



## **HM Treasury Call for Evidence**

**on the**

## **Umbrella Company Market**

**response from**

## **Freelancer and Contractor Services Association LTD (FCSA)**

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## Executive Summary

The emergence and rapid growth of the umbrella market has been a positive contributor to UK productivity and wealth. Compliant umbrellas provide certainty and security to the workers engaged by them, ensuring that they receive the full protections required by employment law, that their tax affairs are simplified, and all required taxes are remitted to HMRC.

FCSA has played a major role in promoting ethical and fully compliant standards to the sector and has, by engaging with third-party legal and experts and liaising widely with other stakeholders including Government, produced and documented a *de facto* gold standard for compliance, which every FCSA member is rigorously held to. These are continuously reviewed and revised as legislation/regulation changes and have been made publicly available so that non-members may also ensure their businesses are compliant.

When a fully compliant and lawful umbrella company operates in the marketplace, they do so in a way which protects the worker. This should be contrasted with firms or schemes which fail to pay workers correctly, fail to pay the correct taxes and National Insurance Contributions (NICs) to HMRC and often directly disadvantage the worker in that, ultimately, it is the worker who HMRC will hold responsible for unpaid tax. Such unethical or unlawful firms directly contribute to the tax gap.

FCSA recommends that any proposed regulation should focus on the protection of worker employees and the integrity of the supply chain, including compliant umbrella service providers.

The FCSA therefore calls for any proposed regulations to achieve four key aims:

- Recognise that compliant and ethical providers in the supply chain are beneficial services which ultimately protect workers
- Have a “light touch” and have regard to existing legislation such as
  - Tax and Employment Law
  - Conduct of Employment Agencies and Employment Businesses Regulations
  - Agency Workers Regulations
- Create a greater focus on identifying rogue and unlawful operators and schemes
- Allow for the prosecution of the operators of those rogue companies, with deterrent fines for unremitted tax and NICs and, in clear cases of fraud or extortion, prison sentences

Specifically, FCSA recommends that any proposed regulation provides

1. Protection of both workers and ethical service providers
2. Clarity as to the establishment, role, and powers of the SEB
3. Clarity of intent around mandatory remuneration e.g., holiday pay, SSP
4. Framing regulation to avoid excluding other outsourced worker models
5. Clarity on the priority of enforcement by HMRC
6. Investment in cyber expertise
7. Formation of a task force to pursue cyber attackers and cloning activity



## About FCSA

The Freelancer & Contractor Services Association (FCSA) is the UK's leading professional membership body dedicated to raising standards and promoting supply chain compliance for the temporary labour market. Our members provide umbrella employment, self-employed services, accountancy, and business support solutions to the contingent workforce. At the time of writing the FCSA has more than 70 Accredited Members who collectively represent over 182,000 workers engaged as employees.

The FCSA has worked extensively with government and other stakeholders to promote the highest possible standards in the industry, most recently working with HMRC across a number of areas including the IR35 Forum, providing labour market intelligence and umbrella regulation advice to BEIS departments such as Labour Market Enforcement and Employment Agency Standards.

It has also assisted Parliament, giving evidence to the All-Party Parliamentary Loan Charge and Taxpayer Fairness Group and the House of Lords Finance Sub-Committee as well as being an expert advisor to the BEIS-supported JobsAware initiative.

FCSA continues to promote compliance within the sector for the benefit of individual workers, HM Government, and the supply chain. It welcomes the opportunity to support HM Treasury in this call for evidence.



## The UK Umbrella Market

The UK umbrella market began in earnest circa 20 years ago as a result of legislative changes beginning with the introduction of intermediaries' legislation, commonly known as IR35. The sector has grown for a variety of reasons but most notably the Managed Service Company legislation introduced in 2007 and, more recently, off-payroll reforms in the public sector closely followed by application of the reforms to the private sector.

In 2015 there were around 400,000 workers engaged through umbrella employment with circa 250 umbrella companies in operation. This accounted for over £11 billion being collected in taxes on behalf of HM Treasury.

