

**Good Work: the Taylor Review of Modern Working Practices
*Consultation on increasing transparency in the UK labour
market***

Submission to the Department of Business, Energy, and Industrial
Strategy

Chartered Institute of Personnel and Development (CIPD)

May 2018



*Championing better
work and working lives*

Background

The CIPD is the professional body for HR and people development. The not-for-profit organisation champions better work and working lives and has been setting the benchmark for excellence in people and organisation development for more than 100 years. It has over 145,000 members across the world, provides thought leadership through independent research on the world of work, and offers professional training and accreditation for those working in HR and learning and development.

Our membership base is wide, with 60% of our members working in private sector services and manufacturing, 33% working in the public sector and 7% in the not-for-profit sector. In addition, 76% of the FTSE 100 companies have CIPD members at director level.

Public policy at the CIPD draws on our extensive research and thought leadership, practical advice and guidance, along with the experience and expertise of our diverse membership, to inform and shape debate, government policy and legislation for the benefit of employees and employers, to improve best practice in the workplace, to promote high standards of work and to represent the interests of our members at the highest level.

Introductory comments

Our response focuses on the questions for employers and questions for all as we are a membership organisation, and have not answered the questions for individuals. We have engaged with our members to inform our response. We draw on findings from a recent survey completed by 186 HR professionals which asked for their views on the majority of questions in the consultation document. 117 of these responses were from HR professionals in the private sector, 32 in the public sector, 32 in the third/voluntary sector and 5 classified their sector as 'other'. In terms of the size of organisation our survey respondents work in, 5 work in micro organisations (0-9 employees); 13 in small businesses (10-49 employees); 65 in medium-sized organisations (50-249 employees) and the majority, 103, work in large organisations of 250+ employees. In our response we will note any notable differences in views between sector and size of organisation.

This data is supplemented by the findings of our Labour Market Outlook survey where we asked employers for their views on whether the Right to Request a stable contract should be introduced and the length of service needed to apply for such a right. We also held two roundtables with senior leaders from our Policy Forum in both London and Manchester, then conducted follow-up interviews with some senior HR leaders and practitioners which adds further insight and detail to our response below.



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HR professionals most likely have primary responsibility in an organisation for all of the practices covered in this consultation and are likely to be the main person in an organisation dealing with the issues raised. Their views are therefore critical in understanding how greater transparency in the labour market can be achieved, as well as the benefits and risks associated with different options.

Our response

Context

To set the context around the survey data, we asked the following question from the consultation document of our survey respondents.

QP10 If you are an employer, what proportion of individuals undertaking paid work at your workplace are:

a. Permanent employees

	100%	80-90%	60-79%	40-59%	20-39%	1-19%	0%
Percentage	15.22	63.59	17.39	1.63	1.63	0.54	0
Count	28	117	32	3	3	1	0

Base: 184

Non-permanent staff

	100%	80-90%	60-79%	40-59%	20-39%	1-19%	0%
Percentage	0	0.66	2.63	3.29	15.13	73.03	5.26
Count	0	1	4	5	23	111	8

Base: 152

Section A: Written statements

1. As an employer, have you provided a written statement of employment in the last 12 months to a) your permanent employees, b) your non-permanent staff

a) Your permanent employees?

Of the 177 HR professionals who answered this question, the majority (93%) said yes, 6% said no and 2% didn't know.

	Yes	No	Don't know
Percentage	92.66	5.65	1.69
Count	164	10	3

b) Your non-permanent staff?

The majority (71%) said yes, 25% said no and 5% didn't know.

	Yes	No	Don't know
Percentage	70.62	24.86	4.52
Count	125	44	8

If yes: Approximately how many written statements has your organisation provided in the last 12 months?

104 HR professionals answered this question. There was a very wide range of responses, with some organisations providing fewer than ten written statements to their non-permanent staff and others issuing them in their thousands. We have grouped the responses in the summary table below to show the scale at which written statements are being issued for non-permanent staff.

	Count
1-10	11
11-49	38
50-99	13
100-199	13
200+	24

If no: What are the main reasons for not providing non-permanent staff with a written statement of employment?

23 survey respondents said they don't provide agency staff with a written statement of employment. Many of these said the agency will issue a written statement so they don't need to. Comments included: *'They work through an agency and the agency employs them to complete an engagement in our business. We have the engagement agency with the agency who in turn provides particulars to their employee'*; *'Agency staff aren't entitled to it'*; *'We would expect the agency to provide them directly to their staff'*; *'Mainly engaged via a recruitment agency on a temporary basis and they are their employer'*.

Other groups mentioned by survey respondents as not been given a written statement of employment are:

- Unpaid work experience;
- They are directors not employees;
- Casual workers;

- Our non-permanent staff are consultants and they have not requested a written statement of employment;
- Consultants invoicing us for services via their limited company; and
- Contractors supplied via outsourced company

Only a few people gave reasons for not giving such groups a written statement:

- If they are with us for <12 weeks;
- To avoid creating an employee relationship where worker status is intended;
- For contractors we rely on their own contract terms that we sign; and
- Costs

Some people told us about an alternative arrangement they use:

- We provide a contract of employment for permanent staff and a zero hours agreement for non-permanent;
- They are classed as casual workers and are given a letter detailing their status as a worker and their right to accept or refuse work; and
- Engaged temp workers get a letter of engagement.

**2. In general, when do individuals starting paid work at your organisation receive:
a) a written statement, b) an employment contract or other employment particulars**

A significant majority of respondents say they provide both a written statement and employment contract to individuals starting paid work before they start work. The next most common practice for both written statement and employment contract was to provide these to individuals on the the first day of starting paid work.

	A written statement (count)	An employment contract (count)
Before paid work starts	104	91
On the first day of starting paid work	8	18
Two days to a week after starting paid work	4	12
More than 1 week but less than 2 weeks after starting paid work	1	3

More than two weeks but less than a month after starting paid work	1	10
More than a month but less than two months after starting paid work	6	8
More than two months after starting paid work	0	0
Don't know	3	1
Not applicable	3	1

Base: 138

3. How long, on average, would it take a member of staff to produce a written statement for a new starter?

About two thirds of respondents estimate that producing a written statement takes under thirty minutes, with a further 28% estimating it takes between 30 minutes and one hour.

	Percentage	Count
Under 30 minutes	65.94	91
30 minutes to an hour	28.26	39
Between half an hour and half a day	5.8	8
Between half a day and a full day	0	0
More than one full working day	0	0

Base: 138

4. How often do you seek legal advice when producing a written statement?

Almost two thirds of employers say they never or rarely seek legal advice when producing a legal statement, compared with just under 4% who report they always or often seek legal advice. A further 27.54% report they sometimes seek legal advice when producing a written statement.

	Percentage	Count
Always	2.17	3
Often	1.45	2
Sometimes	27.54	38
Rarely	46.38	64
Never	19.57	27
Don't know	2.9	4

Base: 138

5. Are there other business costs associated with producing a written statement, in addition to personnel and legal costs that we should be aware of?

Of the 138 HR professionals who answered this question, the majority said no (82.61%); 8.7% said yes and 8.7% didn't know.

If yes: Please provide details of these additional costs to the organisation.

Five people cited stationery, postage and printing as additional costs. Other responses were:

- Insurances;
- The work is undertaken by payroll provider therefore payroll provider charges for the service;
- In order for the written statements to be raised it's necessary for the type of business to have conducted some basic security checks. These are completed as part of the initial written statement process;
- Fitness assessments DBS clearances;
- Solicitor fees; and
- They pay for HR advice as a lump sum.

9. To what extent do you agree that the right to a written statement should be extended to cover permanent employees with less than one month's service and non-permanent staff?

Good practice, and the aim of achieving greater transparency, suggest all individuals starting paid work should know the basics of their employment relationship from day one. At a minimum this would include details of who you're

being employed by, when you are needed to work and what you'll be paid – i.e. the items covered in the principal written statement.

