



## THE ASSOCIATION OF RECRUITMENT CONSULTANCIES

Matthew Taylor  
Modern Employment Review

by email only to [modernemploymentreview@beis.gov.uk](mailto:modernemploymentreview@beis.gov.uk)

Thursday 11th May 2017

Dear Mr. Taylor

### **Gig economy and employment status issues**

We provided some evidence to you in November 2016 on the gig economy. I am now writing to you more specifically on the issue of employment status. The Association of Recruitment Consultancies (ARC) has long campaigned for modernisation in this area and I want to share our thinking with you.

I have attached a brief resume about us so that you have some idea of the work I and our team have undertaken with government departments over the years. References to 'AWR' are to the Agency Workers Regulations 2010 and references to 'CREgs' are to the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

Our first point is about joined up thinking. Whilst I understand that your brief excludes tax issues it seems to us that employment status and payment of tax and NICs are often connected particularly when it comes to temporary work. We are concerned that a review in one area may not translate into the other and in terms of our industry and employment generally what is required is the formulation of a single cohesive policy that addresses all the status issues. We believe that the number of cases in the Employment Tribunal and higher courts each year evidences that the lack of clarity in relation to definitions in the law itself is central to a growing problem. The lack of consistency with tax law, which often uses variables adopted by the tax authorities based upon employment law principles, adds to this and together simply serves to create ambiguity and confusion. The emergence of the gig economy, which thrives on ambiguity in status for employment and tax purposes, is just one manifestation. Tax status and employment status are inexorably linked.

We believe that 'supervision', 'direction', 'control' and 'mutuality of obligation' as tests for establishing whether there is a certain employment or tax status, and indeed the approach taken by the Courts based on these principles, have all had their day and are no longer fit for purpose. Their continued existence provides uncertainty for all concerned and clogs up the Courts and tribunals as each case is invariably nuanced and fact and detail specific. In respect of rights entitlement, we respectfully suggest there could be an entirely new approach that provides clarity and thus the related rights. Perhaps if definitions are modified in the practical way I suggest below, there would be little need for rights to be varied.

The exact conditions that would distinguish one status from another would have to be set out but we believe that this approach could result in a simpler, fairer system for both workers and businesses which is not reliant on outdated tests. Modernisation along these lines could demonstrate our society as progressive and realistic.

This vision is something I would value the opportunity to discuss with you, not least because your review has taken on additional weight in the light of the dissolution of parliament and its committees in advance of the general election. If you think that there is merit in exploring this further I would be happy to discuss some ideas on detail.

There is one other issue that I want to draw to your attention, relating to the Apprenticeship Levy. Currently agencies with a payroll in excess of £3m pay the levy into their fund, yet their hirer clients cannot access monies in that fund. Thus hirers who are inevitably charged the levy by their supplying agencies, so paying the levy in practice, do not achieve the benefit.

We suggest that agencies can transparently charge the fund element to their hirers, and the hirers use the invoice as a credit for their own training purposes. Given that agencies are unlikely to use the fund for their own internal training purposes, since there is little demand in the agency sector, a connection can be made, agencies could promote apprenticeships to their hirers potentially opening up a better take up of training as a result.

Again I can provide you with the detail of a proposal we have presented to the government levy coordinators, and their response that avoids the proposal, if you would find that helpful.

With kind regards  
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