Autumn Statement 2023

A submission from the Recruitment Employment Confederation

September 2023

London, SW1A 2HQ 27 September 2023

Dear Chancellor,

As we move into Autumn, action to address ongoing skills and labour shortages in particular sectors, economic inactivity and rising costs are important if we are to grow the economy, improve productivity and mitigate the cost-of-living crisis. Collaboration between government and business is critical for the UK to recover and grow, and the REC is always ready to work with government on this agenda.

The recruitment and staffing sector - the members of the REC - represent a professional services sector that is bigger in scale than either law or accountancy. We reach far into the heart of the UK economy. We place a million people into new permanent roles every year, and a million temporary workers into workplaces every day; REC members are advisers, planners and partners with businesses in every sector on recruitment, retention and productivity.

The government has the opportunity to use this Autumn Statement to set out a clear long-term strategy for the UK that will help tackle these ongoing challenges. We appreciate the need for balance around spending but the right investment, in the right places, could boost productivity and ensure greater returns to Treasury. The government set out the groundwork to address many issues in the Spring Statement earlier this year, and this Autumn Statement should build and progress these further.

The first part of our submission looks at some of the policy interventions government can make to help with this. These include:

1. Look at ways to boost investment and growth, via a stable, modern taxation system, reviewing and modernising public sector procurement to serve the needs of the sector and enabling more businesses to embrace AI through assurance.
2. Prioritise the people that ensure businesses and communities can thrive, by reforming the apprenticeship levy to make skills training more accessible, building on the Spring Statement's childcare proposals and address other barriers, such as transport, to improve accessibility to work.
3. Take a risk-based approach to regulation, recognising where laws need to be modernised to reflect the current labour market and consider where bureaucracy is holding back productivity, including the creation of a more efficient labour market enforcement framework.

We believe that each of these themes and the recommendations set out below strike the correct balance between cost and return on investment for the prudent fiscal approach that is required at the moment. Many are cost-neutral but where investment is needed, the return will be far greater over the medium and long-term, helping to save money and boost growth.

The second part of our submission gives an overview of the UK labour market, using the data on which we have based our recommendations. Treasury and Bank of England officials already cite our data, as it is a robust and longstanding lead indicator on the labour market. If you or your team would like to arrange a meeting to discuss any of our policy asks in more detail, Ellie in my office (ellie.goddard@rec.uk.com) can put time in the diary.

Yours aye,

Neil Carberry,
Chief Executive

Part one: Boosting economic growth by enabling business investment, focusing on people and skills, and taking a risk-based approach to regulation.

Boosting investment and growth by addressing the challenges inherent in the tax system for temporary and contract workers, reform public sector procurement and creating a safe effective AI framework for the UK

The Autumn Statement presents an unparalleled opportunity for the government to set out a clear long-term strategy for the UK that will address the ongoing issues we are facing around the economy, productivity and the cost-of-living crisis. Whilst the financial situation in the UK may be tight at the moment, sensible investment in the right parts of the UK economy will pay dividends in the short medium and long term. Investing in the right areas will allow the UK to grow its economy, making it a more attractive investment proposition to businesses. This investment in turn will allow the UK to make the most of its labour force, further boosting productivity in the economy. Investing now presents a long-term way of thinking about the UK workforce and economy and the right balance should be struck rather than defaulting to an overly cautious approach. The recommendations and policies set out in this section demonstrate areas in which government can adopt this approach.

Provide clarity on employment status for tax and overhaul IR35 legislation

Nearly half of the UK working population works in a non-permanent, flexible way. The tax system needs to keep pace with our changing labour market with shifts in working patterns and business requirements. To create confidence and boost business investment, we need our tax system to be competitive, fair, simple and consistent. Diverse forms of engagement in our labour market are critical for growth. Getting taxation right for contractors must be part of this.

Understanding and complying with the off payroll working (IR35) rules is challenging. Many individuals, businesses (including our members) and their clients find off-payroll working legislation the most difficult tax legislation to understand. Although the legislation has been reviewed and amended several times since its inception, it is still overly complex and does not place sufficient impetus on the end-client to provide their assessment and take responsibility for it. Trying to ascertain if and how it applies to other actors in the labour supply chain, including recruitment agencies, in the context of limited client engagement and a lack of regulation on umbrella companies puts even greater financial burdens on fee payers. Businesses want to be compliant with IR35 but ambiguity over employment status for tax purposes increases the risk of falling foul of the rules and being fined. Not getting IR35 right also results in lost revenue to the Exchequer.

1. *Recommendation: IR35 is still not working so we need a full overhaul of the legislation. Businesses and individual taxpayers need a system that supports the use of flexible labour and works fairly for everyone involved.*
2. *Recommendation: Government should reduce ambiguity over employment status for tax for businesses, to improve compliance and lower tax risks.*

Improve HMRC's CEST tool so that it is effective and relevant for contractors

As called for in previous submissions, HMRC's CEST tool is still not fit for purpose, despite minor updates and improvements over the years. One of the REC's main concerns still relates to HMRC's view that mutuality of obligation should not form part of the questions in the CEST tool, even though this does not reflect the reality of how contractors work and has already been demonstrated in the Professional Game Match Officials Ltd (PGMOL) case.

In addition, the questions are still too vague. The examples in the CEST guidance such as painting and decorating or market research, are generally irrelevant in the sectors where consultancy arrangements are most common. For example, where contractors deliver professional services, health and care, IT solutions, or media advice.

There are also concerns about the accuracy of the CEST tool. Often changing a response to a single question changes a determination from "inside IR35" to "outside IR35". Case law on employment status for tax is clear that one factor is unlikely to determine a change in status, and that all relevant factors should be considered. This clearly demonstrates that the CEST tool is not sophisticated enough for hirers to rely on it and meet their obligation to use "reasonable care" when reaching a conclusion. The sheer number of "undetermined" outcomes show the tool isn't working as intended.