This view is strongly supported by our survey data. The majority of the HR professionals surveyed (see table below) agreed that the right to a written statement should be extended to cover permanent employees with less than one month's service and non-permanent staff. Several CIPD members who offered their views in interviews agreed with the proposed extension, so that people can make an informed decision about whether or not they want to join the company. If the terms and conditions of employment are not explicit from the start, it can create a range of issues and can have a negative impact on employee engagement. One interviewee who employs people on zero-hours contracts said they are all given a written statement so that their rights are very clear, and they are able to accept or reject the work when it's offered. Another said that often, agency workers tend to be loyal to their agency and fellow agency workers, but not to the organisation they're working for. *'They're likely to be more loyal if they're treated well, and there's no reason why they should be treated differently to permanent staff.'*

Another interviewee felt that anyone who is a permanent employee should have the right to a written statement, but that non-permanent staff could get a curtailed version of what permanent staff get. It could look more like an agreement (covering core rights and what employer is not obligated to do so it's written down transparently) than a contract. The important thing is it would need to be explicit about the obligations/lack of obligations of both parties in the spirit of increasing transparency in the labour market.

CIPD Recommendation:

CIPD believes that A 'know your rights' campaign would help increase people's awareness of what they're entitled to. One interviewee suggested a page on the Government's website which clearly sets out people's rights.

		Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Permanent employees with less than one month's service Base: 134	Percentage	55.22	32.84	7.46	2.24	2.24
	Count	74	44	10	3	3
Non-permanent staff Base: 133	Percentage	39.85	33.08	14.29	11.28	1.50
	Count	53	44	19	15	2

10. The following items are currently prescribed contents of a principal written statement. Do you think they are helpful in setting out employment particulars?

134 HR professionals gave their views on this question, with the majority agreeing that inclusion of each of the prescribed contents of a principal written statement is helpful.

	Yes	No	Don't know
The organisation's name	99.25% (133)	0	0.75% (1)
The employees' name, job title or a description of work and start date	99.25% (133)	0	0.75% (1)
If a previous job counts towards a period of continuous employment, the date that period started	98.51% (132)	0.75% (1)	0.75% (1)
How much, and how often, an	100 (134)	0	0

employee will get paid			
Hours of work (and whether employees will have to work Sundays, nights or overtime)	99.25% (133)	0.75% (1)	0
Holiday entitlement (and if that includes public holidays)	97.76% (131)	2.24% (3)	0
Where an employee will be working and whether they might have to relocate	97.01% (130)	2.24% (3)	0.75% (1)
If an employee works in different places, where these will be and what the employer's address is	89.55% (120)	8.21% (11)	2.24% (3)

Slightly fewer agreed about the helpfulness of including: if an employee works in different places, where they will be and what the employer's address is. Reasons for not agreeing to this detail being helpful include: a view that just the principle place of work needs to be stated; there may be too many places to detail, so a summary statement should suffice; there could be multiple addresses that the HR team wouldn't be aware of; different places could delay issuing of statement; they encourage remote working so don't specify; and the word 'various' locations within the organisation should suffice.

Longer comments include:

'Reps can be working out of multiple locations, so stating a general area/region or even countries should be sufficient.'

'It depends on how often the employee would work in a different place. If they work in one place for some of the week and another office for the rest of the week, then it would make sense to include it. However, I have employees who work all over the country so it makes

sense to have a 'home' office for them & give details of that - as & when they need to work in other locations, information is provided to them at that time.'

'In a services business it is difficult to describe these 'in advance' i.e. more than, say, a couple of weeks ahead.'

'Reality is often complex and changing. Contractual location rarely captures this complexity which is accepted and understood by all parties outside of the written statement.'

'As employees will move to different locations dependent upon role and we don't necessarily know what these locations will be at the start date.'

The one person who said hours of work was not helpful to include in the principal written statement said this was because: *'jobs should be based on output not input'*.

The three people who said no to holiday entitlement being helpful to include said this was because it:

- *can be more complex to calculate for non-permanent staff and delays statement issuing;*
- *complex to work out, depends on start date and days worked per week; and*
- *it is contained in our benefits brochure.*

11. Do you agree that the following additional items should be included on a principal written statement:

There were varying levels of agreement about whether each item should be included on a principal written statement. Qualitative responses explaining people's views are detailed below the table.

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know
How long a temporary job is expected to last, or the end date of a fixed-term contract?	73.28	25.19	1.53	0	0	0
How much notice the employer and the workers are required to give to terminate the agreement	79.23	18.46	1.54	0.77	0	0
Sick leave and pay entitlement	52.67	25.95	7.63	11.45	2.29	0
The duration and conditions of any probationary period	64.12	30.53	2.29	1.53	1.53	0
Training requirements and entitlement	15.38	18.46	30	28.46	7.69	0
Remuneration beyond pay e.g. vouchers, lunch, uniform allowance	25.95	30.53	20.61	22.14	0.76	0
Other types of paid leave e.g. maternity, paternity and bereavement leave	14.4	20.61	24.43	32.06	7.63	0.76

We asked the people who disagreed with the inclusion of a certain item in the principal written statement why that was. Below are their views under each of the items. There were

no comments about why people felt how long a temporary job is expected to last, or the end date of a fixed-term contract, should not be included.

a) *How much notice the employer and the workers are required to give to terminate the agreement*

- Contained in contract of employment.

c) *Sick leave and pay entitlement*

- It's pay affecting, and all pay affecting clauses should be in there
- Contained in contract of employment
- Detail on this including terms of reporting absence etc. is better in a policy
- Generally a standard term and therefore included in the contract of employment and/or employee handbook
- Sick leave is not a right it is at a company's discretion
- Best covered as a policy
- Covered by separate detailed policy
- Handbook instead

d) *The duration and conditions of any probationary period*

- Probationary periods are not really necessary

e) *Training requirements and entitlement*

Six respondents said this is non-contractual so shouldn't be included. Other views were:

- Training is input and productivity is about output
- Employees should be able to learn from observation, feedback, and taking opportunities
- It should be produced after discussions with department managers as part of ongoing progress
- It should not be - large organisation, very complex, none mandatory
- This is a detail that needs to be a tailored discussion not a legal minimum
- Training is agreed with individual based on individual needs which can best assessed once in post
- Because this is subject to frequent change and would be best left non-contractual and communicated in other ways
- Training requirements could be lengthy and continually changing so they should be contained in a training document
- Generally agreed once an employee starts and not applicable to all
- Covered in training policy
- Do not necessarily know at start of employment

- Training is carried out on the job. Training entitlement would be difficult to quantify
- Our organisation isn't clear on this. It is an advocacy arrangement.
- Best covered as a policy
- I consider they should not be included as they are likely to be variable and not as easy to ascertain on offer
- Not necessary, could be issued in benefits booklet
- I didn't think this should be included because the statement should contain critical employment factors and I think this information could be provided as part of the induction process.
- Handbook instead

f) Remuneration beyond pay e.g. vouchers, lunch, uniform allowance

Five people feel this information should be included in the employee handbook instead.

- These change and may not be contractual so shouldn't be in principal statement
- Contained in contract of employment
- Often too much detail so should be detailed separately for the relevant role level
- Additional benefits may change, so should be advised separately
- Part of flexible reward package
- We do indicate areas such as lunch but they are non-contractual arrangements.
- Liable to change
- Not necessary as could be included in benefits booklet
- These are good to know but the information given subsequently.

g) Other types of paid leave e.g. maternity, paternity and bereavement leave

22 comments refer to this information being best included in a staff handbook or an organisation policy.

- Entitlements change easier to cross reference to current policies as appropriate. None of these dictate employment status so don't need to be in written terms varied from time to time.
- We apply statutory terms and these are subject to change
- These can be adequately dealt with if the situation should arise. Our entitlements are statutory only.
- Too onerous and not apply across the board - not needed for all
- Covered by company policies
- Contained within our benefits brochure
- I disagreed as not necessary as could be included in benefits booklet

12. To what extent do you agree that the principal written statement should be provided on (or before) the individual's start date?