By 2021 this had grown to nearly 700,000 umbrella employees operating through around 500 umbrella companies. The FCSA estimates that these employees contribute over £19 billion to HM Treasury.

This growth must also be seen in the light of an ever-increasing corporate pattern to adopt outsourced skills to enable end hirers to remain flexible, competitive and to operate with decreasing fixed costs.

As a result, there is little doubt that there will be a growing demand from both UK businesses and individual workers to operate in an agile outsourced environment and FCSA is committed to promoting and encouraging compliance, transparency and integrity in the entire supply chain.

## The Compliant Umbrella Model

A compliant umbrella company is a company that employs an outsourced worker (an agency worker or contractor) allowing that worker to work across multiple contracts and sectors whilst retaining full employment rights under an overarching contract of employment.

Umbrella companies do not find work for the workers they employ but instead offer the services of that worker via an employment business which finds the work.

The advantages of umbrella employment include:

- Ensuring full employment rights as set out by UK legislation
- This includes holiday pay and statutory sickness/maternity/paternity and adoption pay.
- Access to a company/auto-enrol pension scheme
- The workers PAYE deductions (tax and NI) are correctly calculated by the umbrella company and remitted to HMRC
- The ability to build a continuous record of employment thus giving the worker greater access to mortgages and other loan facilities.
- Provision of relevant insurance covers such as public, employers liability and professional indemnity.
- The ability to move across a number of contracts without any of the accompanying administrative burden. This is taken care of by the umbrella employer.

A compliant umbrella firm will also provide its employees with a properly informative payslip and/or reconciliation statement<sup>1</sup> and under FCSA compliance codes to show all deductions out of the assignment rate paid by the employment agency. This should include (as a minimum):

- Assignment fee – the fee paid by the employment agency to the umbrella company
- Umbrella margin – the amount of money taken from the assignment fee to cover both the costs and profit of the umbrella company
- Employment costs – all employers (including umbrella employers) have to account for employer's national insurance (ErNICs) and its other costs before it states the gross pay.
  - Compliant umbrella companies will include this on the payslip and/or reconciliation statement to transparently show the contractor employee what employment costs are deducted before the gross pay sum is arrived at.
- Gross rate of pay – the derived amount when umbrella the costs above are deducted
- Income tax – this is the correctly calculated amount the umbrella employee pays from their gross rate of pay
- Employee's National Insurance (EeNICs) – all employees, including umbrella employees, must pay National insurance.

The FCSA has a rigorous set of compliance standards to ensure that the contractor and supply chain that they are dealing with are the most independently tested umbrella companies and directors in the industry.

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<sup>1</sup> See Appendix A for an example of a fully FCSA compliant payslip and reconciliation statement.

## The Benefits of Compliant Umbrellas

### Benefits to workers

- Reduction of administrative burden
- Simple management of tax affairs
- Access to pensions
- Provision of holiday pay
- Transparency of pay (illustrations and payslip reconciliation)<sup>2</sup>
- NMW guarantee even where an employment business does not pay
- Managing debt collection as necessary (usually from agencies)
- Continuous employment over number of assignments
- Accuracy of pay (reduced likelihood of errors due to expertise)
- Statutory protections
- Provision of necessary insurances
- Provision of optional benefits or employee benefit programmes

### Benefits to Recruitment/Employment Agencies

- Payroll expertise agencies are not payroll experts (umbrellas are),
- Core business activities (placing talent, not payrolling)
- One invoice v multiple returns,
- Guidance and expertise on policy changes
  - i. Umbrellas are often the first to react to and advise on changes e.g. NMW, NI changes, apprenticeship levy, furlough, HSC Levy

### Benefits to Government

- Collection of Income Tax and National Insurance
  - FCSA members alone collect £7bn in taxes which are timeously remitted to HMRC
- Ease of enforcement
  - Umbrellas have a large number of employees
    - FCSA members alone employ c180,000 workers
    - Providing RTI data to HMRC
  - HMRC has over time carried out compliance audits on most FCSA Members to ensure there is no tax leakage
- Simpler classification of workers
- Efficiency of process for HMRC
  - Umbrellas hold required information in easily accessible formats
- Specialist professional operation of payroll reduces likelihood of errors
- A compliant umbrella sector allows effective and rapid deployment of policy
  - e.g. introduction of Travel & Subsistence rules in 2008
- Compliant umbrellas ensure compliance with tax and employment legislation
  - Easing enforcement burden and reducing costs