We understand that HMRC are planning to launch CEST 2.0 in the Autumn. It is important that the improved CEST fully addresses the issues set out above. Failing to use this opportunity to make these improvements will leave contractors and the companies that engage in the same vague and uncertain position they find themselves in currently, resulting in a loss of revenue for HMRC.

3. *Recommendation: Improve HMRC's CEST tool so that all factors relating to a particular period of work are taken into consideration, and unrealistic assumptions are not built into the tool*

Ensure the tax system supports the shift to hybrid, remote and flexible ways of working

The UK's employment benefits system is primarily designed to support workers who commute daily to an office space, but with the rise in hybrid, flexible, and remote working set to stay, and one million job vacancies in the UK, employers need to look at how they attract and retain staff. Of course, pay is important, but it is not the only thing to consider. Today's workers weigh their pay against the whole package, such as flexible working, training, annual leave – and even whether the corporate culture aligns to their personal values. This is why our *Overcoming Shortages report* last year stressed to employers the importance of working conditions and getting the employee offer right.

That's why we should look at the tax efficient benefits employers can provide to employees to make it possible for businesses to attract the best candidates. Importantly, the tax system needs to support all types of working arrangement equally. Not all work is full time and permanent and the tax system could better reflect the reality of the modern labour market. For example, the Cycle to work scheme (C2W) currently requires users to use their bikes "most of the time" to commute to work. However, with the rise of hybrid working post pandemic, this is no longer a practical requirement for people to meet. Easing this requirement to be "some of the time" would allow users to work in a modern hybrid manner whilst still benefitting from the C2W scheme. Easing the access requirements to this benefit will also have a positive impact on the government's green targets and employee health.

Expanding non-taxable health support for all eligible workers will also have benefits. Making all Employee Assistance Programs a fully tax-free benefit is a quick win for the government and will reduce mental health issues in the labour market. Since the pandemic we have seen a marked increase in mental health and stress related absence from work. Making EAPs tax-exempt will increase the take up of these schemes and will help to mitigate the adverse effects of poor mental health. This can keep workers in work and leads to a healthier, more productive workforce overall.

4. *Recommendation: Work with labour market and business organisations to identify where employees get real value from the employment benefits system, such as reforms to the cycle-to-work scheme*

and employee assistance programs, and where more support could be given to keep the UK competitive and create a sustainable talent pipeline.

<u>Promote the safe and ethical use of AI and other technology</u>

The recruitment industry has been early adopters of AI and the scope for increased use by them is huge. In recruitment, for example, AI tools are used to source candidates right through to helping inform decision making during the interview process. However, this technology is not without problems and there are concerns around the ethical and moral implications of AI, with unconscious bias or unfair algorithms potentially impacting the effectiveness of these technologies. In order to fully embrace the potential of AI, businesses would benefit from an effective assurance framework to make sure this technology is used appropriately and increase uptake to help businesses increase their productivity and growth.

5. *Recommendation: Government should work with business groups to understand use cases and to develop an AI assurance framework which positions the UK as a world leader in the safe use of AI, and work with employers to promote best practice around the safe and ethical use of AI to maximise productivity. This should aim to simplify use of AI across borders where compliance and regulation requirements vary.*

<u>Address economic inactivity by tackling NHS waiting lists and addressing staffing challenges</u>

We know that long term sickness is a major factor in over 50s leaving the workforce. Lengthy waiting lists are only exacerbating this, preventing people getting the help they need quickly to return to work. NHS workers are exhausted, with some leaving the profession entirely and industrial relations have been at an all-time low. We had hoped the long-awaited NHS Workforce Plan would shed some light on the way the NHS currently procures staff and offer a better, more efficient system, but unfortunately the plan simply relied on the same uninformed arguments about reducing agency spend without looking at the need for procurement reform. Moreover, most of the identified actions in the plan won't be implemented in full until 2031 at the earliest, which doesn't address the critical state of NHS staffing today, tomorrow, or even in the next five years.

The current system treats workforce procurement in the same way as they do suppliers of physical materials. In England, recruitment agencies adhere to the rules and price caps set out within the procurement frameworks introduced in 2016. But the price caps and terms have not been reviewed or updated since then, failing to account for new statutory costs that have been implemented as well as general rises in wages and costs. This fails to reflect the changing demand within the workforce and the wider care industry. More importantly, it fails to provide the best value for taxpayers' money.

Currently, price caps and the terms of NHS frameworks are unrealistic and do not flexibly respond to the supply and demand or last-minute needs for staff to keep wards open. As a result, NHS Trusts and agency workers consider more expensive and less regulated off-framework options which don't guarantee the same level of compliance, standards, or pay rates as on-framework agency suppliers. There is also a growing body of evidence that staff banks are costing more to run than agency support. The narrative against agencies fails to account for the valuable level of service they provide to the NHS with one REC member confirming that they have supplied over 10 million hours of staffing to the NHS since the start of 2022. This is just one supplier, so across the whole sector this would total an astronomical volume of capacity that would likely otherwise go unfilled.

We need to have a robust, realistic framework system that prioritises patient safety and provides value for money. The frameworks should be designed in partnership with NHS Trusts, using the frontline experience of agencies and agency workers across the country. Without their insights, no framework will properly reflect realistic demand. Getting the NHS workforce right, and taking pressure off existing staff, is crucial if we are genuinely going to tackle waiting lists and get more people back to work.

Employers can help those with long-term illness get back to work by phasing returns to work, flexible working patterns or even part-time working. Things like the Flexible Furlough Scheme enabled employers to bring furloughed staff back on a part-time basis, helping to fill gaps and use their skills, while maintaining flexibility. This sort of approach is what is needed from more employers, but government intervention will encourage more to operate in that way and avoid repeating the mistakes made by the NHS previously when assessing the social work workforce.