- 89.51% of the 124 HR professionals who answered this question in our survey agreed or strongly agreed that the principal written statement should be provided on or before and individual's start date.
- Strongly agree: 62.9% (78 people)
- Agree: 26.61% (33 people)
- Neither: 4.03% (5 people)
- Disagree: 4.84% (6 people)
- Strongly disagree: 0.81% (1 person)
- Don't know: 0.81% (1 person)

The majority of our interview respondents also agreed that the written statement should be issued on or before day one of work, so that everyone knows where they stand. One individual commented that they think it's important people understand their rights from the beginning, then people are making a decision based on the facts rather than a month down the line.

CIPD viewpoint:

CIPD believes it is good practice to issue the principal written statement on or before an individual's start date as it outlines the key information about a person's employment. Having it issued later means an individual will have completed some work with an employer without having seen this core information. An employee may find it harder to ask questions or raise an objection to its content at a later date.

13. To what extent do you agree that the above other parts of the written statement should be provided within two months of an individual's start date?

124 HR professionals answered this question with a net agree score of 86.19% that the written statement should be provided within two months of an individual's start date.

- Strongly agree: 59.68% (74 people)
- Agree: 26.61% (33 people)
- Neither: 8.87% (11 people)
- Disagree: 1.61% (2 people)
- Strongly disagree: 3.23% (4 people)

Two months appears to be ample time to create and issue a written statement. However, you have to be working for one month to qualify to get a written statement, so the possibility of shortening the period in which you receive a written statement to one month should be explored. Otherwise, in theory, employers could provide the written statement a month after an individual's employment has ended.

Several interviewees had similar views that the whole written statement should be provided as soon as possible, ideally on or before someone starts work, and if they start work very quickly, then a few days afterwards. If someone goes off sick within the set two month period, then they should know what they're entitled to, and about accruing holiday. It could also be that someone could receive the remaining parts of the written statement after they have left the company. One person articulated the need for openness and transparency so that everyone was going into the employment relationship with their eyes wide open. In their organisation, they provide all the policies and particulars of employment from the beginning, based on the belief that there's no reason not to do so.

Another interviewee highlighted that although they believe the written statement should be provided upfront with the offer letter so that people understand their rights; in reality micro businesses may struggle to do the paperwork in 8 weeks and many micro businesses don't even know about the 8 week rule. The interviewee drew on their experience of hiring in an SME to explain why they think 8 weeks is a good limit in reality, explaining that often people can get offered jobs but on the first day or perhaps a week before, tell you they've changed their mind and are going to work somewhere else. The SME may be issuing a few written statements for each post when this happens before they get someone to actually join them which is a lot of administration.

Another interviewee believed that the organisation cannot increase productivity without full disclosure of how their workers will be treated, to create a partnership of equals between employer and employee. They noted that people can now look up an employer on the internet or social media, which could give them more information about the employer than if they have to wait to receive their terms and conditions of employment.

18. Which of the following best describes your awareness of the Acas guidance on Written Statements?

Most of the 124 respondents to this question are at least aware of the Acas guidance, and 80% have some knowledge of what it says.

	Percentage	Count
I have a good knowledge of the Acas guidance	35.48	44
I am aware of the Acas guidance and have some knowledge of what it says	45.16	56
I am aware of the Acas guidance but do not know much about it	16.94	21
I have not heard of the Acas guidance	2.42	3

19. If you have some knowledge of the Acas guidance on written statements, how helpful did you find it?

We asked this question to those who had indicated in the previous question that they have some knowledge of the guidance. Most of the 100 respondents to this question found the Acas guidance very or quite helpful.

	Percentage	Count
Very helpful	41	41
Quite helpful	56	56
Not very helpful	3	3
Not helpful at all	0	0

Section B: Continuous Service

We asked the following questions at a roundtable discussion with senior leaders from the CIPD's Policy Forum and in follow-up interviews with some senior HR professionals.

20. What do you think are the implications for business of the current rules on continuous service?

One respondent noted that it's possible for employers to engineer a break in service to create more flexibility and therefore enable them to terminate the employment more easily, avoiding unfair dismissal. This can occur in a redundancy situation where a capability issue has arisen with an employee, and the employer suggests a break in service which can give the employee a second chance. However, if the employee doesn't perform well, they can be dismissed more easily. Employers are therefore able to reduce job security to remove statutory rights and lessen the risk faced for the organisation.

An interviewee reflected that some employers use the current rules to break service so casual workers don't get employment rights. They felt a more appropriate measure of continuous service would be the regularity of work rather than a break in work.

Another interviewee believed the current rules work: *'You could (extend it to) a month but that seems unfair to an employee to increase the break because what happens during the intervening time? You have to look at why there's a break.'* They recalled how they have seen people who were employed, fired on the Friday, and then hired as a consultant on the Monday (particularly in the public and non-profit sectors). They pointed out that this may suit the worker. However, it raises the question of at what point would you say the person is still employed? *'They're doing exactly the same job, being paid minus NI contributions – the saving is clearly for the employer. From the Monday the person needs to pay their taxes themselves, and there's a question about whether they're really independent after a weekend.'*

They pointed out that this arrangement may work for some people who like working as a consultant, or people who want to take the whole summer off and then get back to work. However there's a stigma to being laid off and you only get statutory guarantee payment. They suggested instead that if people want to take the summer off and come back, having a culture of flexible working, or taking unpaid leave, could be a better option.

Another interviewee who works with a number of organisations reflected that it's rare that the current rules cause much of a problem. However, one example of where there could

be contention is when a casual worker who is working intermittently wants to claim unfair dismissal as they need two years of continuous service. The employment lawyer then needs to look for one week breaks in employment. They felt the Government's proposal of a month could give protection from unfair dismissal to more people.

Another interviewee provided reflections from an agency point of view, saying that as temporary workers come and go all the time, having a period of one month could mean you have people on multiple contracts with numerous agencies, which may not be helpful. Someone may go to three or four agencies in a month so there's a question about whether that would count as continuous service with different agencies simultaneously. In addition, if you have a month break, lots of agencies will have multiple accrual pots they're holding onto to see if the person will come back during that period. They felt a week is suitable.

21. If you are employed, or represent employees what are the implications for you or those you represent of the current rules on continuous service?

Several respondents highlighted that companies can exploit the current rules by ending people's contracts during a quiet time for the business, then re-hiring them when needed, which means they don't qualify for certain rights.

One interviewee said that people can resign then return to the organisation on different terms and conditions, which leads to a question of whether their previous employment counts in their length of service. It can be difficult to decide when someone actually started if they've been at the company for years, as there are often no records. They said many organisations don't keep HR records, and documentation is viewed as a burden, particularly in SMEs. Employment is often agreed on a handshake, with managers not understanding the importance of keeping records such as the amount of time people have taken off work. There needs to be education to help SMEs understand that they should have a contract with people they're employing in the same way as they do with suppliers.

22. Do you have examples of instances where breaks in service have prevented employees from obtaining their rights that require a qualifying period?

Respondents felt that the current rules do not tend to disadvantage particular employee groups. However, it was felt that more evidence is needed on the impact of breaks in service on atypical workers.

At a roundtable we held in Manchester with senior HR leaders, no one in the room could think of examples of where employers had used the current break in service rules to prevent employees from qualifying for service contingent employment rights.

One interviewee talked about the domestic service sector, having seen some families with nannies use layoffs – when the family go away for the summer but want the nanny there when they get back. In this situation, the gap is too long for continuous employment, so the nannies are not accruing their rights as they would normally. *‘I think that’s a clear example of where it’s being misused in the domestic sector. There’s no rights to redundancy, maternity or anything else’*. The nannies may be on a fixed term contract from 1 September to 1 July which is then terminated, the family goes off for the summer, and then they rehire the nanny on 1 September. This can happen for several years. They reflected that private families/hirers are not likely to be challenged on how they employ people.

