Introduction

The Recruitment and Employment Confederation (REC) is the professional body for the UK’s recruitment industry, with 3,300 recruitment businesses and over 10,000 individual recruiters in membership. REC members provide people to work in every sector of the UK economy.

All our members must abide by our Code of Professional Practice and must pass a compliance test to enter and remain in membership every two years. We also run a complaints function and can take complaints from agency workers, work-seekers, employers or members of the public about our members. The REC is committed to raising standards throughout the recruitment industry.

We welcome the opportunity to submit evidence to this inquiry into sexual harassment in the workplace which has risen up the corporate and government agenda in recent months. It is clear that this is an issue that affects many workplaces - from prestigious industries to low paid sectors. Urgent action is needed from employers and the government to tackle this and the wider issue of harassment in the workplace. We were pleased to feed into the forthcoming Equality and Human Rights Commission report on sexual harassment and look forward to working with them and other organisations to raise awareness of this issue.

We feel it would be useful for us to provide information to the committee on the following:

- The legislation which employment businesses and agencies are required to comply, particularly those provisions which have a bearing on how employment businesses may deal with a complaint about sexual harassment from an agency worker.
- The work of the REC to promote agency work engagement and good recruitment practices amongst employers and recruiters.

Our recommendations can be summarised as:

- Given the tripartite nature of agency work, it is important that both employment businesses and their clients have procedures in place that allow them to address complaints about harassment (this should cover sexual harassment and other forms of harassment) that involve agency workers as well as their own directly engaged staff.
- Official guidance from the government on harassment or other employment related matters needs to acknowledge that employment businesses are often employers of agency workers and so have obligations under recruitment specific legislation.
- It is important to acknowledge the distinctions between certain types of temporary work. Agency workers have specific rights but often are mixed up with gig or zero hours workers in the public debate. This can lead to uncertainty and confusion. When people don’t understand their rights, it means they risk accepting inappropriate or even unlawful treatment at work and when work-seeking. We have produced an agency workers’ rights factsheet to help inform agency workers.
- Employers and agencies should put the recommendations of our report Tune into Temps into practice to ensure a positive working environment for agency workers. Above all, we call on both agencies and host organisations to ensure that agency workers are treated at all
Section one: Industry specific legislation

It is useful to consider specific provisions in the regulations that govern the recruitment industry when considering how recruitment businesses deal with complaints regarding sexual harassment.

Employment agencies and employment businesses are governed by recruitment specific legislation – the Conduct of Employment Agencies and Employment Businesses Regulations 2003, which are made pursuant to the Employment Agencies Act 1973.

Recruitment businesses can be divided into two areas – permanent recruitment and temporary supply. Businesses that do either or both of these functions are typically referred to as ‘agencies’ but they do have specific legal definitions:

- **An employment agency** carries out permanent recruitment, meaning that they introduce candidates to clients for the client to engage directly. After the candidate is engaged, the employment agency pays no further role in the process.

- **Employment businesses** supply engage temporary workers and supply them to work for clients under the client’s supervision and control.

Typically employment businesses engage workers on contracts for services, (contracts under which they provide their services personally). Some employment businesses use contracts of employment meaning that their agency workers have full employment rights.

In either case, for the purpose of the Equality Act 2010 (the Act), the employment business is an employer and the agency workers are employees (under the wider ‘employee’ definition set out in the Act). They are also subject to the provisions that apply to ‘employment service providers’ in the Act.

The Conduct Regulations require employment business to obtain certain information from a client to enable them to select suitable candidates. This includes obtaining information about any risks to health and safety known to the client and what steps the client has taken to prevent or control such risks. This information must be provided to the agency worker at the time that he or she is given information about the assignment.

An employment business is also required to take such steps as are ‘reasonably practicable to make sure that it will not be detrimental to the interests of the agency worker or the client for the agency worker to work in the particular role, before the agency worker is introduced or supplied to the client.

If during an assignment the agency workers raises a complaint to the employment business about sexual, or indeed any other unlawful harassment, the employment business, should, taking into account all of the obligations set out above, take steps to:

- Raise the matter with the client.
- Investigate the complaint. If the allegation is made against an employee of the client, for practical reasons, this will require the cooperation of the client.
In circumstances where the client, for example, does not cooperate with the employment business to investigate the complaint, ultimately, the employment business will have to make a decision as to whether it is appropriate to continue to supply the agency worker to that particular client.

In some cases it may be appropriate for the employment business to withdraw the agency worker from that assignment, not because of any wrongdoing on the part of the agency worker, but more so because it has not been possible to ensure that the harassment will not continue.