6. *Recommendation: Government should review and reform NHS procurement, committing to review framework price caps every three years. Such pricing arrangements should be standardised across all staffing delivery methods. This would tackle off framework staffing and reduce costs overall.*

Develop genuine partnerships with employment experts to design public sector procurement frameworks that provide value for money and deliver efficiency

The use of agency workers to support public services in health and education is crucial to service provision in these sectors. That is unlikely to change anytime soon with skills and labour shortages in some cases at crisis levels. Instead of acknowledging this with respect for those workers and their vital contribution to keep hospital wards and schools open, there is instead a headline-grabbing blame game, centred around accusations of profiteering by agencies and excessive costs to taxpayers. This needs to stop and instead we need a long-term partnership with constructive two-way dialogue facilitated by relevant government departments and bodies. Chasing lowest cost provision whilst working within a flawed system has reduced the range and quality of provision government can achieve – costing far more in the long run. The way the NHS procures staff is a good example of this, but we're seeing the issue compounded elsewhere too, including via the Public Sector Resourcing framework.

One of the failures of the system is the unfulfilled 2015 promise of giving a third of public procurement contracts to SMEs when the Public Contract Regulations were introduced. SMEs have had a poor experience, where there is no choice for them on which framework to supply through – leading to many SMEs stepping back from the market. There is well-evidenced risk of certain MSPs not acting as a neutral vendor and trying to attract candidates and roles directly for themselves. If an MSP or neutral vendor is appointed, there must be a cap on roles they or their connected businesses can supply, as was the case in Contingent Labour ONE (a previous framework agreement that came to an end in 2018) and must be factored in for the upcoming Workforce Solutions Framework. It is in all our interests to see a framework system that is sustainable, effective, and good value for the taxpayer.

7. *Recommendation: Government should work with staffing experts to design public sector frameworks that provide the best value for money, encourage more SMEs to bid and stay on framework, and ultimately work more efficiently for all involved.*

Reform the skills system to catalyse business investment and create a sustainable talent pipeline and improve access to work for disadvantaged groups by removing barriers

Reform and expand the Apprenticeship Levy so that it can help more workers

The Levy only funds one sort of training - Apprenticeships. Apprenticeships are a great thing but can only be delivered to those who have the same employer for at least one year. That means the majority of recruitment agencies and temporary workers cannot access the training their wages are being levied to pay for. Of the one million temporary workers on assignment in the UK on any given day, around 960,000 are ineligible for Apprenticeship Levy funding. That is include just 2% of temporary assignments last for 12 months or more, ruling out an apprenticeship for most temps.

According to a recent FOI to the Department for Education, more than double the funding was used from the Levy (£853 million) on Levels 4-7 in comparison to Level 2 (£410 million). If we want to boost productivity and economic growth, and genuinely make sure that it pays to be in work, then we need people at every skill level. That will create a more sustainable talent pipeline, moving some people into work, and enabling others to upskill.

The inability to use Levy funding is a significant issue in sectors with acute shortages and high demand for temporary workers, including health and social care, hospitality, logistics and manufacturing. Businesses want and need to invest in their people but too many have their training budget tied up in the levy without being able to use it - this doesn't leave budget for additional training, further exacerbating skills shortages.

Entry-level apprenticeships have a significant role to play in helping people starting off in their careers, transition into other sectors, and improving social mobility. Sectors like driving & logistics, manufacturing, and construction are struggling to develop an entry-level talent pipeline to cover current labour shortages, which doesn't just undermine their contributions to the wider economy now, but also in the long-term when the cycle of shortages continues. In addition, the government's own statistics show that of the 349,200 apprenticeship starts in the 2021/22, just 26.2% (91,000) were Intermediate (level 2). According to our members, work-readiness has been an issue for many younger workers, especially post-pandemic. Protecting funding for entry-level training would prepare those at the beginning of their careers or transitioning to a new career area.

Ultimately, the fundamental issue is still the length of Apprenticeships. Given that 98% of temporary workers are on contracts that last less than 12 months, they need alternative on-the-job training opportunities. DWP has found that in-work progression opportunities are vitally important. Once someone is in work, they are able to progress more easily, increase their earnings and move off of Universal Credit as their entitlement tapers. The key is getting these people into work in the first instance. Introducing some level of flexibility, to enable a portion of Levy funds to be used to fund shorter training courses in sectors identified as experiencing severe shortage is a good way of engaging those furthest from the labour market. This type of training should include high-quality, modular forms of training (e.g., forklift licence acquisition, teaching assistant training, certificates in healthcare support services etc).

8. *Recommendation: Government should expand the courses where costs can be drawn from the levy pot, making it more flexible so that more people can access shorter, modular courses and high-quality training.*
9. *Recommendation: To ensure that apprenticeships remain focused on skills and training for young people, learners who are already qualified at or above Level 6 (equivalent to a full undergraduate*

degree) should no longer be eligible to start a levy-funded apprenticeship. Consideration should also be given to preventing employers from accessing further levy funding if they have trained more apprentices aged 25+ than those aged 16-24.

Incentivise business to invest in green skills to help the UK meet its Net Zero targets

With the rise of automation, new technologies, and entirely new jobs in developing sectors, like green, having the right people with the right skills is critical both for economic growth but also for achieving our Net Zero ambitions. The government already committed to creating thousands of new jobs in its Ten Point Plan for a Green Industrial Revolution, but we're at serious risk of falling short unless government takes, and commits to, some bold, comprehensive action. The US Inflation Reduction Act has turbo-charged the race for green investment, with Canada, the EU and others following suit. If the UK gets its approach right, it could make the UK a more competitive place for green investment and growth. But our tax system doesn't provide any clear strategic link to our net zero goals, failing to provide support for green investment in innovation or for training in green skills.

Last year, PwC published a report which shows the already growing green skills deficit. There are currently around 270,000 workers in the oil and gas sector who can transfer their skills towards delivering net zero. However, around 20% are expected to retire by 2030, leaving only 216,000 transferable workers to help plug the 400,000 jobs needed to build the new energy workforce across areas such as nuclear, hydrogen and renewables. As set out in our *Overcoming Shortages report* labour and skills shortages result in higher inflation and lower investment. At this difficult time for business, government needs to incentivise business investments, to ensure we have the skills we need for the future to enable us to achieve our Net Zero targets.