One interviewee told us of a person on bank staff and had worked pretty regularly, not far off full-time. Went on holiday for a fortnight and when she came back started on a proper contract with set hours but wasn’t classed as having continuous service.

Another interviewee told us they have also seen this practice used in the hospitality sector: *‘where you have low paid workers who don’t have control or the power to turn around and say they want continuous employment’*.

23. Do the current rules on continuous service cause any issues in your sector?

One of our roundtable respondents highlighted that this has been a problem in the higher education sector, where many people are on fixed-term contracts (an example was given of someone not qualifying for maternity leave).

Another interviewee who works for a recruitment agency described confusion over treatment of holiday accrual, since it can be difficult to establish the point of leaving an organisation for agency workers.

Our response to Q22 contains an example from the domestic services sector.

24. The Government has committed to extending the period counted as a break in continuous service beyond one week. What length do you think the break in continuous service should be?

While our survey data summarised below suggests a notable proportion of HR professionals think the period counted as a break in continuous service should be expanded, this was at odds with views of our roundtable respondents. People answering the survey did so in isolation, with no context about the possible scenarios that could play out, whereas at the roundtables the discussion focused on experience and possibilities. We therefore urge caution in interpreting the survey data in isolation of the qualitative responses.

Half of the 121 HR professionals who responded to this question in the survey said the break in continuous service should be one month. The next most popular option was three in ten people saying it should be two weeks.

	Percentage	Count
2 weeks	31.4	38
3 weeks	1.65	2
1 month	49.59	60
6 weeks	7.44	9
Other	9.92	12

The roundtable respondents indicated that there's a lack of knowledge of the scale of the problem around the current rules on continuous service, suggesting there is not enough evidence on whether this is really an issue.

However, it was mentioned that in some situations it can suit employees to only have a one week break. The problem could potentially be exacerbated if the break is extended to one month, for example, because it could mean that people are out of work and unpaid for four weeks rather than one week – i.e. employers could take advantage of the system by laying people off for longer.

At a roundtable we held in Manchester with senior HR leaders there were concerns that extending this period, for example, to a month, could have unintended consequences of potentially penalising people by forcing employers to delay re-employing them. The example was given that an older worker might be looking to change their employment contract in order to work fewer hours or with more flexibility, and would be prevented from earning for a month, rather than the current situation of just a week.

One interviewee commented that this is a low priority compared to other employment law changes needed. Another told us there can be unintended consequences, but it's unlikely in practice. Organisations employ people because there's work that needs to be done, so they'll keep them in work. If someone's doing a good job and you still need them, laying them off for a month would mean you have to find someone else, creating further problems for employer. Another interviewee said this becomes important for individuals in situations like mass redundancies, for calculating redundancy entitlement.

Another interviewee commented that having a month's break could act as more of a disincentive for employers to break service as it's a long time to not have someone in role when the job needs doing.

Another interviewee pointed out that case law and the regulations don't marry up as case law suggests you need at least 3 months and 1 day to start continuous service afresh, while the law itself stipulates 1 week.

One individual felt that '*employment law shouldn't be a remedy for bad management*', giving the example of factories where temporary workers are needed – the employer knows when they need to increase production, so a good employer would plan how many workers they'll need at a particular time, so they should think about how they can keep their best workers, treating them fairly.

CIPD viewpoint:

In light of both the qualitative and quantitative evidence submitted by CIPD members and other experts involved in the consultation exercise, the CIPD view is that unless there is significant other evidence that the current break in continuous service rules are causing problems for individuals undertaking paid work, then the existing period of one week should be retained.

25. Do you believe the existing exemptions to the break in continuous service rules are sufficient?

The majority of survey respondents (76.23% - 93 people) believe the existing exemptions are sufficient. 10.66% said they're not, which equates to 13 people, and the remaining 13.11% (16 people) said they didn't know.

Just four of the people who had responded no to Q25 told us which additional circumstances they think should be added:

- Moving between different contract types in the same organisation, e.g. casual to permanent.
- Where a temporary role has been undertaken for a year and up to two years it should be considered as continuous service where that person is made permanent with the same company or transferred under TUPE.
- No additional but some should be removed, for instance a break for maternity or reserve forces callout should not be considered a break in service.
- Study leave.

26. The Government intend to update the guidance on continuous service, and would like to know what types of information you would find helpful in that guidance?

We added an additional response option to this question: *I don't feel updated guidance is needed*. 9% of respondents ticked this option, suggesting an appetite for updated guidance on continuous service. Real examples from case law and signposts to further information were deemed the most helpful by HR professionals, but still almost half also said information on what to do if you feel your employer has not complied with the legislation would help them.

	Percentage	Count
Real examples from case law	86.07	105
Signposts to further information	68.85	84
Information on what to do if you feel your employer has not complied with the legislation	46.72	57
I don't feel updated guidance is needed	9.02	11
Other	2.46	3

One interviewee highlighted the risk that if the Government publicises this guidance, it will make employers aware of something they can use to circumvent statutory obligations, i.e. that they can break service in this way.

Another interviewee suggested that an additional page on the www.gov.uk website which makes it clear to people what their rights are would be useful.

Section C: Holiday Pay

27. Do you think that the Government should take action to change the length of the holiday pay reference point?

36% of 122 HR professionals we surveyed said yes, they think the Government should change the length of the holiday reference period. Another 45% said they shouldn't, and 19% said they didn't know.

Of the people who said it should be changed, 37 provided a comment about why. The need to change the length of the holiday reference period because of seasonal variations in working was mentioned by 14 people. One person said, *'Seasonality of some jobs mean that holiday entitlement differs throughout the year'* and another commented, *'To account for seasonal and temporary work with the same employer. Also term time working needs clearer guidance on how annual holiday entitlement should be calculated'* and another view was that, *'Pro rata seasonal/term time only calculations confuse employees'*.

Other comments about accounting for term-time working included: *'Make it clearer for those that do not work a 'normal' working week and working year e.g. term time only staff and, 'I work in a school. A 12-week reference period has just caused difficulties in a recent case for a term time employee who will now be paid more holiday entitlement than their full year counterpart.'*

Ten comments focused on a more fair and accurate picture being achieved via a 52 week reference period. Comments included, *'Most businesses operate within a 12 month calendar so averaging over this basis gives a more accurate reflection of "normal pay"'* and, *'Our business has peaks and troughs making holiday calculation variable. 52 weeks would give a more accurate figure.'*

Four comments were about having an annual reference period making the calculations simpler, including, *'The time it takes to calculate an average 12 weeks is more extensive than annually. Annual payment would more readily represent what the individual works on an ongoing basis representing the right proportion of salary and additional payments for the year.'*

28. If you answered yes to Q27, should the Government: a) increase the reference period from the current 12 weeks to the 52 weeks recommended in the review? b) Set a 52 week default position but allow employees and workers to agree a shorter reference period?

The majority of the 99 HR professionals who responded to this survey question think the reference period should be increased from the current 12 weeks to 52 weeks. Just half felt there should be a 52 week default position with employees and workers able to agree a shorter reference period.

	Yes	No	Don't know
Increase the reference period from the current 12 weeks to 52 weeks	90%	2.5%	7.5%
Set a 52 week default position, but allow employees and workers to agree a shorter reference period	51.52%	39.39%	9.09%
Set a different reference period	7.69%	80.77%	11.54%

CIPD viewpoint:

Overall, CIPD judges that a 52 week reference period would avoid distortion from seasonal variation and term-time working for example and create a fairer indication of holiday pay entitlement.

29. What is your understanding of atypical workers' arrangements in relation to annual leave and holiday pay?

There was consensus at the Manchester roundtable of senior HR leaders that it is very difficult to ensure that agency workers take their annual leave if they are receiving holiday pay in lieu of leave. It was also pointed out by more than one member that it is not just atypical workers who don't take annual leave. The key issue for employers is to ensure

there are not work factors, for example excessive workloads or poor line management, that are preventing or discouraging people from taking their holiday regardless of the type of contract they are on.

