

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

Citizens Advice formal consultation response



Summary

Citizens Advice gives people the knowledge and confidence they need to find their way forward - whoever they are, and whatever their problem. Our network of independent charities offers confidential advice online, over the phone, and in person, for free. Last year we helped 2.6 million people in person, by phone, email or webchat. Our advice website had over 25 million visits, with 34 million pages viewed.

In 2018/19, Citizens Advice helped more than 140,000 people with issues relating to employment. Millions more have accessed our employment advice online. We therefore have a detailed understanding of how the labour market is changing and the implications this has for the lives of workers.

We are pleased to respond to the government's consultation on creating a single enforcement body for employment rights and we strongly welcome the intent to establish such a long-needed body. Our key recommendations are:

- The new body must be able to adapt to changes in the labour market. This means the Secretary of State must be able to alter its remit appropriately through secondary legislation.
- In addition to the functions of the current enforcement bodies, the initial remit of the organisation should include enforcing holiday pay, Statutory Sick Pay, the payment of tribunal awards, and the correct allocation of employment status.

We have called for this innovation for over twenty years. The creation of this agency will mark a genuine step forward for workers' rights in the UK. It will make enforcement far easier for workers to navigate, by providing a single point of contact for all issues, and is an opportunity to extend and strengthen the public enforcement of employment rights.

Establishing this body is crucial to the success of the wider Good Work Plan. The Plan proposes many important improvements and clarifications to workers' rights, but it will only be successful if changes in the law result in changes in practice. Rights are only as strong as your ability to enforce them.

Because of this, we support the proposal that the new body expands the remit of current labour market enforcement. It's important, though, that adequate additional resources are committed to any new enforcement areas in order to ensure that both new and existing areas have sufficient resources to be effective.

This response is based on the following evidence:

- Data gathered through our network of local Citizens Advice offices throughout the country
- A survey of people seeking help with employment problems via our website.¹

¹ Survey ran from April to September 2017, base = 903

Section 1: The need for a Single Enforcement Body

Consultation Questions

- 1. Is the current system effective in enforcing the rights of vulnerable workers? NO**
- 2. Would a single enforcement body would be more effective than the current System? YES**
- 3. What do you think would be the benefits, if any, of a single enforcement body?**

The current enforcement system is not working for all workers. The creation of a single enforcement body for employment rights would significantly improve the current system.

The current enforcement system is not working for all workers

Unfair treatment at work is common in the UK. In 2018/19, Citizens Advice helped more than 140,000 people with nearly 220,000 employment problems. These included 17,000 sick pay issues, 8,200 issues with paid holidays and 6,800 cases of other unlawful deductions from wages.

The cases we see are often examples of employers' failure to fulfil workers' basic legal rights. Our advisors' experiences are underlined by population-wide estimates of these problems. Across the country, 439,000 people were paid less than the minimum wage last year. This means almost 1 in 4 (22%) workers eligible for the minimum wage aren't receiving the pay they are entitled to.²

1.8 million British workers are missing out on holiday pay per year - leaving affected workers £1,000 worse off on average.³ Our research indicates that up to 460,000 workers may be falsely self-employed, and therefore don't receive the holiday, sick, and maternity pay from their employers that they should.⁴

Rights are only as strong as your ability to enforce them. While most employers obey the law, the evidence shows that far too many still fail to fulfill their basic legal obligations.

This indicates that the current enforcement system is not working as it should, for many of the reasons set out in the consultation document:

² [National Minimum Wage: Low Pay Commission Report 2018](#). Figures include both National Living Wage (NLW) and youth rates

³ N. Clark, E. Harman [Unpaid Britain: Wage Default in the British Labour Market \(2017\)](#), p.22; note: this figure refers to the value of time worked when workers should have been receiving holiday pay.