Part of the challenge is there's no set definition of what a 'green job' is, and in fact, even within the industry, there's debate about whether the terms 'green jobs' or 'green skills' should be used. We know that younger people in particular want to work in jobs that have a positive impact on the environment, but far too many don't know what subjects to study or training to pursue. A new occupational standard should be developed, and built into the Gatsby Benchmarks, for careers advisors, teachers, and training providers so that they can give young people the information needed to ensure that every young person receives high-quality careers information related to green jobs.

In addition, schemes like Kickstart and Restart should be used to promote the uptake of green skills training or jobs that will be needed to meet our net zero targets, including roles in retrofitting, renewables, and the electric vehicle sector. Previously, just 1% of roles within Kickstart jobs were in green sectors. There's a real opportunity to ensure that green jobs and skills are embedded in these programmes from the outset. The REC is working in partnership with Maximus, experts in employability services, to deliver the government's Restart scheme and since the partnership began, thousands of workers have been placed in great jobs, including in roles like retrofit and energy efficiency. More could be done to leverage these schemes to fill roles to help meet our 2030 net zero aims.

10. *Recommendation: Create a fair and accessible 'green tax credit' for businesses that invest in green skills which help towards achieving Net Zero and secure our future labour and skills supply.*
11. *Recommendation: Work with labour market and business organisations to agree and introduce a clear definition of a green job. This will help track the number, type, and location of green jobs and will improve policy development to drive green growth.*
12. *Recommendation: Commit to labour market activation schemes to boost participation in green jobs, ensuring green jobs and skills are embedded in the programmes from the outset.*
13. *Recommendation: Build on the Gatsby Benchmarks to ensure every young person gets effective careers advice with a clear understanding of career pathways, particularly in green sectors.*

Build on the Spring Statement's Childcare announcements

Good progress was made regarding childcare provision in the Spring Budget, but to fully capitalise on this progress, more needs to be done to help address the acute labour and skills shortages present in this sector. The government should set out a credible workforce strategy for the early years sector to set out their plans to create a sustainable flow of talent into this sector, and to ensure the roll-out of childcare provision in 2024 is successful. As part of this rollout, the government needs to work with childcare providers and local authorities to set the funding rate at an adequate level. Using the local expertise of authorities and providers will help to ensure funding is allocated effectively and makes the best use of taxpayer money.

A well-staffed and effectively funded childcare workforce is essential to the roll-out of the expanded childcare provision in 2024, but this is meaningless without ensuring there is high uptake of the provision from parents and carers. A higher uptake will free up individuals to return to work and increase labour market participation, which must be a priority for this government. Streamlining the process to apply for childcare will help with this, and this can be done by allowing access to childcare providers as soon as parents receive an eligibility code, and reducing the frequency that parents have to confirm their eligibility for both the 30-hours entitlement and the Tax-Free Childcare scheme to once a year from the current 3-month period. Additionally, the government should look to expand the eligibility for 30-hours childcare entitlement to parents or carers in training or education. This will help to remove a barrier to those individuals looking to return to the workforce after a period of absence. Local authorities can also boost childcare provision by identifying unused property or other spaces within their regions that could be adapted into childcare facilities. Local Authorities can work with local providers to identify and make the best use of space that would otherwise be vacant. This will help providers to expand their offering at a lower cost to the provider, and this saving could therefore be passed on to the service user.

Following the announcements in the Spring Budget, the government will soon be funding up to 80% of all childcare places in England. Because of this, the government should grant all early-years providers an exemption from business rates. The savings this grants childcare providers could then be channelled back into the sector, allowing businesses the freedom to use these funds to recruit and retain higher quality staff, increase affordability for parents and carers or expand their offering in terms of the number of places available.

14. *Recommendation: Publish a childcare workforce strategy, developed in partnership with childcare providers to maximise the efficiency of funding in the sector.*
15. *Recommendation: Streamline the process to access childcare provision by removing bureaucracy and expand access to childcare assistance schemes to those in training and education to remove barriers to the labour market.*
16. *Recommendation: Grant a business rates exemption to all early years providers to boost the quality of childcare provision available by freeing up additional money for childcare providers.*

Improve the existing Access to Work scheme to help more people with disabilities

The Access to Work scheme was introduced for people with disabilities in 1994, and since then has played an important role in helping people with disabilities into work. The scheme operates well and offers a valuable service to open up the labour market to people who would otherwise be blocked from participating in it. More needs to be done to raise awareness of the Access to Work scheme to ensure it is used more extensively. According to ONS data from June 2023, there are currently 9.58 million adults between the ages of 16 and 64 in the UK who class themselves as having a disability. Whilst not all of these adults will need or want to make use of the Access to Work scheme, only

37,710 people were approved for Access to Work provision in the 2021/22 financial year. Additionally, between 2007/08 (the earliest year for which records are reported) and the end of 2021/22 only a total of 418,620 people in total had provision under the scheme approved. The disparity between these figures highlights the need for greater promotion and awareness of this scheme.

The Access to Work scheme also needs simplifying to encourage use. As currently structured it puts too much onus on the individual to apply and claim for the support and grants offered under the scheme. This process makes the scheme quite reactive, as the support and funding can only be accessed by the candidate, who then needs to work with their employer to implement it. Bringing employers into the process earlier would help to make proactive changes to the workplace, allowing businesses to create more inclusive working environments/processes that benefit everyone, rather than responding to a particular individual's needs on a case-by-case basis.