The recommendation in the Government consultation on agency workers is that all agency workers should receive a 'key facts' page from the employing business, setting out their employment rights and benefits including information on holiday pay/leave entitlement. This would help ensure that agency workers are more aware of their rights to annual leave.

Employers should be ensuring that all workers/employees are aware of their leave entitlement and the minimum statutory number of days' leave, and encourage managers to ensure that people are taking their leave. Recent CIPD/Simplyhealth research finds that 'leaveism' – people not taking annual leave because of stress or excessive pressure - is on the increase.¹

a) Are they receiving and taking annual leave?

81.58% of survey respondents said atypical workers are receiving and taking annual leave in their organisation, with just 6.14% saying they're not and 12.28% not knowing.

b) Are they receiving holiday pay but not taking annual leave?

29.63% said atypical workers in their organisation are receiving holiday pay but not taking annual leave. 50.93% said this is not happening and 19.44% said they didn't know.

c) Do you know of any other arrangements that are used?

N/A

¹ CIPD/Simplyhealth. (2018) *Health and well-being at work*. London: Chartered Institute of Personnel and Development. Available at: <https://www.cipd.co.uk/knowledge/culture/well-being/health-well-being-work> [Accessed 23 May 2018].

Section D: Right to Request

31. Do you think that the Government should introduce a Right to Request a more stable contract?

The summary statement in the consultation document frames our response to this question: ‘employers should treat their workforce fairly and not seek to play the system to their advantage to avoid costs and responsibilities’.

CIPD viewpoint and recommendation:

CIPD supports the proposal for a right to request a more stable contract which would afford workers some degree of choice, although dependent on acceptance of the request from the employer. Lessons can be learnt from experiences of the right to request flexible working, for example that a main source of value of having a right to request is the conversation between employer and the individual.

We would recommend this topic could also be part of a ‘know your rights’ government campaign as it would be a new right. In addition, guidance for employers similar to the Acas guidance on the right to request flexible working, would be useful for employers.

Our 2013 research on zero-hours contracts found that these types of contracts (although only one type of non-traditional employment) can suit some people’s circumstances.² Our survey findings from our survey of zero-hours workers suggest a minority of people working on zero-hours contracts are dissatisfied with working in this way; however, a much greater proportion are satisfied. Almost half of zero-hours contract workers (47%) say they are satisfied with having no minimum contracted hours, 27% say they are dissatisfied and almost a quarter (23%) are neither satisfied nor dissatisfied. However, still, there are over a quarter who would like more certainty over their employment.

Looking beyond zero-hours contract workers, Office for National Statistics data from December 2017 to February 2018 suggests that 29.3% of temporary workers would like more permanent arrangements but aren’t able to find a permanent job.

² CIPD. (2013) *Zero hours contracts: Myth and reality*. London: Chartered Institute of Personnel and Development. Available at https://www.cipd.co.uk/images/zero-hours-contracts_2013-myth-reality_tcm18-10710.pdf [Accessed 23 May 2018].

Results from a survey of our members show a majority view that such a right should be introduced. A majority 54.17% of 120 HR professionals responding to our survey said yes, the Government should introduce a right to request a more stable contract, just 38.3% said no and 7.5% didn't know.

However the detail would need fine consideration through further consultation with both workers and employers to fully understand the practicalities and come to a workable policy.

We also asked 1008 employers for their views on this question in our quarterly Labour Market Outlook Survey, with similar results.³ We asked: *In response to these recommendations from the Taylor review, Government is currently consulting on whether it should introduce a right for workers on flexible employment arrangements to request a more stable contract after a certain period of time. Would you support or oppose the introduction of such a right in principle?*

- 67% supported the introduction of a right to request a more stable contract in principle
- 19% opposed it
- 14% said they didn't know
- Employers in the third/voluntary sector were significantly more likely to support the move than those in the private sector (76% versus 65%).

At our Manchester roundtable with senior HR leaders, there was solid support for the introduction of a the right to request a stable contract, with a view that this should happen after a worker has been engaged in continuous employment with an employer for a minimum of 12 months. There was a view that much more information would be needed about such a right, for example, how would it work where a worker is employed by an employment business or umbrella body, but the worker has been engaged with a third party employer for 12 months? Respondents also felt there is a need for a more detailed consultation on this recommendation if the Government wants to introduce such a right.

We also posed this question to HR professionals we interviewed as part of forming our response to this consultation. One interviewee described what happens in their SME. The right to a more stable contract is offered to people from the start, and this is transparent when the job is advertised: *'They have an open-ended contract - we tell them we'll pay holiday pay and pension'*. Most people at the company (particularly working mothers) choose to stay working as consultants, as they prefer to choose when they work. It can be beneficial for the worker who wants to work on an ad-hoc basis, and for the employer who

³ Data to be released soon. We will share with BEIS when it is released.

may not have a continuous stream of projects for people to work on. The key point in this discussion was that the worker has choice.

Another interviewee said they think work is an unequal bargain at the moment, and more stability would be sensible. A stronger definition of who is an employee is needed: for example, *'if you're driving a van with a logo on and wearing a uniform, are you an employee?'* Drivers for a delivery company are the core of the business, which *'seems a loaded equation'*. This interviewee felt it can be difficult for some people to cope with not knowing how many hours they'd be working in a week.

Just two interviewees felt it unnecessary to have this right to request, saying that if the employer had enough work on ongoing basis, they probably would have offered it in the first place. However there was agreement with the intent to stop employers treating people poorly, although of course the request could be denied. A good employer may accept it and would have done so anyway and a less good employer may say no. Overall, an interviewee felt that the goal of the right to request is an appropriate one but the right to request may not solve it.

Another person supported the idea but also highlighted that flexible working arrangements are needed as businesses have peaks and troughs such as times where more people are on holiday; gaps that are filled by people who want temporary arrangements. This right would need to be rolled out in a way that doesn't have a negative impact on recruitment agencies. A further interviewee felt the process should be kept as simple as possible.

Another interviewee was concerned that the relationship between employer and worker would change if you keep having to turn the requests down. It could create a hostile relationship, which could have a negative impact on customer service and productivity.

32. Should any group of workers be excluded from this right?

In all, 64% of HR professionals we surveyed said no groups of workers should be excluded from this right. 17% didn't know.

A minority 18.75% (equating to 12 people) felt certain groups should be excluded from this right. Their comments about the groups they feel should be excluded are as follows:

- Fixed-term temporary workers
- Subcontractors and agency workers
- Genuinely self-employed

- Those working on a student visa
- Mutually agreed casual workers
- Truly self-employed. But I do feel the criteria needs to be much clearer therefore harder to 'fudge' for less scrupulous employers.
- Freelance, Self-Employed for HMRC
- People who have worked on/off for the employer for less than 2 years

CIPD viewpoint:

CIPD believes the right to request a more stable contract should apply to all workers. It is important that the flexibility in the UK's labour market works for both employers and individuals and that wherever possible people involved in atypical or non-standard employment are doing so out of choice because it suits their individual circumstances.

33. Do you think this will help resolve the issues the review recommendations sought to address?

CIPD viewpoint:

CIPD believes the introduction of a right to request a more stable contract has the potential to help increase transparency and choice in the labour market.

Providing individuals with a right to request a change in their employment status or the regularity of their working hours can help enhance the UK's flexible labour market.

To be sustainable, non-standard or atypical employment arrangements need to be a win-win for both the employer and the individual. The right to request a stable contract provides an opportunity for people on these sorts of contracts opportunity to speak to their employer if they are not satisfied with uncertainty over their hours or employment status.

The effectiveness of such a right is dependent on employee awareness of the right and their confidence to request. It's also dependent on employers giving such requests reasonable consideration, which will hopefully be motivated by a desire to avoid people working for them becoming disengaged or leaving the organisation.