The employment business should certainly seek to find an alternative assignment for that agency worker so that he or she does not suffer any further loss. Moving forward, it will also have to consider its obligations under the Conduct Regulations, if the client makes a request for further staff to be supplied—particularly in determining whether any other workers might suffer a detriment to working in the same environment if no action has been taken by the client to investigate the previous complaint.

It is important to bear the above in mind when considering the steps taken by employment businesses following a complaint about sexual harassment.

Section Two: Agency worker engagement

As the professional body for the recruitment industry, the REC promotes good practice in recruitment and agency worker engagement.

Good Recruitment Campaign

We believe that employers need to take recruitment and people management practices more seriously. That’s why we launched our Good Recruitment Campaign which seeks to put recruitment at the top of the corporate agenda. At the heart of the campaign is the Good Recruitment Charter, which promotes fair, legal and ethical resource planning. Over 300 employers have now signed up from large corporates like McDonalds, Diageo, EY and Coca Cola to small businesses and charities including Age UK and WaterAid. Upon signing up to the Charter, employers gain access to tools and resources to benchmark their hiring practices and reinvigorate their processes.

Tune into Temps: How recruiters and employers can support agency worker voice in the work place

Previous research on staff engagement has focused on permanent employees, but agency workers are also a key part of the workforce. We partnered with the Involvement and Participation Association in 2017 to talk to employers, recruiters and their workers to explore how engagement can be promoted amongst agency workers. The guide includes recommendations to recruiters and host organisations as well as examples of good practice.

Above all, we call on both agencies and host organisations to ensure that agency workers are treated at all times with decency, compassion and respect, which they are as entitled to as any other employees.

Agencies should make every effort to ensure agency workers:

- are placed according to their individual needs and aspirations, requiring agencies to take the time to understand both the client and the worker, and their reason for undertaking
agency work, to make sure that all placements will work to the mutual benefit of both parties

- **go to vetted clients that match the agency’s own values.** Agencies should check on the progress of their workers regularly to make sure they are being well treated by the host workplace

- **are able to raise concerns about any aspect of a placement without fear of being penalised as a result.** When workers are unhappy, agencies should work quickly to resolve any problems or find them a new placement that better suits their needs

- **are supported with their professional development throughout their employment,** both during and between placements, involving regular feedback and appraisals, access to training and opportunities to move between placements that offer the chance to learn a desired range of skills

- **understand and have easy access to their workplace rights, above and beyond compliance with statutory requirements.** The rights agency workers are entitled to should be clearly communicated. Wherever possible, the agency should use legal statutory minimums as a baseline.

**Workplace hosting agency workers should make every effort to ensure agency workers:**

- **are given a proper induction, on a par to that received by permanent staff,** so that they feel properly welcomed from the beginning of their placement and have all the necessary training to ensure they can do their job safely and professionally.

- **are treated as ‘part of the team’,** both in terms of equal access to facilities and benefits, from day one of their placement, but also making sure on an informal level that permanent staff treat agency workers as equals and include them in activities and social events.

- **develop a good relationship with their line managers,** including regular feedback and, for those agency workers there for several months, receive proper appraisals, advice and an opportunity to develop their skills.

- **have the organisation’s values and narrative demonstrated to them,** in order to communicate how the work they are doing fits in to the wider organisation and give them a sense of purpose and meaning in their work.

- **are listened to at work,** both when they give advice and suggestions about operational matters and when they raise concerns or grievances they might have. They should be given the same access to and support from any staff representatives in the workplace as permanent employees.

**Recommendations**

- Given the tripartite nature of agency work, it is important that both employment businesses and their clients have procedures in place that allow them to address complaints about harassment (this cover sexual harassment and other forms of harassment) that involve agency workers as well as their own directly engaged staff.
• Official guidance from the government on harassment or other employment related matters need to acknowledge that employment businesses are oftentimes employers of agency workers and so have obligations under recruitment specific legislation such as the Conduct Regulations.

• It is important to acknowledge the distinctions between certain types of temporary work. Agency workers have specific rights but oftentimes are mixed up with gig or zero hours workers in the public debate. This can lead to uncertainty and confusion. When people don’t understand their rights it means they risk accepting inappropriate or even unlawful treatment at work and when work-seeking. We have produced an agency workers’ rights factsheet to help inform workers.

• Employers and agencies should put the above of our report Tune into Temps into practice to ensure a positive working environment for agency workers. Above all, we call on both agencies and host organisations to ensure that agency workers are treated at all times with decency, compassion and respect, which they are as entitled to as any other employees.

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