17. *Recommendation: Government should launch an awareness campaign for the Access to Work scheme to promote it to a wider audience, and work with businesses to proactively make the changes that the scheme can be used to support.*

Review the immigration system to make it more efficient and effective

With the ongoing labour and skills shortages, a simple solution to address these is to make small but significant changes to the immigration system. To boost the UK economy, we need to be open for business and that means creating pathways for high-quality workers to come into our labour market where necessary. Current routes to recruit overseas workers are too costly, complicated, and long-winded. This means businesses cannot quickly and flexibly respond to their recruitment needs, especially for roles that cannot be filled by domestic candidates. Quick changes can be made to the immigration system with little to no investment which will have huge net positives for the UK economy. This includes cutting waiting times for applications and reducing the cost for sponsoring visa applications. Currently a sponsored visa can cost a business up to £5000 if they sponsor for the maximum duration, reducing this cost, or scrapping it entirely, would free up money for businesses to invest in elsewhere, such as staff training or new equipment to further boost productivity.

18. *Recommendation: Work with businesses to review and refresh the immigration system, allowing high quality candidates to effectively and efficiently be recruited to key occupations in the UK labour marker.*

Build on the success of Restart with a new successor scheme

Since its introduction in 2021 the Restart scheme has played a key role in helping people on universal credit into meaningful work. Since becoming a Restart gateway, the REC, in partnership with Maximus, has helped over 1500 people who had been out of work for 9 months or more back into work. This shows the value of the scheme in helping people who would otherwise be inactive back into the labour market. However, the existing Restart scheme is only open until November 2025. This means the government needs to consider the introduction of a successor scheme to carry on the excellent work that businesses have been able to do under Restart. Government needs to open a dialogue with employers to understand what aspects of Restart have worked and what could be improved to develop a future scheme to help the long-term unemployed return to work.

19. *Recommendation: Government to begin developing a successor scheme to restart, working with employers and providers to develop the most effective scheme to help people back into work.*

Work with industry to ensure that well-intended regulation works in practice and ensure employment legislation is fit for today's labour market

<u>Take action to facilitate sound and ethical business practices</u>

Introduce umbrella company regulation

The REC has been calling for umbrella company regulation for years, and while it's good that government is consulting on this, now is the time to get on with it. Umbrella companies currently facilitate tax avoidance and evasion schemes and allowing them to continue to operate is directly costing the Treasury money. In order to be as effective as possible, regulation for umbrella companies should be based around the definition of “temporary work agency” as set out in in the Agency Worker Regulations. This is a tried and tested definition and would effectively cover the constant evolution of how umbrellas function.

Umbrella regulation needs to ensure that the businesses responsible for non-compliance are the ones subsequently held accountable for it. These means umbrella companies should be liable for non-payments of tax, and their supply chain should not be expected to police or be responsible for an umbrella company’s failings. Umbrella regulation would need to be enforced by the Employment Agency Standards Inspectorate (EAS), which could later be incorporated into a Single Enforcement Body should this ever come to fruition. EAS has the best tools to police umbrellas, but it is crucial that they are given further resources as they will not be able to cope with enforcing standards for thousands of additional businesses that would fall within their remit with their current level of resource.

Without this regulation, umbrella companies, including many non-compliant organisations, will be able to continue arguing that they fall outside scope of regulation, putting workers and businesses at risk, and costing the Exchequer millions in lost revenue. The government needs to seize this opportunity to finally implement a regulatory framework and ensure standards and compliance are enhanced and maintained. This will safeguard workers, businesses, and boost economic growth.

20. *Recommendation: Reciprocal obligations should be placed on umbrella companies so that they have a similar legal obligation to provide all the information that employment businesses need to provide and to update the information provided if it changes. Also introduce a formal definition of umbrella company in line with the definition of temporary work agency already set out in the Agency Worker Regulations 2010.*

Joint Employment Model

Joint employment models have recently emerged as a method of engaging temporary workers where an umbrella company and an agency jointly employ a worker, who is then supplied to a client. In this set up, the umbrella and the agency are jointly responsible for the worker’s employment rights and agree to split the management of these rights between them. This differs from the traditional umbrella model, where the umbrella is legally the sole employer of the worker, and there is no contractual relationship between agency and worker.

The joint employment model is relatively new, but already there are cases that highlight this risk. For example, if a worker has been paid less than National Minimum Wage or has not received their full holiday pay entitlement, then it is unclear which employer should be responsible, which makes it harder for the workers to seek redress.

The joint employment model also operates partially outside of the existing regulation for the recruitment industry, due to the lack of regulation for Umbrella companies set out above. Without this regulation, there is a chance that the umbrella side of any joint employment model is not operating to the same standards as the agency side. This opens the door for further non-compliance, as there is no way to police this unless umbrellas are brought within scope of new or existing regulations.

The joint employment model also can be used to avoid tax. In the traditional model, VAT would be paid on the money paid from the agency to the umbrella, and then again on any payment the umbrella made to the worker. In joint employment, the agency and umbrella are jointly liable for a single VAT payment, which reduces the overall tax liability. The government needs to take care not to unintentionally encourage the proliferation of this arrangement without having the necessary regulation in place to protect workers.

21. *Recommendation: The government should provide guidance to Crown Commercial Service (CCS) or other framework providers not to allow the proliferation of this model by making it acceptable as part of government frameworks.*

Create a Single Enforcement Body

As first proposed in the Taylor Review, we need to see the creation of a well-resourced Single Enforcement Body (SEB). A correctly introduced SEB would act as a one-stop shop for labour market enforcement, combining the existing remits of the Employment Agency Standards Inspectorate, the Gangmaster's Labour Abuse Authority and HMRC's National Minimum Wage team. It is crucial that any SEB that is established retains the funding, skills and expertise of these existing enforcement bodies and does not have its powers diluted by merging of these bodies. If introduced correctly, a SEB will help to improve enforcement to protect the compliant businesses in a way that the existing enforcement bodies can't do currently under their split remits.

22. *Recommendation: Government should create a Single Enforcement Body to enhance worker rights and compliance and standards. This would benefit compliant businesses, taxpayers and the Exchequer.*

<u>People work flexibly, our law has to allow and encourage that where it is the workers' choice</u>

As agency worker numbers continue to increase, it is important that the UK has an employment law framework that is able to fairly and accurately account for the demand for flexible work. Whilst some legislation does cover agency workers, the majority has been designed with the more traditional employment model of full-time permanent working in mind. Legislation often refers to employees, which the majority of agency workers are not, or self-employed workers, again which agency workers are not.

