

Margaret Beels
Director of Labour Market Enforcement
Department for Business, Energy, and Industrial Strategy
1 Victoria St
SW1H 0ET
BY EMAIL TO: LMEDirectorsoffice@beis.gov.uk

5th January 2023

Dear Ms Beels,

I write further to your office's invitation on the 7th December 2022 to update you on recent impacts on the labour market of changes to the economy since our submission in May 2022, a copy of which I attach for ease. We confirm that our May submission remains relevant to your delayed strategy, but we wanted to update you on the developments below to also be incorporated into our submission.

APSCo research – A skills short market Since May 2022 the candidate and skills short recruitment market has significantly worsened in key sectors including clinical healthcare. There needs to be a better approach to how talent is sourced into the clinical healthcare sector as well. The current inflexibility around framework requirements will only continue to limit the available pool of workers, which will exacerbate both the reliance on agency staff to fill immediate gaps and budget restraints caused by reliance on agency staff.

Our APSCo November 2022 monthly trend research suggested a slowing labour market for both permanent and contract vacancies year on year. However this follows a significant spike of over 50% between 2020 and 2021 and permanent placements continue to be significantly higher than at any time since January 2017. Contract placement levels remain at similar levels to those last seen in the second half of 2019. In regard to vacancies, permanent vacancies are now lower than 2019, whilst contract vacancies remain high, suggesting employers are turning to contractors as they cannot fill permanent placements. Our trends data remains indicative of a skills and candidate short market.

Government initiatives to improve the skills of the domestic labour force such as T levels and flexi-apprenticeships are failing to have sufficient impact. There needs to be a new coordinated approach to expanding the use of the apprenticeship levy to include flexible, modular training and an additional focus on regional hubs and centres of expertise. APSCo would like to see greater incentives and support for employers over the long term to improve participation by recognising the monetary and organisational commitment required by an employer to support a student.

Tier 2 visas and visa for skilled self-employed Unfortunately our members report difficulties accessing Tier 2 visas due to very long processing delays as well as cost and we continue to ask for a highly skilled visa that does not require employer sponsorship to bring in the expert independent workers the domestic market needs.

Employment Bill We were very disappointed to note the government's intention to shelve the Employment Bill and the introduction of the Single Enforcement Body as stated by the BEIS Secretary of State Grant Shapps when giving evidence to the BEIS Select Committee on 13th December. The introduction of changes by way of supported private members bills is piecemeal and falls far short of the reforms promised by the Good Work Plan.

Flexible working The Government is proceeding with the day one right to request flexible working. There is the possibility that these changes will lead umbrella workers – who are employed

by the umbrella company – to access day one rights to flexible working due to their status as employees with overarching contracts. While at the time of the consultation BEIS indicated that it did not intend to include agency workers who are by definition flexible and did recognise our concerns on umbrella employed workers and their status, we are concerned as to what specific measures have been put in place to address this, whilst offering such workers some flexibility. The concern of APSCo members is that day one rights will result in a disorganised transfer of many hundreds of thousands of employed umbrella workers from employment into worker contracts, with the corresponding loss of employee benefits, to manage the impact of the legislation.

EU Reform Bill The Retained EU Law (Revocation and Reform) Bill (the EU Reform Bill) risks damaging workers' rights if measures such as the Working Time Regulations, agency worker rights, data protection rights and holiday pay are not incorporated into UK law in time. However, it is also an opportunity to review whether the law is fit for purpose for the modern flexible labour market.

As an example, the application of the law in respect of holiday pay and leave for agency workers set out in the Working Time Regulations and accompanying case law, is not fit for purpose for the flexible agency worker sector. The "rolled up" holiday pay methodology accompanied by robust process to ensure agency workers take leave, as used for practical reasons by many in the sector, is fair to the worker and ensures that non reputable recruiters or umbrella companies do not withhold holiday pay, extract it as dividends or spend it on other costs, such as VAT payments.

There are examples where money is wrongly kept by the engager or is no longer there when the worker requests leave, requests payment at the end of an assignment or in the worst case when the engager liquidates. The current state of case law following the Supreme Court decision in Harpur Trust v Brazel [2022] UKSC 21 is starting to distort behaviour in the marketplace. For example agencies are terminating workers, issuing P45s in-between assignments, to seek to mitigate the holiday pay risk. The EU Reform Bill is an opportunity to put more appropriate regulation in place and APSCo are keen to be involved in reviewing alternative approaches.

Umbrella market The Umbrella employed market continues to be a source of concern for our members. Government must be ambitious and futureproof the legislation, considering licensing of the umbrella market, the mandatory use of client accounts as well as the introduction of statutory compliance codes. Tackling rogue umbrellas needs to be a priority for HMRC and BEIS to ensure the recruitment landscape is fair and works for all.

I would be pleased to discuss any of the issues raised in this letter so please contact me if this would be helpful.

Yours sincerely,



Tania Bowers

Global Public Policy Director