⁴ Citizens Advice, [Neither One Thing nor the Other how reducing bogus self-employment could benefit workers, business and the Exchequer](#) (2015)

- We agree that the fragmented nature of the current system ‘makes it difficult for both workers and employers to know where to go for help’. Workers who have problems are faced with seven different local and national agencies, all of which cover either different types of rights or different types of employment. It is therefore no surprise that some of the interviewees in our research said that the absence of a clear first port of call left them feeling that they “didn’t know where to start the conversation”. Nearly half (45%) of survey respondents who didn’t take their problem forward said that it was because they didn’t think anyone would be able to help.
- Having such a variety of organisation also ‘limits the visibility of the work of the bodies’. Our own research shows that awareness of the individual bodies is low amongst the people they are supposed to help. Almost three out of ten (29%) of our survey respondents couldn’t name a single enforcement agency.⁵ Only 11% of respondents were aware of the HMRC NLW compliance team, 6% of the Employment Agency Standards Inspectorate (EAS), and 5% of the Gangmasters and Labour Abuse Authority (GLAA).
- The disjointed nature of current enforcement responsibilities contributes to a lack of intelligence sharing and horizon scanning across the sector. This is particularly relevant because employers who fail to fulfil their obligations in one area of employment law are often failing to fulfill others. For instance, more than a third (37%) of our survey respondents had more than one problem. In a more integrated system, workers who seek help from an enforcement agency about one type of problem could supply vital information about other issues in their workplace.

Creating a Single Enforcement Body will be an important boost to public enforcement activity

But, in addition, the current situation creates a situation where workers’ access to public enforcement is both uneven and ultimately inadequate. All employment rights (apart from some health and safety cases) in the UK can be pursued by individuals or groups of workers through an Employment Tribunal. Only some of these rights are enforced publicly (i.e. by the government through enforcement agencies).

Employment tribunals are an important route to redress, which all workers should be able to access. However, the number of claims made through this process is vastly smaller than the estimated scale of employment problems. For instance, only 24,000 cases of unlawful deductions of wages, a category that includes withholding holiday, sick and maternity pay, were notified to tribunal in 2017/18 - despite the fact that 1.8 million workers are estimated to not be paid holiday pay alone.⁶

⁵ Prompted question.

⁶ HMRC, [*Tribunal and gender recognition certificate statistics Quarterly: October to December 2018*](#)

This disparity is not surprising. Taking a case to Employment Tribunal can be a long and involved process, which the tribunal service estimate can last over 6 months.⁷ With the exception of discrimination cases, no legal aid is available.⁸ Many people will be unable to go through this process without support.

Furthermore, the tribunal system relies on individuals taking action against their employers. Many workers will be unwilling to do this because they fear the repercussions. Our survey found that 34% of respondents who did not seek help said that they feared losing their job, and 31% said that they thought they would be labelled as troublemakers.

Public enforcement is a crucial part of addressing the imbalance of power between workers and employers. As the Taylor review itself noted it is particularly important for the most vulnerable workers, who are “working in environments where the balance of power sits squarely with the owner or manager”.⁹

However, as mentioned above, public enforcement is not currently available for many types of employment problems and the powers of the individual agencies vary considerably. For instance, while some agencies can recover money for workers who complain, in other cases workers still have to pursue the money they are owed through Employment Tribunals.

Beyond their handling of individual complaints, not all agencies can take proactive action to raise standards. For instance, while the HMRC Statutory Sick Pay team can resolve individual complaints, it does not have the powers or resources to conduct targeted inspections of employers, or raise awareness among employers or employees.

The government has already recognised some of the gaps in the current landscape by committing to publicly enforcing holiday pay for the first time. The proposed Single Enforcement Body is an opportunity to both extend the rights which are publicly enforced, and harmonise the powers available to enforce them. This will create a system that is far easier for individuals to navigate and ensure that vulnerable workers are supported by the state when challenging illegal practices.

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

We support the proposal to create this body and believe that there are few risks which specifically relate to incorporating the existing enforcement bodies and powers into a new body. What risks that do exist mostly relate to the transition and we welcome your

⁷ HMCT’s guidance states that a claim that needs a hearing will take an estimated 30 weeks ([Your Claim: what next?](#)). This does not include the early conciliation process which can take another month.

⁸ Legal aid has never been available for representation at tribunal, but before 2013 it was available to help workers establish whether employees had a case and to help them prepare.