There are a number of key pieces of employment legislation that are particularly outdated and are not fit for purpose when it comes to their application to agency workers. These include the Working Time Regulations 1998 (WTR), the Health and Safety at Work Act 1974 (and its derived regulations), Social Security (Categorisation of Earners) Regulations and the Social Security Contributions and Benefits Act 1992 (which covers statutory sick pay), and the Transfer of Undertakings (Protection of Employment) Regulations 2006.

Modernising these pieces of legislation to take into account modern working practices will have huge benefits for both agency workers and the businesses they work for. Creating a new suite of modern agency worker appropriate laws will reduce non-compliance, improve awareness of worker rights and reduce the complex and confusing admin that exists around some of these rights in their current format.

For example, the WTR cover several aspects of working time, including calculations for holiday leave and pay. However, since the introduction of the WTR in 1998, these regulations have been impacted by case law, changing the scope and application of the regulations to agency workers. This also means that simply referring to the WTR as written will not help an employer to correctly apply the law around working time to their agency staff. Calculations around holiday pay have become increasingly unclear and it is easy for businesses to accidentally underpay their agency staff. Government has taken some steps to address this with recent consultations around the accrual of holiday for workers with non-standard contracts and rolled-up holiday pay (paying holiday pay in a worker's regular pay check rather than when they take leave) but more needs to be done to resolve these issues. Replacing the WTR with a new set of regulations that account for agency work would resolve these problems. This would make it clearer for agency workers to know and understand their rights and remove the risks of businesses miscalculating holiday pay and then having to deal with lengthy and confusing processes to rectify this. The REC can provide a detailed assessment of what needs to be changed and how.

A clear example of the need for new law in this area is the Harpur Trust vs Brazel case. The judgment in this case has created a precedent where temporary workers may become entitled to a full 5.6 weeks of annual leave regardless of how long they work on an assignment. This outcome is absurd and risks undermining the entirety of the temporary labour market in the UK. Steps need to be taken to introduce a sensible and appropriate holiday pay calculation for temporary workers to avoid destroying the value of the existing temporary labour market.

23. *Recommendation: Government should review outdated legislation and introduce new laws that accurately account for modern working practices. Changes to legislation of this nature need to be made in consultation with industry experts who can offer advice and guidance on the nuances on the sectors and industries that will be affected.*

More considered approach on Private Member's Bills

We have seen an increase this year in Private Member's Bills (PMB) getting to the statute book. Whilst PMBs are a legitimate and democratic means to introduce new legislation, there needs to be consideration for the unintended consequences of such bills. For example, the recent Workers (Predictable Terms and Conditions) Bill sought to introduce the right for all workers with irregular working patterns to request a more stable contract. Whilst on paper this seems a benefit to boost worker rights, the bill as drafted inadvertently undermines the nature of the temporary labour market and the working practices of agency workers.

In order to mitigate the potential negative impacts of PMBs it is important that all proposed bills of this nature are subject to a rigorous consultation process during the drafting process. Industry expertise can play an important role in ensure bills can operate efficiently to deliver their goals without unintended consequences. In regard to the Workers Bill, consultation with the recruitment industry could have addressed the issues the application of the bill as drafted will create.

24. *Recommendation: Government needs to introduce a clear process for consultation and engagement with impacted stakeholders on the content and application of PMBs before publication.*

Part two: Latest research from the REC

Over the course of the last year, we have seen permanent hiring slow gently in many sectors, while labour shortages persist in others. Temp billings have been more robust, with higher wages offsetting a gentle drop in volumes meaning the market for recruiters is tough but not bad. Businesses have been more cautious about hiring in light of high inflation and the cost of capital, as well as wider economic concerns.

Client feedback for the past couple of months has been more positive, however, and we can see this reflected in our Labour Market data. Firms are now more confident in their plan - a stark contrast with the more cautious and concerned view of Autumn 2022.

We remain concerned by the need to drive growth in our economy - this is the only answer to delivering prosperity for workers and funding public services well. Across skills, immigration, welfare, infrastructure and taxation, a strong industrial strategy is needed to make sure that we can deliver the rest from the UK's brilliant but not limitless labour force.

The latest data from the REC's Report on Jobs and Jobs Outlook is set out below.

Report on Jobs – September 2023

The latest KPMG and REC, UK Report on Jobs survey, compiled by S&P Global, signalled reduced recruitment activity across the UK during August. Permanent placements fell at a rapid pace that was the sharpest in over three years, while temp billings slipped into decline for the first time since July 2020. Recruiters frequently mentioned that the weaker economic outlook and cautious hiring policies had dampened recruitment activity.

The slowdown in hiring and reports of redundancies drove a further substantial increase in candidate availability. Concurrently, total vacancy growth continued to moderate, with the latest survey signalling a notable weakening in growth of demand for permanent staff. Nevertheless, competition for specific skills and the strong inflationary environment drove further increases in starting pay.

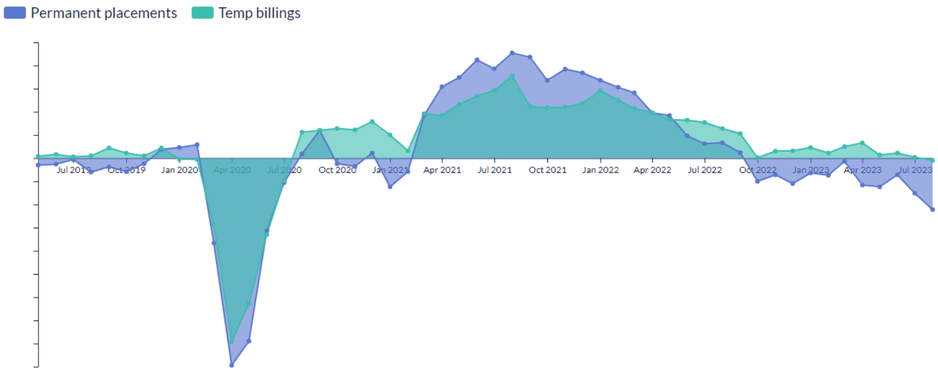
The report is compiled by S&P Global from responses to questionnaires sent to a panel of around 400 UK recruitment and employment consultancies.