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<sup>2</sup> Illustrations of a compliant payslip and a compliant reconciliation statement are at Appendix A



## FCSA Accreditation

### 1. Due diligence process

Every company within FCSA membership is subject to detailed due diligence checks which include an independent data company performing in depth credit and financial checks on each company and its directors, social media searches, Companies House checks and similar checks on any companies that have common directors.

### 1. FCSA Codes of Compliance

The umbrella sector lacks both legal definition and regulation and so in this absence the FCSA has developed the most detailed test of compliance in the industry.

For FCSA umbrella companies this involves two sets of detailed compliance codes that cover every aspect of tax and employment legislation which FCSA companies are tested against. These tests are carried out during the initial onboarding period as an FCSA member and, importantly, annually thereafter.

FCSA's compliance codes are detailed within the Mandatory Codes<sup>3</sup> and the Umbrella Employment Codes<sup>4</sup>. These codes are revised on a regular basis to ensure full compliance with both UK laws and regulations and industry best practice.

FCSA does not carry out assessments on these standards in-house, but instead engages independent tax specialists and employment lawyers who have vast experience within the contingent worker sector.

In addition, the FCSA Codes are also used as a base for constant mystery shopping throughout the year.

### 2. FCSA Charter

As well as being continually tested against the FCSA Codes of Compliance, all members are required to abide by and promote the contents of the FCSA Charter<sup>5</sup>. It is this independent rigour and testing that gives the FCSA confidence to play a pivotal role in safeguarding the long-term future of the freelance sector for the benefit of the UK economy by:

- Setting and raising standards for service providers who support contingent workers
- Promoting compliance in order to protect contingent workers
- Influencing and lobbying to ensure that members' needs are represented to policymakers
- Collaborating through partnerships with like-minded organisations

Against these definitions and standards, the FCSA has seen substantial growth within the umbrella sector.

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<sup>3</sup> [FCSA's Mandatory Codes are available via this link](#)

<sup>4</sup> [FCSA's Umbrella Employment Codes are available via this link.](#)

<sup>5</sup> [FCSA's Charter is available via this link](#)



## Targeting problems effectively

The FCSA emphasises again that it is **not** the sector as a whole which requires regulation, indeed FCSA believes that the vast majority of providers intend and strive to be wholly compliant.

However, FCSA acknowledges that there are bad actors in the sector. These are both individuals and organisations, sometimes large and complex, and are often based offshore or in tax-haven territories. These bad actors are responsible for increases in the tax gap and are at the base of problems in the sector. FCSA believes it is they who should be the focus of any proposed legislation or regulation.

Individual workers are subject to fraudulent and misleading offers designed to lure them on to the books of these operators who then fail to properly take account of UK tax or employment laws and regulations or pretend to do so and then fail to remit deductions to HMRC, instead pocketing the monies for themselves. It is known these schemes have sometimes even proffered a DOTAS number as evidence of “HMRC compliance”<sup>6</sup>

The FCSA believes that a substantial increase in economic turnover in the sector coupled with an underinvestment in policing and regulating it has caused a concerning increase in unlawful activity. This has taken several forms and is documented on the FCSA website

As a result, it is important that protective and preventative measures are brought into place that addresses this unlawful behaviour on behalf of workers and the compliant supply chain.

The perception that bad actors are unlikely to be investigated if or even discovered by the authorities, encourages well-organised criminal elements to be attracted to this type of activity.

This has led to an increase in negative publicity for the umbrella market as a whole, whereas in fact, there are many highly ethical and compliant operators who have a passion for delivering a fair and transparent service to all. FCSA and others represent this part of the market.