In situations where there is an opportunity to move to regular hours or a permanent position, but it hasn't occurred to the employer, and the employer doesn't know that the employee is looking for a more stable contract, a right to request could facilitate that conversation.

34. Should employers take account of the individual's working pattern in considering a request?

We believe workers should have the right to request a more predictable and stable contract, in line with their current working pattern within the organisation. Where an individual's work has been consistently regular (for example 15 hours a week for 12 months) there is a case to be made that the individual doesn't need to be on a flexible contract.

The majority (80%) of the 65 HR professionals who answered this question agreed that the individual's working pattern should be taken into account. Just 14% said no, and 6% didn't know.

A straightforward request is one where the individual's current working arrangements fall into a pattern. And if it has been demonstrated that the existing pattern fits the business needs, the business may not be able to offer a different working pattern.

Overall, good practice is that managers take time to have the conversation with employees, understand the individual's views on their working arrangements and consider whether that can be accommodated in a way that suits both the individual and the organisation, whether now or in the future.

An interviewee from an agency gave the example of a company with an embargo on recruitment that therefore recruits temporary staff who work there consistently. In that instance where there's no fluctuation and no end in sight to the work, the agency has a conversation with the client to find out the reasoning behind it as there's no reason for a flexible contract. They felt that although this doesn't benefit the recruitment agency; it's good for individuals to have this right to provide job security.

Another interviewee believed all aspects of the working pattern should be considered, on top of consideration of whether the job actually exists on a permanent basis, including the individual's performance and how reliable they are as a worker. They felt there should be a second recruitment process: *'Have you met the standard we expect of someone working here permanently?'*

35. Should there be a qualifying period of continuous service before individuals are eligible for this right?

CIPD viewpoint:

CIPD believes that there should be a qualifying period of continuous service of 12 months to give both worker and employer the opportunity to establish a working pattern and see what works for both parties. This length of time would also take into account seasonal fluctuations. A shorter qualifying period could devalue the process as employers may find it difficult to approve requests where they don't have enough evidence about the pattern of regularity of demand for goods or services and consequently labour.

In our Labour Market Outlook survey, 662 employers gave us their views on this question: *In your opinion, what length of continuous service should individuals need to have with an organisation before they are able to request a stable contract, for example either a permanent contract or regular guaranteed hours?*

- At least 3 months -20%
- At least 6 months – 32%
- At least 12 months – 41%
- A least 2 years – 6%
- Other – 1%

There were no significant differences in responses by sector (private, public, voluntary).

One interviewee said a qualifying period was sensible, for example 12 months. They gave the example of a worker who may only be needed for the Christmas period in a retail organisation. In this circumstance it's a short-term need and the employer shouldn't be obliged to offer a more permanent contract. Another interviewee also suggested 12 months as a suitable period in which a working pattern could be established; they argued six months would be too short as could be to fill a particular peak in work, or to take into account things like maternity cover.

Another interviewee suggested the simplest thing would be to dovetail it with a fixed term contract, after four years. This was similar to another response that it's important to keep the arrangements and processes as simple as possible. They said that if there's scope for ambiguity or picking-and-choosing, that's where relationships can become problematic.

One person explained that in their industry it was impossible to predict demand, even calculated as an average over the course of a year, giving the example that they would expect to need more staff during school holidays, but if it rains during those holidays then the plan will change from day to day.

36. What is an appropriate length of time the employer should be given to respond to the request?

CIPD viewpoint:

CIPD's view is that one month is sufficient time for an employer to respond to a request, in line with the views of just over half of our members who responded to our survey. Although employers currently have three months to respond to requests for flexible working, this feels too long.

Two interviewees we asked about this agreed that 3 months is too long; one proposed 14 days and the other suggested a month (unless it's a large corporation with a highly hierarchical structure). One said that when investigating a request, the organisation should have a process in place to look at all the factors involved.

	Percentage	Count
1 months	52.31	34
2 months	24.62	16
3 months	20	13
More than 3 months	3.08	2

Base: 65

One interviewee who works for a charity said that it can take two months to obtain the right HR information from others in the business that would be needed to respond to a request. Another suggested one pay cycle would be a reasonable amount of time to respond, i.e. if people are paid weekly, the employer should respond within a week.

37. Should there be a limit on the number of requests an individual can submit to their employer in a certain period of time?

A limit on the number of requests is a sensible step. We feel one request every six months after the qualification period is reasonable and would take into account changes in life circumstances, or changes in the organisation.

A majority 86% of the 65 HR professionals who answered this question said yes, there should be a limit. A small 8% said no limit, and 6% didn't know.

Twenty-five comments suggest the limit should be one per 12 months. Three people commented that this would be the same as the right to request flexible working. Twenty people suggested one request every six months, or the equivalent of two a year. Two people thought the limit should be three requests in a 12 month period, and two people said four requests per year.

An interviewee commented that if organisations know it's coming and are prepared, they should be able to absorb the admin around this. It's a theoretical possibility people can submit multiple requests and that will depend on the nature of the business. However, a more likely admin issue for organisations would be having a lot of workers who all put in requests, rather than the possibility of multiple requests from a small group of people. They also felt that resources for employers would be useful, as often employers have a lack of experience of how to work out things like holiday entitlement.

Another interviewee suggested one request in 12 months would make it the same as for flexible working so would be consistent. However, another felt 12 months was too long and suggested once every 6 months is better as a fast changing environment means business requirements change. An employer may have a sound business reason to say no at first, but then something changes and a repeat request six months later is accepted. Another individual highlighted instances in factories where the opposite happens - permanent employees are asked to become temporary employees, due to business conditions.

38. When considering requests, should Small and Medium Enterprises (SMEs) be included?

Yes, we think workers in all sizes of business should have the right to request a stable contract. Given around two-thirds of people in the UK work in SMEs, this is a significant proportion of working age adults that would otherwise be excluded from this right. The Department for Business, Energy and Industrial Strategy would need to seek views from a

wide range of small businesses (which is a wide category of diverse enterprises) about the practicalities.

One interviewee told us they felt the larger SMEs should be included: *'if you employ a couple of hundred people, you should do this like everyone else'*. Two interviewees felt SMEs should be included with one commenting that the admin burden wouldn't be particularly onerous for them. There may be more scope for SMEs to turn down a request, for example the business can't afford to risk having someone permanent until they are really sure the demand for the work is there, but it should still be considered.

Another interviewee suggested that before SMEs hire someone, they should have to demonstrate that they understand what's required of being an employer. It's not necessarily right that they can offer someone a job without addressing issues such as the contract.

Another interviewee said the majority of employment relationships would be out of scope if SMEs were not included, given they are responsible for 60% of private sector employment.

Section E: Information and consultation of employees regulation (2004) (ICE)

According to case study research, the ICE regulation that the request for a formal agreement must be made by at least 15 employees or 10% of the workforce can put undue stress on employees, who may be perceived as questioning managerial legitimacy. This can happen particularly in situations where the request is made without the support of a trade union.⁴ Organisations may establish arrangements typically known as joint consultative committees (JCC), staff/company councils or works/office committees as mechanisms to share information and consult with employees, should employees trigger their statutory rights. According to a recent CIPD paper on employee influence, more knowledge could be provided about specific areas of influence that may be yielded by employees through these arrangements.⁵ The WERS survey in 2011 found 28% of employee representatives said JCC meeting agendas are typically controlled by their manager and their preferred options for which issues to discuss.⁶

According to WERS, the incidence of consultation committees has remained stable or declined: the number of organisations with a JCC at the workplace level in 2011 was 7%, and the number of organisations with a higher-level JCC was 18%. Another recent CIPD survey found that only 6% of employees have access to non-union staff associations or consultation committees, showing that these are not a common indirect channel for voice.⁷

We asked the following questions at a roundtable with senior leaders from our Policy Forum and in follow-up interviews with some senior leaders. There was a sense that ICE is a significant and important piece of legislation, more so than continuous service.