Permanent placements and temp billings fall in August

August survey data pointed to a broad-based decline in hiring activity across the UK. Permanent staff appointments fell at a rapid pace that was the quickest seen in over three years, while temp billings also contracted.

Though marginal, it was the first time the latter had declined since July 2020. Recruiters frequently mentioned that employers were hesitant to commit to new hires and adopted recruitment freezes due to a weaker economic climate.

Permanent placements and temporary billings indices



Overall candidate supply continues to rise rapidly

The overall availability of candidates expanded for the sixth straight month in August. Although the rate of improvement slowed from July, it was nevertheless the second-sharpest recorded since December 2020. There were widespread reports that redundancies and a general slowdown in hiring activity had driven the latest rise in labour supply, with both permanent and temporary candidate numbers expanding at rapid rates.

Total vacancy growth slips to two-and-a-half-year low

Overall vacancy growth softened for the sixth successive month in August. Furthermore, the latest increase in demand for staff was the weakest seen in the current two-and-a-half-year sequence of expansion and only marginal. The slowdown was driven by a softer rise in permanent vacancies, which increased only fractionally, as growth of demand for temporary staff remained strong.

Pay pressures remain elevated

Starting salaries and temp wages rose sharply in August, with recruiters often commenting that competition for scarce candidates and the higher cost of living had led employers to raise pay. However, the rate of starting salary inflation edged down to the joint-weakest since March 2021, and was much slower than that recorded a year ago. While temp pay growth picked up from July, it was the second-softest since April 2021.

Regional and Sector Variations

Permanent placements fell rapidly across all four monitored English regions, led by the Midlands.

All four monitored English areas bar the Midlands registered a drop in temp billings during August. London recorded the quickest reduction overall.

Sector data indicated that the strongest increase in demand was seen for temporary staff in the private sector. Short-term vacancies meanwhile continued to rise only slightly in the public sector. Demand trends meanwhile diverged for permanent staff, with vacancies broadly unchanged in the private sector but rising modestly in the public sector.

Half of the ten monitored job categories registered higher demand for permanent staff in August. Hotel & Catering recorded the strongest rate of vacancy growth. Secretarial/Clerical and Retail meanwhile saw the steepest falls in demand.

Short-term vacancies expanded in the majority of the covered employment categories during August, led by Hotel & Catering. Demand for temporary Executive/Professional workers meanwhile stagnated, and fell in the Construction and Retail categories.

Neil Carberry, REC Chief Executive, said:

"August is always a slower month for new permanent roles, but this has been exacerbated in 2023 by the lack of confidence to start the new hiring we saw among firms in the Spring. As inflation begins to drop, it is likely that firms will return to the market later in the year – employer surveys suggest confidence may be returning. But for now, the labour market has more slack than it has since the heights of the first lockdown. Firms continue to use temps to fill any short-run needs, with the small drop in August representing little change from the past few months.

"Recruiters routinely describe this sober overall picture as harder, but not necessarily bad. Vacancies are still in a strong position. There are huge variations between sectors, too. Hospitality, Accounting, Logistics, Manufacturing, Engineering and Healthcare continue to grow strongly for both permanent and temporary roles, meaning employers are still experiencing shortages. Demand for permanent healthcare staff has now risen for 37 months, for instance. In many of these sectors temporary staff are keeping employers going – including in the NHS, where agencies have been unfairly blamed for failures of training and procurement practice from NHS England. A focus on effective skills reform will be vital to addressing shortages overall in all the shortage sectors.

"With demand weakening, we see the drivers for rising pay being more to do with companies' pay settlements for existing staff, rather than market demand. Those finding new jobs are benefitting from rises that many firms put in place for their teams earlier in the year. That said, data shows pay pressures remain sharp for permanent workers in some sectors driven by ongoing shortages."

Claire Warnes, Partner, Skills and Productivity at KPMG UK, said:

"The August summer break has seen little change in the ongoing tight labour market conditions. If you're looking for a new role – the market remains in your favour, as starting pay continues to be driven up by inflationary pressures and a high demand for candidates with specific skills across many sectors.

"For recruiters, the picture is still complex. Despite an increasing pool of candidates this month, the economic outlook is keeping businesses cautious. Many employers aren't ready to commit to permanent roles, and those who are indicate they cannot find candidates with the right skills, causing these placements to fall at a rapid pace during August – the sharpest for three years. Temporary billings slipped for the first time since July 2020, as squeezed budgets mean there's little room to bring on short-term staff. But certain sectors, like healthcare are bucking this trend, with sustained high demand for both temp and permanent staff. And as the appetite for tech and AI expertise keeps increasing, the IT sector needs temporary workers to support more projects.

"The underlying issue is that skills - or a lack of them – remain central to the tensions in today's labour market, and significant investment now for the long term prospects of the economy is vital."

JobsOutlook – July 2023

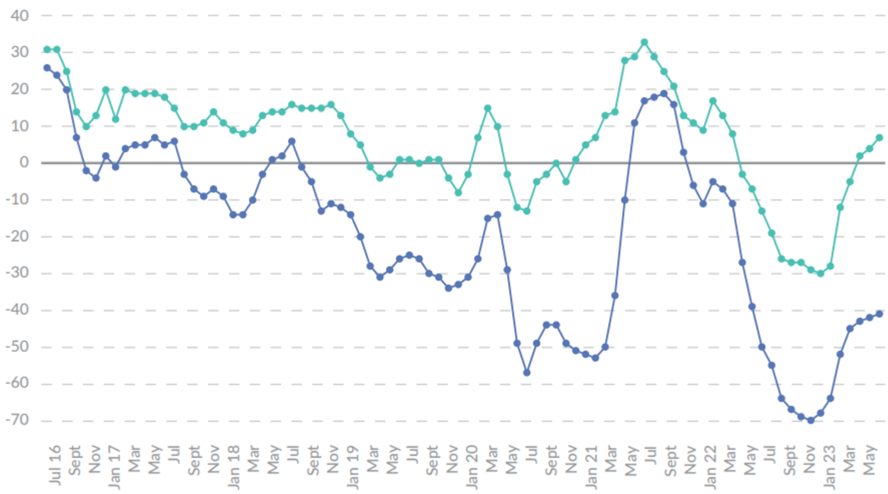
The REC's September JobsOutlook will be published later this month. However, in the interest of providing our submission in good time we will provide this to Treasury at a later date. Below is some of the key data from the previous edition of JobsOutlook, published in July of this year.