⁹ [Good Work: The Taylor Review of Modern Working Practices](#)

proposals to set up a shadow body to mitigate these risks. The long run benefits of an enforcement body, in our view, far exceed the short run & mitigatable transition risks.

To be successful it is crucial the organisation should have adequate resources, powers and profile in order to succeed in its brief. If the body is not able to ensure that action is reliably taken when people report problems, we may see similar levels of disillusionment from workers as we see in the current system.

The consultation document notes that “resource for enforcement would be maintained”, which we welcome. However, if (as we support) the body is to extend its remit to include areas such as holiday pay enforcement and regulation of umbrella companies, it will require additional resources in order to meet this new remit and ensure existing areas of enforcement are not under-resourced.

Maintenance of existing enforcement powers will also be important in ensuring effectiveness. For example, the National Minimum Wage unit in HMRC can currently access employer tax data. This power makes enforcement action easier and less resource-intensive - for the single enforcement body to be effective, this ability to share and use data in this way would need to be maintained.

It is also crucial that boosting public enforcement is not seen to decrease the importance of access to Employment Tribunals. Tribunals will remain a crucial route to redress for most employment problems, and there are many cases which can only be resolved through the detailed determination of facts in court. We therefore welcome the proposal to include the enforcement of tribunal awards within the remit of the new body (see below for more details), and hope that this reflects an intention that public enforcement should complement the work of tribunals, rather than replace them. We also believe that data sharing between tribunals and the SEB should allow the SEB the option of opening wider investigations into employers who they believe may be systematically non-compliant.

We are concerned about the proposal in the consultation document that the new labour market enforcement body should work closely with other enforcement bodies, including immigration and benefit fraud enforcement.

For this organisation to succeed, it is vital that vulnerable workers trust that they can report an employment problem safely. This will be harder to achieve if the body works closely with other organisations that vulnerable workers might already distrust or have negative experiences of. In 2018/19, 28% of all the people we helped about an employment issue also saw us about a benefits issue in the same year, suggesting a significant overlap between vulnerable workers and those receiving or applying for benefits. Forthcoming Citizens Advice research finds that disabled benefits claimants often do not believe the benefit system treats people with dignity and respect. It's important that the design of the new enforcement body does not allow workers' distrust of other services & enforcement bodies to disrupt the success of this one.

If people believe that reporting employment problems could throw doubt on their, or their colleagues', immigration status or benefit entitlement, the body will not be trusted to receive reports of employment problems. Additionally, the GLAA's guidance highlights that being 'threatened with being handed over to authorities' is a key indicator of labour exploitation.¹⁰ Coordination between labour market and immigration enforcement risks increasing the perceived credibility of such threats, and therefore would be counter-productive.

¹⁰ GLAA, [*Labour Exploitation: Spotting the signs*](#)

Section 2: Remit of the new body

The consultation document makes several proposals about the remit of the potential new body. Before considering these in detail it is, however, important to emphasise that the new body must be able to adapt to changes in the labour market if required.

The government's Good Work Plan, which the new enforcement body is part of, was partly created in response to the growth of non-traditional forms of employment.¹¹ As the nature of work continues to change new challenges are likely to arise, and it will therefore be crucial that the new enforcement body is able to adapt. We would therefore propose that the remit of the body should be reviewed frequently, and that the Secretary of State should have powers to add areas of responsibility without passing primary legislation.

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

Statutory Sick Pay should be included within the body's remit. Citizens Advice helped with over 14,000 Statutory Sick Pay problems in 2018/19, substantially more than both holiday pay and minimum wage problems combined. There is a clear need for stronger enforcement activity.

The HMRC Statutory Sick Pay team only provides a dispute resolution service and are not a body which can undertake proactive investigation. Although this process provides a useful alternative to going to Tribunal, it has similar flaws. The process relies on individuals taking action, who may not be aware that they are not receiving their legal entitlement and to be secure enough to publicly challenge their employer.

