many workers, especially the low paid; increased resources to Acas to ensure it has full capacity both for current and future levels of calls.

There would be an argument for extending the times during which the helpline is open to include evenings and weekends but only with the full agreement of Acas helpline staff and unions.

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

Unite does not believe there should be a single enforcement body.

Unite does not agree that a single enforcement body improve the ability to identify the full spectrum of non-compliance.

We note with concern, under the headings in the consultation, 'Making it easier to raise a complaint' and 'Improving the ability to identify non-compliance', unsubstantiated suggestions about what a single body could achieve that the existing structure cannot. For example, "A single enforcement body would have a more visible and recognisable presence…" – this would only be the case if resources

were increased to publicise this, and if resources were to be available for this, then why not be spending the money now on promoting the existing system?

There is also the suggestion that, "By bringing together the resources of the existing bodies in one place, under one organisation, we would have more flexibility to be able to move resource as required…". By 'resource' it can be assumed that this means 'staff' (we have to assume this as it is amongst the many points in the consultation document that remain vague). The implication here is that in one big enforcement body, staff would be interchangeable between one function and another, regardless of expertise or knowledge; that they could be pulled off complex long-term investigations to help firefight in another part of the organisation. This underlines our earlier point with regard to merged organisations – that the development of a deep level of expertise and effectiveness is undervalued and readily jettisoned to save money and achieve a notional 'synergy' through a merger.

The existing bodies are already cooperating with shared intelligence. No evidence is produced in the consultation document to prove that one single information hub would lead to more easily shared intelligence.

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

Unite agrees with the TUC in rejecting a hierarchy of 'harm'. It speaks of a complete lack of understanding of how breaches across the full spectrum actually affect workers, and how something deemed to be 'lower harm' can have devastating effects on the individual worker.

In the consultation document at pp. 3-4, key potential deliverables are listed. The key objectives include "…increased focus on high-harm cases to disrupt serious, repeated offending." In our experience, there has already been an increased focus of resources and policy focus on the most serious cases. This reflects, of course, the increase in the involvement of organised crime in labour exploitation, including the growth of modern slavery, which has rightly been responded to with appropriate force and powers.

However, this has run alongside a period of deregulation for a 'light touch' on business together with cuts in state funding for labour enforcement bodies of all types. The government has made a political choice to conceptualise labour rights abuses in terms of 'rogue employers', as does this consultation document, which describes a binary world populated by some exceptionally bad employers, while the vast majority of employers are compliant. Unite and other stakeholders do not recognise this framing. In our view, labour abuses run along a spectrum of compliance. Categorising some breaches as 'lower harm' is dismissive of how they affect workers, but also fails to understand how 'lower harm' breaches lead to more frequent and more serious 'higher harm' breaches further along the spectrum. Additionally, the nature of supply chains and many tiers of contracting means that

labour abuse in the chain requires action from employers throughout the supply chain.

We would highlight the view of the former DLME stated in his 2018/19 Annual Strategy:

"I see modern slavery as the extreme end of a continuum of non-compliant behaviour. I am keen to ensure that the links between modern slavery and other forms of labour market exploitation (both in terms of the individuals involved and the conditions that enable it to happen) are recognised so that the whole spectrum of behaviour can be tackled in a coherent and effective manner". [9]

22. Which breaches should be publicised?

None, only prosecutions, more serious breaches above a specified threshold, all

One of the tools for enforcement, the NMW naming and shaming scheme, is currently suspended. In June 2019 government minister Kelly Tolhurst maintained that the scheme was being 'reviewed', and said this was a recommendation by the former DLME.[10] However, the recommendation was for review, not suspension. Conservative MP for Bexhill and Battle Huw Merriman noted that: "I urge [the minister] to keep the name and shame policy because there is no better way of shaming people into compliance". The minister claimed that the 'review' would be concluded in a few weeks, but there is no indication that the scheme has been restarted. The scheme should be restarted immediately and continue to publicise breaches.