⁴ Cullinane et al (2015), in CIPD. (2017) *Power dynamics in work and employment relationships: the capacity for employee influence*. London: Chartered Institute of Personnel and Development. Available at: https://www.cipd.co.uk/Images/power-dynamics-in-work-and-employment-relationships_2017-the-capacity-for-employee-influence_tcm18-33089.pdf [Accessed 23 May 2018].

⁵ CIPD. (2017) *Have your say: alternative forms of workplace voice*. London: Chartered Institute of Personnel and Development. Available at: <https://www.cipd.co.uk/knowledge/work/future-voice/alternative-workplace-voice> [Accessed 23 May 2018].

⁶ WERS. (2011) *The 2011 Workplace Employment Relations Study*. Available at: <https://www.gov.uk/government/publications/the-2011-workplace-employment-relations-study-wers> [Accessed 23 May 2018].

⁷ CIPD. (2018) *UK Working Lives: The CIPD Job Quality Index. Full Report*. London: Chartered Institute of Personnel and Development. Available at: <https://www.cipd.co.uk/knowledge/work/trends/uk-working-lives> [Accessed 23 May 2018].

39. Are there formal provisions in your workplace for informing and consulting employees about changes that may affect their work?

One interviewee said that everyone in their company meets monthly to discuss what they've been doing, changes to staff handbook, and changes to things due to GDPR or new policies. They said setting out formal agreements is important, but the majority of small businesses don't do it. A template policy would be useful to encourage more businesses to formally consult their staff.

Another senior HR leader we interviewed told us that as a business they engage with staff a lot, following the legal requirement about redundancies and when there is an issue they want to get feedback on. They prefer to engage directly with staff, since they don't have a recognised trade union. Their engagement mechanisms are quite informal as that fits with their culture: *'We have regular briefings (where) management give a presentation and take questions. Focus groups are a way of engaging people and I've used champions (people who can engage locally and report back to us on issues we may not hear about otherwise). But this isn't part of a formalised network. As champions are subject specific, it works well. We're very informal and anyone can talk to the chief exec. We're starting to do more videos and we have team briefings'*.

41. How might the ICE regulations be improved?

There was general consensus from our roundtable participants that there is no need to change the regulations, but rather, a major government campaign to promote the benefits of the regulations for employers would be beneficial. While there is a strong business case that the ICE regulations make it easier to implement changes in the organisation, there has been a lack of communication, so most people aren't aware of this. Barriers to using ICE that were suggested include:

- Lack of support from the TUC, with trade union representatives not wanting to work with non-trade union representatives.
- Many organisations are already doing things to engage with staff and share information, so don't feel the need to use ICE.
- Concern that the organisation may lose some of the control over what they're consulting on if they use the ICE process.
- Lack of employee awareness of ICE so under-used.

One suggestion was that the regulations could just apply to organisations that don't have a recognised trade union, to overcome the barrier of working with trade unions. When ICE is

viewed as a strategic form of collective voice in the organisation (as opposed to merely complying with the regulation), it can work well, which highlights the importance of organisational culture in how ICE is used. However, it was also mentioned that ICE requests tend to occur in response to something significant having happened in relation to the workforce, therefore it's unlikely that a harmonious workforce would put in a request without some form of catalyst.

One interviewee told us that employee awareness is likely to be low: *'Most of employees in my current workplace wouldn't be aware of the ICE regulations'*. They also highlighted the time taken to set up and run a forum and make sure people are trained on how the forum operates and expectations of being part of it. However, an issue they encountered was the number of people moving around the business, and needing to ensure each business area was represented. They organised an annual conference meeting to help them gel as a team of people. There were also problems in getting enough people to stand.

Another interviewee also felt that they're not publicised enough, and that their colleagues (including HR practitioners) did not fully understand the organisation's obligations under the regulations. They said improvement was necessary as they're important, and there's a place for them because employees have a right to know about major business decisions that are going through. However they felt they need to be strengthened and publicised more otherwise they feel a bit 'empty handed'. The regulations need to be supported by comprehensive guidance about what to consider to make consulting and engaging with employees effective.

An interviewee told us that training for people on the forum is important for a constructive conversation: *'we had lots of people who were passionate, but not easy to engage or focused as we hadn't given them training'*. In contrast, there was a feeling that union representatives had training so were easier to work with. Staff may not understand the difference between a forum created for the ICE regulations and a trade union. Without training, there can be a lack of understanding about what the forum is there to do.

The interviewee also highlighted that training and setting expectations are important, as some representatives felt they were only being gathered together for bad news and that they had to endorse it. Some felt it was a light consultation as management had already made a decision. *'You have to make it clear to people why you're talking to them and what you expect from them in return. That's irrespective of the way you're consulting with people. You have to be clear whether you're consulting with them or are just informing them. Expectation setting is a critical thing – what you expect to happen as a consequence of receiving their feedback and then people tend to engage much more realistically'*.

Another interviewee who had worked in other European countries mentioned that it would be useful to look at productivity levels in relation to the way ICE regulations and employee involvement are implemented in different countries. From their experience, the relationship between the parties is fundamental to the success of the consultation – collaborative solutions can be developed if the organisation has a good relationship with trade union representatives, for example.

42. Should the ICE regulations be extended to include workers in addition to employees?

One question to clarify here is what we mean by ‘workers’, and whether there are particular categories of worker that should not be eligible. From the CIPD’s point of view, there is a moral case for including all types of worker, and not treating particular groups (such as workers on zero-hours contracts) differently from the rest of the workforce.

In the roundtable discussion, there was consensus that workers should be included, since they are integrated in the workforce and therefore should be involved voluntarily in consultations about their working conditions.

One respondent noted that for workers to establish their employment status, collectively advancing a request for a consultation body is a quicker way of bringing their request into a forum, instead of taking it to an employment tribunal. It is currently not in employers’ interest to include workers in a works council, since it would be a factor that could help to define their employment status. A recommendation was to change the law on works councils to allow workers to participate without it affecting their employment status.

Another respondent, talking from personal experience of being a contractor in the past, said that an inclusive employer would automatically include everyone in things like all-staff briefings. In some companies you will have an overt understanding of whether you are an employee or a contractor and in others you’ll just feel one of the team, regardless of your employment status or working arrangements.

43. In your opinion, should the threshold for successfully requesting ICE regulations be reduced from 10% of the workforce to 2%?

CIPD viewpoint:

It is the view of the CIPD that lowering the threshold for requiring employers to establish arrangements for consulting and communicating with their workforce from 10% to 2% would make little difference to the impact of the regulations.

Our respondents felt that changing the threshold would make no difference to take-up, since it's only beneficial if individuals choose to take advantage of the regulations. However, one roundtable participant highlighted that lowering the threshold could encourage unions to get

Research jointly sponsored by CIPD, Acas and the Department for Business, Innovation and Skills on the impact of the ICE regulations showed that management is the dominant factor deciding the extent arrangements for informing and consulting staff are a communication tool or are a genuine means of consulting with staff.⁸ The ICE regulations were found to have limited impact on the extent information and consultation (I&C) arrangements provided opportunities for employee consultation, instead management preference was the main factor deciding whether information and consultation arrangements were genuinely consultative or simply a means of communicating with the workforce.

The research also showed that employers have to invest in training employee representatives and time in building trust in the consultation process for I&C arrangements to be seen to add value to the organisation and the workforce. This suggests that simply reducing the threshold required to trigger the establishment of formal I&C arrangements from 10% to 2% is unlikely to in itself provide greater opportunities for genuine two way employee voice.

44. Is it necessary for the percentage threshold for implementing ICE to equate to a minimum of 15 employees?

One interviewee felt that a change in the threshold would not make any difference. Instead, a greater awareness of employee rights is needed.

⁸ BIS/ACAS/CIPD. (2009) *Implementing information and consultation: evidence from longitudinal case studies for organisations with 150 or more employees*. Available at: http://eprints.uwe.ac.uk/12855/1/Employment_Relations_Research_Series_%28ERRS%29_105_-_URN_09_1543.pdf [Accessed 23 May 2018].