In our experience of helping people with these problems, the ways employers avoid paying statutory sick pay are often systematic and are mostly likely to affect workers in insecure work. For example, many workers who have irregular shift patterns or a low number of minimum contracted hours report that employers' avoid sick pay by temporarily taking them 'off-rota' for the duration of their illness.¹² Workers in such circumstances are both likely to be unsure whether what their employers are doing is illegal, and feel unable to challenge the practice for fear of losing more hours in the future.

Case study

Alex started a new job as a delivery driver, but became very ill a few months later. They were signed off sick from work and provided their employer with sick notes.

Despite Alex being entitled to Statutory Sick Pay (SSP), Alex's employer provided

¹¹ [Good Work: The Taylor Review of Modern Working Practices](#), 2017

¹² Citizens Advice, [Sharp Practice at work: Sick Pay](#), 2017

incorrect information to HMRC which made it look like they hadn't earned enough to be eligible. The employer then told Alex that they had to resign from their role or they'd be fired.

Alex had the bank statements and pay slips that proved their eligibility to SSP. However, their employer had kept hold of their sick notes, which meant they couldn't open a dispute with HMRC on their own.

A Citizens Advice adviser contacted Alex's employer on their behalf and was able to acquire the sick notes. Nearly two months after the period of sick leave, Alex was able to open a dispute against their employer to receive the sick pay they were entitled to.

We welcome the government's plans to extend and strengthen the Statutory Sick Pay system, but these proposals will be most likely to achieve their desired ends if they are backed up with a strong enforcement regime through the new single enforcement body.

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

Given the wide scope and existing expertise of the Equality and Human Rights Commission, we agree that it should maintain its current role in enforcing equality in the workplace. Discrimination cases can require a complex determination of facts and will often be best decided through the employment tribunal system. Supporting such actions may be best undertaken by an independent body dedicated to furthering equality.

However, equality should be central to the work of the new body and built into its design. It should have an explicit mandate to secure compliance with rights under the Equality Act in relation to core workers' rights, working directly with the EHRC when necessary. Dedicated equalities specialists with equality expertise should be part of its workforce.

We also note that the consultation does not mention any equality impact assessment having been conducted. We hope this will be done at an early stage, and the findings integrated into the body's design.

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

We strongly support the single enforcement body taking on the BEIS ET penalty scheme, and believe it should have powers to investigate companies which persistently don't pay. Non-payment of Tribunal Awards is a long standing issue which Citizens Advice has frequently highlighted.¹³ Failure to pay awards immediately not only adds to the effort

¹³ Citizens Advice, *The cost of a hollow victory*, 2013

and time it takes to make a successful tribunal claim, it also fundamentally undermines trust in the tribunal system.

Case study

Hanna was employed by a limited company in the hospitality industry, but she quit after her employer didn't pay her wages two months in a row.

Hanna then took the employer to an employment tribunal. She won, and they were ordered to pay Hanna the money she was owed. However, the tribunal system couldn't force the employer to pay, so Hanna took them to County Court. The court also ruled in Hanna's favour, and employed bailiffs to help her get the unpaid wages.

The employer agreed to pay Hanna what she was owed over two months, but when the first payment came it was less than a third of what had been agreed. The employer then stopped communicating with the bailiffs, and the court told Hanna that there was nothing else that they could do.

Several months after Hanna was first denied her wages, the employer's company went into liquidation and the court debt was written off. The employers set up a new limited company, working in the same way at the same venue, but Hanna never received most of the money that she was owed.

The most recent comprehensive study of the problem in 2013 showed that only 53% of awards are made without the complainant having to take further action, and 35% are never paid at all.¹⁴ Since this study a system of naming and shaming non-payers and the BEIS penalty scheme have been introduced. These were welcome developments, but no assessment so far seems to have been made as to whether they have been effective in increasing prompt payment.

The new enforcement body should urgently review whether the current schemes are increasing payment timeliness and introduce a more proactive enforcement regime if they are not. Evidence from the 2013 study indicates that investigative powers may be necessary. The most common reason (37%) given for non-payment of awards was that the company had gone insolvent, but over half of claimants giving this as the reason believed that the company they had worked for was now trading again under a different name or at a different location'.¹⁵ Timely and effective enforcement of tribunal awards may help ensure that workers receive the money they're owed before a company's insolvency prevents enforcement from being possible.