Section 4. Powers and sanctions

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?

If resources were increased to enable the existing enforcement bodies fully to tackle the spectrum of labour market non-compliance, it might be possible to comment on whether the range of tools is appropriate. As it is, despite claims from the government of unprecedented levels of payment of arrears to workers and budgets for enforcement (as in the June 2019 House of Commons debate mentioned above), the enforcement bodies are still running to try and keep up with the extent of non-compliance by employers. In addition, the enforcement bodies have duties, powers and cooperative arrangements under the DLME that are still bedding in, and need to be reviewed independently. However, Unite would agree with the TUC proposal that

[9] DLME UK Labour Market Enforcement Strategy 2018/19, May 2018.

[10] https://hansard.parliament.uk/Commons/2019-06-04/debates/BB82B07A-5962-4D0A-B391-BE2BE12EA45D/NationalMinimumWageNamingScheme

the GLAA and EAS should be able to issue civil penalties to employers who breach trigger offences, licensing standards or the Conduct Regulations.

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

Yes – this would increase the range of options for the GLAA and EAS and act as an additional deterrent to employer non-compliance.

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

The former DLME recommended a significant increase in the size of civil penalties and Unite would support this.

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

No. There is no commitment in the consultation document to extra resources to enable a single enforcement body to enforce section 54; in addition, compliance is currently low so the task would be immense.

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

Yes. However, we suggest that the Government reconsider the introduction of joint and several liability. In the UK labour market an estimated 3.3 million people are employed by outsourcing companies, 2 million by labour market intermediaries and a further 615,000 by franchised businesses. In this context, it is clear that the legal accountability framework should reflect the fragmented employment relationships in the labour market. Organisations that rely on people to do work for them must have a legal responsibility to protect their workers' core workplace rights.[11]

The introduction of joint (and several) liability would be a very useful measure, but could be supported by others. We recommend that as well as naming the company, additional details, such as how the lead company's practices have contributed to the abuses, how it failed to take action to address the breaches or terminated the relationship with the supplier as a last resort, could be published.

Joint and several liability would enable workers to bring a claim for unpaid wages, holiday pay and sick pay against any contractor in the supply chain above them. This

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[11] https://www.tuc.org.uk/sites/default/files/Shiftingtherisk.pdf

would encourage contractors to be more diligent in choosing their subcontractors and give them real responsibility for the people that do work for them.

This idea is not novel. The Equality Act 2010 prohibits principal employers from discriminating against or victimising contract workers who are not under their direct employment, while the Posted Workers (Enforcement of Employment Rights) Regulations 2016 provide that a posted worker in the construction sector can bring a claim against the contractor for any underpayment of national minimum wage. Joint and several liability would extend these principles already existent in UK law to all sectors and to the core employment rights.

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. Unite believes it would be fair and proportionate to name and shame a company in these circumstances.

As stated above, millions of workers in the UK are employed via labour market intermediaries or more indirectly through subcontracting and outsourcing. Often these employment practices are adopted in order to avoid the employment law and tax obligations of directly employing a workforce.

Moreover, evidence clearly shows that it is frequently the practices of lead companies that ultimately causes labour rights abuses. The ILO survey of low-level suppliers showed that a lack of systemic written contracts, vague and frequently changing technical specifications, insufficient order placement and lead times, and the market power of buyers, led directly to labour rights abuses.[12]

The survey showed that in all sectors 54% of suppliers have a high dependency risk on a single buyer. In some sectors such as garment and agriculture sectors, the number of suppliers was as high as 75%. This allows buyers a disproportionate say over conditions of sale. Only 17% of suppliers considered their orders to have enough lead time and 39% reported accepting orders whose price did not allow them to cover their production costs due to extreme buyer pressure. Only 25% of suppliers reported that their buyers were willing to accommodate minimum wage increases in their prices.