Employers feel marginally more positive about the UK economy, but it is not enough to shift their caution on hiring

Confidence

Across April-June 2023, business confidence in the UK economy continued to rally, improving to net: -41 from net: -43 in February-April 2023. Moreover, sentiment notably improved across the quarter, from net: -52 in April to net: -31 in June.

Along with this improvement, the net balance of employers' confidence in making hiring and investment decisions was bolstered, with the balance of sentiment rising by 5 points to net: +7. And confidence similarly rose across the quarter, from net: +1 in April to net: +14 in June.



Permanent Recruitment

Whilst the UK-wide balance of employers' sentiment towards short-term permanent hiring remained static at net:+18 between February-April and April-June 2023, there were notable regional variations. At net: +25, forecast demand was highest in London (up from net: +20 in February-April). In contrast, it was just net: +11 across the remainder of the South, outside London (down from +12). By organisational size, large (250+ employee) enterprises were the most optimistic (net: +22) compared to net: +17 within both medium-sized (50-249 employee) and small (0-49 employee) organisations.

In contrast to the static short-term outlook, employers' medium-term hiring intentions for permanent staff fell by 5 percentage points between February-April and April-June 2023, from net: +20 to net: +16. Moreover, after a surge in optimism in May (net: +22), it fell back to net: +12 in June. Regionally, at net: +30, sentiment continued to be the highest in London - and notably rose from net: +22 across February-April. In contrast, it was just at net: +10 in the remainder of the South and at net: +11 in the Midlands – a notable decline for the latter from net: +23. At net: +19, forecast demand in the private sector was significantly higher than in the public sector (net: net: +1). By size of organisation, there was little by way of variation across the three size bands.

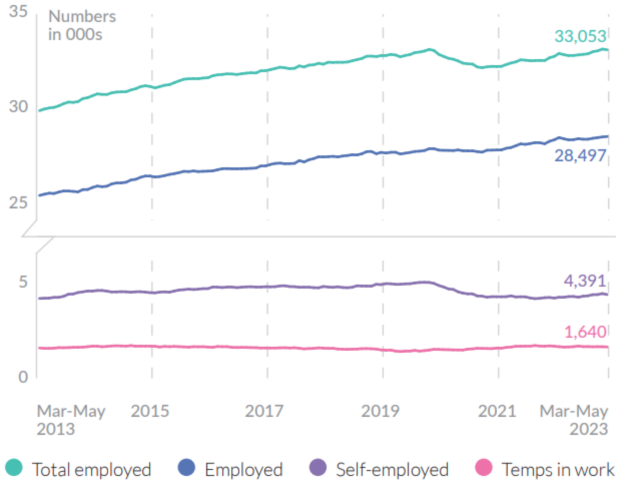
Temporary Staffing

The balance of short-term agency worker hiring intentions dropped by 10 percentage points between February-April and April-June 2023, from net: +18 to net: +8. This was driven by a sharp decline in sentiment in May (net: -3), after which there was a bounce-back in forecast demand in June (net: +10). Sentiment was highest amongst the UK's smallest (0-49 employee) enterprises (net: +19). In contrast, it was marginally negative (net: -3) amongst the largest (250+ employee) organisations and marginally positive amongst medium-sized (40-249 employee enterprises (net: +3). Moreover, whilst 15% of large employers planned to increase agency headcount, almost one in five (18%) planned to reduce numbers.

In relation to medium-term hiring plans, forecast demand for agency workers deteriorated across the period, dropping by 17 percentage points from net: +9 to net: -8 between February-April and April-June 2023. The decline into negative territory was driven by a sharp fall in sentiment in June (net: -22). And it was amongst mid-sized (50-249 employee) enterprises where the greatest fall in demand was forecast, recorded at net: -26 across the quarter (compared to net: -3 and net: -1 amongst micro/small (0-49 employee) and large (250+ employee) organisations, respectively). Moreover, more than one in three (36%) mid-sized enterprises stated their intent to reduce agency headcount.

Total Employment – Permanent, Temporary & Self-Employment

At 33.05 million in March-May 2023, the UK workforce was 0.6% (190,000) larger than a year earlier. From a contingent labour perspective, the number of temporary employees fell slightly by 0.6% (9,000), quarter-on-quarter, and 0.8% (13,000) year-on-year. In contrast, whilst self-employment flatlined quarter-on-quarter, numbers were up 3.3% (142,000) year-on-year. Overall demand continued to wane, however, with the official vacancy count registering its thirteenth consecutive rolling-quarterly fall in April-June 2023. Moreover, numbers were lower than the prior year in 15 out of 18 industry sectors. At 1.03 million, however, the vacancy count remained 29.1% (233,000) higher than pre-pandemic (Q1 2020) levels.



For further information on this submission please contact: Samantha Smith, REC Campaigns and Government Relations Manager, samantha.smith@rec.uk.com or Patrick Milnes, Senior Campaigns Advisor, patrick.milnes@rec.uk.com

The REC is the voice of the recruitment industry, speaking up for great recruiters. We drive standards and empower recruitment businesses to build better futures for their candidates and themselves. We are champions of an industry which is fundamental to the strength of the UK economy. Find out more at www.rec.uk.com