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

Yes

The new body should also have responsibility for ensuring businesses are using the correct employment status for the workers concerned, and fulfilling the responsibilities

¹⁴ BEIS, *Payment of tribunal awards*, 2013

¹⁵ Ibid.

that come with the status. Non-traditional employment, including agency work, zero hours contracts, and self-employment has grown significantly over the past decade.¹⁶ These employment types can be beneficial for some workers, but can also be used incorrectly to deny people core employment rights.

Most notably bogus self-employment - the practice of telling workers they are self employed when the legal tests would likely define them as employees - denies those affected sick, holiday and maternity pay.¹⁷ In 2015, we estimated as many 1 in 10 people who believe they are self employed may actually be employees.¹⁸

The government's Good Work Plan contains commitments to legislate to improve the clarity of employment tests in general, and to tackle the misclassification of self employed people in particular. The single enforcement body could play an important role in ensuring these changes are properly implemented through both compliance and enforcement activity.

¹⁶ Citizens Advice, [Sharp Practices at Work](#), 2016

¹⁷ Citizens Advice, [Neither one thing nor the other](#), 2015

¹⁸ Ibid.

Section 3: Enforcement Approaches

Question 12. Should enforcement focus on both compliance and deterrence? Yes

We support the use of compliance approaches alongside more proactive deterrent activities. Employment law can be complicated, and in many cases it will be more appropriate to support (especially small) employers in understanding the law rather than leap straight to punitive action for 'lower harm' breaches.

We also welcome the flexible approach taken to defining 'lower harm breaches' and commitment to review the definition. The consultation document explicitly notes that this may be difficult to define a lower harm breach as "it can be difficult to establish whether a breach has been accidental or deliberate". Although this distinction is highly relevant to selecting an enforcement approach, it should not be the sole determining factor. Employment breaches can cause workers considerable distress even if employers are making the breach more out of ignorance than malice - breaches which cause significant financial or other harm to workers should not therefore automatically be considered for a compliance approach.

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

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

We agree with the proposal that the single enforcement body should provide advice to employers in high risk sectors. This would be one of its most important roles, and an opportunity to drive improvements in labour market practices *before* they affect individual workers.

The places where individual workers go to for initial advice are likely to be more diffuse. As said above, the creation of a single body will bring much needed clarity to the enforcement landscape, making it much easier for workers to know where to report breaches directly. However, many individuals will turn to other organisations initially - such as unions, community groups or advice agencies - either because they have an existing relationship or because they were not aware that the problem they were experiencing actually involved an employment breach. Citizens Advice clients who have employment problems have often initially come to us about something else. For example, a review of someone's finances to deal with debt may reveal that they are not being paid the minimum wage.

Given that the body is designed to help vulnerable workers in particular, it will be crucial for the agency to develop relationships with other frontline services and community groups. These groups will already be in contact with the communities most likely to be experiencing employment problems, and crucially most likely to be trusted by them. The single enforcement body will therefore need to develop clear pathways from all

places where people are likely to turn with their initial problem through to the enforcement body. However, given the loss of legal aid for most employment cases since 2013 it is important to ensure organisations delivering employment advice in the community are adequately resourced.

Citizens Advice have experience of developing pathways to enforcement through our work as statutory consumer advocate in energy and postal services, and operation of the general Consumer Service. From this we have learnt that coordination between advice giving agencies and enforcement bodies is crucial. First, in order to ensure that clients have as smooth a journey towards enforcement as possible - making it clear when a breach has been reported while minimising the amount of times they have to submit the same information. Second, because combining intelligence from client focusing organisations and enforcement bodies is the most effective way of creating a genuine intelligence map.

A good example of this is the tripartite agreement in the energy sector. This is an agreement between the consumer advocate/advice provider (Citizens Advice), regulator (Ofgem), and dispute resolution scheme (Ombudsman Services: Energy). It includes an agreement to share data in standardised formats, which is used as the basis for both public rankings of providers (our energy star ratings) and enforcement actions. The advice landscape for employment is likely to be more complicated, but similar agreements could and should be reached between the new body and other frontline organisations.