The FCSA has noted an element of ‘group thinking’ being introduced at press, political and market levels which encourages the public and supply chains to believe, incorrectly, that the whole umbrella market is corrupt. It is therefore vital to recognise and encourage the essential role that compliant umbrella firms make in ensuring that workers are protected from exploitation and also remain compliant in their tax affairs.

The FCSA is aware that there is a very small number of those who call for umbrella firms to be banned, and we reject this as a viable or desirable option especially in the light of the many positive benefits compliant umbrellas bring to the market as explained above.

Furthermore, we would point out that if umbrellas were to be banned, the market itself will simply design a new model. It is broadly accepted that tax regulations have driven an expansion of this market and it equally accepted that there is a commercial need for specialist payment service providers. A simple ban would not obviate this need.

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<sup>6</sup> Sir Amyas Morse - [Independent Loan Charge Review report](#), December 2019, Para 3.2

## Current progress in protecting the supply chain

The FCSA exists to promote compliant and ethical standards within the temporary labour market. However, it is not a regulator, legislator, or policing authority.

The FCSA has campaigned for several years for greater Government protection of the sector, and it recognises major progress in recent months, namely:

- The announcement of a Single Enforcement Body (SEB) of key departments joining forces to further protect workers. This body will cover enforcement of agency workers' rights, acting on exploitation, trafficking and modern slavery, poor working conditions, and non-payment of the National Minimum Wage
- The Government announcement of its consultation earlier this year
- The FCSA is pleased to see the recent appointment of Margaret Beels OBE to the post of Director of Labour Market Enforcement. We look forward to working closely with the Director to assist her Directorate in identifying how workers and the sector itself can best be protected
- The FCSA has been encouraged to see that HMRC has created a greater focus on providing guidance for contingent workers, especially those who work within the umbrella sector. FCSA and its members will always strive to communicate this so that as large an audience as possible can be provided with information that will encourage and assist workers in making compliant choices

## FCSA key recommendations

However, there are a number of other measures which may further protect the sector and those who work within it.

### **1. Protection of both workers and ethical service providers**

Whilst Government has hinted at further reviews of employment law and is now consulting on possible regulation of the sector, the FCSA would encourage further consultation on “light touch” regulations to ensure that contingent workers are well-informed have the best access to compliant providers. We further recommend compliant providers are themselves protected by regulation, perhaps via licensing, speedy clone strike-off processes, cyber closedowns &etc, from criminal or unlawful activities targeting the sector.

### **2. Clarity of intent around required remuneration**

Exploitation of holiday pay is a matter of great concern to FCSA and as a result the FCSA Umbrella Codes of Compliance referenced within this response ensure complete transparency for the contractor in terms of entitlement and full reimbursement by means of either paid time off or holiday pay paid in advance. The Codes by which FCSA members operate to also ensure that holiday is paid on gross income which represents the employee’s full legal entitlement.

The FCSA would encourage Government to explore how these standards can be further enshrined in law to fully protect the worker and to be explicit in terms of responsibility as to who is tasked with enforcing current and future holiday pay legislation.

### **3. Clarity as to the establishment, role and powers of the SEB**

The FCSA welcomes the announcement of the SEB, but it is clear that unlawful and ever more sophisticated exploitative activity is increasing and so the FCSA would welcome a further Government announcement that clearly indicates when the SEB will come into existence and what further funding it will be given in order to take action against these activities and the perpetrators.

### **4. Framing any legislation to avoid excluding other models**

Government should avoid regulation of a defined umbrella model. In the view of FCSA this excludes other forms of service provision to outsourced workers and indeed, the marketplace is continually evolving into other forms of engagement methods. For these reasons we have already consulted with Government and strongly recommended that regulation should be framed around outsourced workers model and not the umbrella model itself.

## **5. Clarity on the priority of enforcement by HMRC**

FCSA believe that HMRC is juxtaposed between prosecuting providers of disguised remuneration schemes and maximizing tax revenue. Historically this has resulted in compromise agreements where the directors responsible for these schemes have been subject to minimal intervention whilst the duped or misled individuals have been pursued for the resulting unpaid taxes.