Pressure on time and cost leads to pressure on capacity, working hours and labour costs, which inevitably filters down the supply chain. Wages are suppressed, working hours are irregular and excessive, and unrealistic performance targets are met with lack of breaks and poor health and safety. This has a negative impact on the labour market overall. Poor employment conditions lead to high worker turnover, reduced

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[12] https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_556336.pdf

productivity, unauthorised subcontracting, in-work poverty, and in the most extreme conditions child and forced labour.[13]

At a minimum, therefore, lead companies should be named for failure to rectify labour market breaches as they are also responsible for employment conditions in their supply chain.

We would also note that the phrase in section 4.4 of the consultation document which states, '…a separate entity that it has no direct relationship with…' seems to invite responses against the DLME recommendation. However, companies at the top of supply chains are quick to respond to non-compliance with their product specifications, however arms-length the relationship (eg. supermarkets have specs that are inches thick for fresh fruit and veg and products that fall short are quickly and harshly dealt with). Where there are public health issues, again with food, the retailer will face adverse publicity and be involved in the consequences of the non-compliance by the companies in its supply chain. They already have to comply with the Groceries Supply Code of Practice, and have compliance officers to deal with these issues with suppliers, so why not labour market breaches?

29. Should joint responsibility apply to all labour market breaches enforced by the state? Y/N, please explain your answer.

Yes. The practices of the firm at the head of the chain can impact on all aspects of the suppliers' actions, and there seems to be no good reason to suggest that some labour market breaches can be attributed to the lead firm while others cannot.

30. Would it be effective in all sectors? Y/N, if no, which if any sectors would they be effective in?

Yes, across all sectors.

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? Y/N, please explain your answer.

No. Put it another way, there is no justification for the head of a supply chain avoiding responsibility. It is inherent in taking on the role of head of supply chain that such responsibilities are undertaken. Failure to do so is irresponsible. If an organisation does not want responsibility it should not succeed in its tender to be head of the supply chain.

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

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[13] https://www.ethicaltrade.org/resources/guide-to-buying-responsibly

Yes.

33. Would it be effective in all sectors?

Yes. We note and agree with the specific concerns raised in the TUC response around medical goods and products, and would agree that further action would be needed to identify how best to address these issues, while ensuring loopholes and unintended consequences are not created.

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

Yes. A strong case is made in the DLME strategy 2018/19 for the threat of embargo to act as a major incentive for compliance in the supply chain. Labour market breaches are high in the UK and this would be an additional tool in the drive to deter non-compliance.

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?

Unite has pioneered with Global Union Federations agreements with multinational companies on corporate global responsibility. Such agreements set down minimum standards required throughout the company and its supply chains across the world. The state can commit to playing its part at the ILO and in other global institutions to support the development of such agreements and to work at all levels to encourage and support implementation and monitoring with the full involvement of trade unions, including rights for unions to access workplaces and have contact with workers without intimidation."

Establishing a system of joint and several liability throughout supply chains for basic employment standards. Parts of UK employment law already provide for joint and several liability arrangements . The TUC is calling for this approach to be extended, so that organisations who use strategies to transfer their obligations to other parties, can still be found liable for any breaches of the core employment rights of the people who do work for them. This would bring the following benefits:

a) Joint and several liability ensures that in phoenixing cases, where company directors put companies into insolvency to avoid their employment and tax obligations, workers would still have a course of action to enforce their rights.
b) Widening liability would ensure contractors are more diligent and careful in choosing their subcontractors.
c) Widening liability would strongly incentivise the lead contractor to risk assess, monitor and tackle potential breaches of employment standards in their supply chains.

d) Joint and several liability may also have the benefit of incentivising the creation of more secure, permanent employment, as fewer contractors are willing to take the risk of working with subcontractors who might create liabilities for them.
e) Full joint and several liability provisions would ensure the enforcement process is transparent and that workers are fully informed of any action taken to remedy breaches of employment standards.

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