Another felt that consultation was important no matter what the size of the business, but regulations stating 15 people aren't needed makes ICE relevant to small companies.

45. Are there other ways that the Government can support businesses on employee engagement?

A big challenge for government is how to encourage small firms and owner managers to think more about employment status, rights and employee voice. Small and medium-sized enterprises (SMEs) represent a significant segment of the UK economy – accounting for nearly half of business employment and turnover. To date, most attention on enhancing SME productivity has focused on financial and technological support. However our work in the area indicates strongly that a focus on people management capability is also essential for productivity. This view is reinforced by the Bank of England's chief economist Andy Haldane, who has argued that a lack of management quality is a plausible explanation for the UK's long tail of low productivity companies.⁹ Haldane also suggests there is high potential for productivity growth among smaller firms (with fewer than 50 employees) given that while there is a larger, longer tail of small firms with low or even negative levels of productivity growth, such firms tend to exhibit faster rates of productivity growth than larger firms, even when it is from a lower base.

The recent BEIS Select Committee¹⁰ inquiry into industrial strategy noted that the 'Growth Hub' network, which provides a gateway and advice service to many businesses seeking support, is providing a "patchy" service' and 'there is a need to set a clear national direction and provide stronger support'.

Constraints in time, resources and expertise often present particular challenges for SMEs to developing their capability in effectively managing and developing their people. For example, the majority of small businesses won't have a HR professional in post to provide expert guidance and develop an organisation's people management capability.

One part of the solution is providing bespoke low cost/no cost support on people management issues to small firms. CIPD has piloted and evaluated a model for providing

⁹ <https://www.bankofengland.co.uk/speech/2017/productivity-puzzles>

¹⁰ Business, Energy and Industrial Strategy Select Committee. Industrial Strategy: First Review. Available at: <https://www.parliament.uk/business/committees/committees-a-z/commons-select/business-energy-industrial-strategy/inquiries/parliament-2015/industrial-strategy-16-17/> [Accessed 23 May 2018].

this type of support called People Skills.¹¹ People Skills was developed by the CIPD, with support from J.P. Morgan through the JPMorgan Chase Foundation. It provided up to two days' worth of free HR support to small firms, including face-to-face advice, a telephone helpline, online information and templates, as well as group training events. The year-long pilots programme provided more than 400 small firms with HR support and advice in Hackney in east London, Stoke and Glasgow. The project vision was to support SME growth and productivity by enabling better people management and leadership practice within the SME community.

The evaluation found that, while much of the support provided by the *People Skills* initiative was fairly basic, such as establishing workers' terms and conditions or job descriptions, there was evidence that this provided a foundation for boosting workplace productivity. Owner managers were more likely to report their organisation was better or much better than similar firms in their sector on measures of workplace relations, labour productivity and financial performance after using the *People Skills* service than they were prior to using it. These benefits also came through in the in-depth qualitative interviews with owner managers that participated in the *People Skills* initiative.

The evaluation suggests that tangible improvements to SME employment practices can be delivered through this type of bespoke 'hands-on' support which in turn provides a foundation for greater confidence among owner managers and for more transformational change. In each area the pilot was supported by key local partners for example the local council, Local Enterprise Partnership, Chamber of Commerce, or a combination of these stakeholders.

People Skills was found to be a highly effective operating model that met demand for people management support from SMEs efficiently and effectively. Feedback from small firms which used the service was overwhelmingly positive, and Glasgow City Council decided to continue funding its support once the grant ran out.

CIPD recommendation:

The CIPD recommends a national rollout of the People Skills small firm support model across the Local Enterprise Partnerships as part of a renewed focus in industrial strategy on enhancing workplace productivity by boosting managerial quality, increasing investment in skills and strengthening the quality of business support through local level institutions.

¹¹ CIPD. (2017) People Skills: Building ambition and HR capability in small UK. London: Chartered Institute of Personnel and Development. Available at: <https://www.cipd.co.uk/knowledge/strategy/hr/hr-capability-small-firms> [Accessed 23 May 2018].

CIPD estimates that if a *People Skills* type small firm support model were adopted by all Local Enterprise Partnerships in England, it would require initial funding of around £13 million per year for at least three years. This could be funded by allocating £40 million of the £23 billion National Productivity Investment Fund. The three-year time period would allow for those areas where the approach has proved successful to be scale-up and areas where it was less successful to address the underlying weaknesses around effective engagement with SMEs.

CIPD recommendation:

We also recommend that Government:

- 1. Provides practical guidance and resources for SMEs to enhance people management capability.**
- 2. Develops a clear communications campaign to SMEs (including those hard to reach) about the support available and where they can access information.**
- 3. Provides a one-stop-shop of resources as SMEs often do not know where to go to access information relevant to them, or find support is fragmented.**
- 4. Utilises CIPD research, including the framework of SME growth, to inform the development of an SME support offering.**

46. How might the Government build on the expertise of stakeholders such as Investors in People, Acas and Trade Unions to ensure employees and workers engage with information about their work?

CIPD believes there is a need for more regular strategic engagement between different parts of government, non-departmental government bodies such as Acas, and stakeholders such as BCC, FSB, CIPD, CBI, CMI, EEF, IIP and the TUC to discuss issues and challenges on the labour market and the workplace, agree key messages and ensure that core advice, guidance and information reaches employees, workers and employers. Collectively these stakeholders have effective channels through which to reach hundreds of thousands of employers and millions of workers.

The establishment of some type of strategic forum to act as a vehicle for this type of engagement would enable government and these key stakeholders to collectively address

emerging challenges and issues and ensure that relevant information is reaching employers, workers and employees.

47. What steps could be taken to ensure workers' views are heard by employers and taken into account?

The CIPD recommends that employers create a range of mechanisms to ensure workers' views are heard, including individual and collective, direct and indirect, and informal and formal channels. Effective voice is unlikely to result from a single initiative, but rather from a number of complementary channels supported by leadership at all levels of the organisation. Diversity concerns should be considered as a core concern of voice initiatives, since individuals may have different needs and motivations for voice, and particular workforce groups can often be underrepresented in conventional voice mechanisms. Line managers should also be trained in facilitating open dialogue with individual team members, and recognising the value of worker voice as well as taking action on issues raised where needed.

One senior HR professional interviewee felt that methods of engagement don't always need to be formal – they need to fit the company culture. Good employers are already engaging with their staff and the formal methods may be more for those employers who are dragging their heels and are reluctant to consult and engage with their staff. Another echoed that as soon as formal systems are put in place, it changes the work relationship. They believed it's better to keep voice informal for as long as possible, because representatives may not represent people's views in the right way.

According to one respondent, many organisations are using technology such as online consultative tools that can gauge employees' immediate responses. Employers are also increasingly recognising the benefits of establishing an employee forum or consultative body.

Thought needs to be given to how information and consultation arrangements can work most effectively in smaller firms. One interviewee suggested forums can be held, but it's harder to be anonymous in a small business as there's the risk of being discriminated against or penalised in some way for having a different view. Another interviewee believed there's probably less need for formal information and consultation arrangements in SMEs because people tend to talk more and share things naturally in small companies. When the company grows, there are more policies and procedures, which can mean particular parts of the workforce can get overlooked.



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Another senior HR professional felt that SMEs may be the most needy cases, but you don't want to overburden them, either. The good employers will engage with their staff anyway - the regulations are to spur on those that don't.

One interviewee told us that listening to people on a reasonable basis is important because the more people are listened to, the more they will feel involved: *'If they're not listened to, they'll walk out. I think you have to try your best to treat them all (employees and workers) equally e.g. through a suggestion box.'*

CIPD viewpoint:

CIPD believes there is merit in learning from the experience of the Engage for Success movement which has a wealth of research evidence and case studies about how to engage with employees and the link between employee engagement and business and practical examples of how to support employee engagement.

CIPD

May 2018