The FCSA recommends a different approach where unlawful providers should be the primary focus and that those who promote such schemes should be held wholly liable for any unpaid taxes as well as having more appropriate sanctions, including criminal proceedings, applied to them.

## **6. Formation of a task force to pursue cyber attackers and cloning activity**

The emergence of cloning and cyber-attack activity is now becoming a major concern to FCSA and its members. We cannot underestimate the threat this activity poses to the workers, the sector, and to tax and NICs income properly due to HMRC.

The FCSA recommends that a joint task group is formed as soon as is practicable formed of BEIS, Companies House, HMRC, NCA, National Cyber Security Centre, Nominet and FCSA (which now has extensive data and experience in this area) to begin to create unified rapid response protocols to deal with what is a serious threat to both service providers and individual workers.

This is possibly one of the biggest emerging threats to the sector, being exploitative of workers, damaging to UK businesses and depriving Government of legitimate tax revenues.

## **7. Investment in cyber expertise**

It is vital that this body and HMRC also receives adequate funding to retain and deploy cyber expertise, as this is an arena in which criminal activity is expanding. FCSA remains ready to fully support the SEB and HMRC with its market expertise and intelligence<sup>7</sup>.

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<sup>7</sup> FCSA holds information on this type of attack. This is not disclosed in this submission due to commercial confidentiality and/or pending litigation and/or pending criminal enquiries


## Appendices

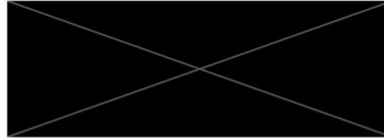
### Appendix A


Tax Period: 38 - Week Ending: 19.12.2021

**Comments**

Employee Ref.	Employee Name	Process Date	National Insurance Number			
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			
Payments		Units	Rate	Amount	Deductions	Amount
Basic Pay		37.00	8.91	329.67	Tax	291.00
Holiday Pay		1.00	143.51	143.51	National Insurance	101.27
Bonus		1.00	859.32	859.32	AE Pensions	33.88

	<b>This Period</b>		<b>Year To Date</b>	
	Gross For Tax	1332.50	Gross For Tax TD	41432.86
Earnings For NI	1332.50	Tax Paid TD	7385.60	
Total Deductions	426.15	NI Earnings TD	41432.86	
Ees NI	101.27	Ees NI TD	3168.48	
Tax Code	1257L			
Payment Method	Bacs			
		<b>Net Pay</b>	<b>906.35</b>	



### Reconciliation Statement

Employee No	Employee Name	Process Date	National Insurance Number
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

**Company Receipts:**

	Units	Rate	(£)
Basic Pay (Daily)	5.00	310.00	1550.00
<b>Total</b>			<b>1550.00 (A)</b>

**Less: Company Costs:**

	(£)
Company Overhead	25.00
Expenses	0.00
Employer's NIC	160.43
Employer's Pension Cost	25.41
Holiday provision	143.51
Apprentice Levy	6.66
<b>Total</b>	<b>361.01 (B)</b>

**Receipts less Costs:** **1188.99 (A) - (B)**

**Add: Holiday pay taken this period** **143.51**

**Less: Non-taxable pay** **0.00**

**Gross For Tax** **1332.50**

Holiday Pay Entitlement	
	(£)
Brought Forward	0.00
Accrued this period	143.51
Taken this period	143.51
Carried Forward	0.00



## Appendix B - Example of overstated take home pay marketing

Umbrella-Paye (<https://umbrella-pay.com>)

Why you should join Umbrella Paye...

- \*A great service\***
- \*A solution with nearly 30 year track record\***
- \*100% Fully IR35 Compliant\***
- \*Legal Team With 30 Years Experience\***
- \*Insurances included\***
- \*Up to 90% take home pay after tax\***
- \*Easy Sign-Up Process\***
- \*Dedicated Personal Account Manager\***
- \*Same-Day Free Payments\***

\*Please note: Take Home Up To 90% After Tax is based on referrals.

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