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23rd. May 2018

**Submission from the Institute of Interim Management
in response to the Consultation on
measures to increase transparency in the UK labour market.**

Introduction

1. This submission is from the Institute of Interim Management (“the Institute”, “the IIM”, “we”, or “us”), a professional membership organisation for independent Interim Managers and Executives (“IMs”), in response to the consultation on improving transparency in the UK labour market.
2. Background information on the Institute and on Interim Management is given in the Appendix attached.

The Issues

Applicable Scope

3. As noted in the introduction to the consultation on transparency recommendations in response to the Taylor Review published in July 2017, concern has been raised over ‘one-sided flexibility’ where some employers are transferring risk to workers. In some cases, the report found that this led to workers feeling no benefit from the flexible arrangement.
4. The Taylor Review was clear that engagement transparency should be a mutually beneficial arrangement and ensured that workers engaged would have a clear understanding of the terms by which they would be engaged. It concluded that this would only be possible for flexible workers when they are able to enforce their rights when things go wrong.
5. The Review made several recommendations related to the use of written statements and what information they should contain, along with information and requirements as specified elsewhere. BEIS, through this consultation are seeking to strike a balance in today’s UK labour market for appropriate transparency.
6. The focus of this consultation is to support various forms of flexible worker, and particularly those where employment rights may accrue.
7. The IIM is responding to this consultation on behalf of the interim profession and this continues previous submissions called for by the department previously when legislative changes have been proposed.
8. The IIM notes the continued desire of BEIS to ensure that the UK flexible labour market continues to operate efficiently and fairly. This balance is felt to be out of kilter currently, particularly for those flexible workers who are not able to ensure enforcement of reasonable and fair terms and conditions

with some employers.

9. The IIM views the flexible workforce in the UK to operate along a continuum or spectrum, where at one end there are many low skilled workers who either operate in seasonal work areas or undertake activities where relatively large numbers of workers are required to undertake similar tasks. At the other end of the same spectrum are IMs. These are relatively few in number across the whole profession, are highly experienced executives who are in business on their own account and are perfectly capable of negotiating their own contractual terms with any potential client. They have no desire to be confused in any way with employees. There is no need therefore to enforce any form of employment rights as they are totally irrelevant to the IM business model. IMs contract with clients to deliver assignments with agreed objectives. They usually charge a day rate for their services and senior IMs would certainly not charge less than £500 per diem. IIM surveys show average fees typically 50% above this figure, rising well beyond £1000 per diem. IMs operate in positions that have a significantly positive impact on the UK economy. Clients see a return on their investment in an IM of many times the scale of the fees invoiced.
10. IM terms and conditions are very clear about who pays, when, how much and what for. Negotiations can be robust, but the final agreement is a business to business transaction and the parties will not sign this if they are not comfortable with the outcome. Additional regulatory enforcement is largely unnecessary, notwithstanding occasional late invoice payment but this issue exists across the whole UK SME community.
11. Whilst the IIM recognises the general labour market benefit of the consultation proposals, the complex work end of the flexible worker spectrum does not need further protection of this sort. Indeed, it needs to be removed from the remit of any proposed changes given they would be completely inappropriate for the profession. We therefore urge BEIS to ensure that changes proposed will include an opt out for IMs and/or write into the scope a form of words that enables all IMs to fall outside the regulatory remit being considered here. This will avoid considerable potential collateral damage to practicing IMs and enable the government to focus on that part of the workforce that would benefit significantly from its endeavours.
12. It is with the approach outlined above that the IIM has responded to the consultation questions, set out below.

Consultation Paper Questions

Personal (P) information

P1

P2

P3

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Are you:

An individual

An employer

Representing employers' or employees'/workers' interests

Legal profession

Other The Institute of Interim Management is a not for profit membership body representing the interests of the professional interim executive: people in business on their own account.

P4

If you are responding as an individual which best describes your employment status?: N/A

P5

If you are an employer, how would you classify your organisation? N/A

P6

**If you are an employee or worker, what type of organisation do you work for?
N/A**

P7

**If you are an employer, how many employees work for your organisation?
N/A**

P8

**If you are employed, how many people work for your organisation?
N/A**

P9

If you represent employers or employees/workers, which best describes you

A trade union

An industry or employer association *see above*

An agency worker interest group

Other (please specify below)

P10

**If you are an employer, what proportion of individuals undertaking paid work at your workplace are:
N/A**

Section A: Written Statements – Questions for employers

Members of the IIM and indeed all professional interim managers/executives, are in business on their own account. They engage in business to business transactions that operate under commercial law and are the

subject of detailed contracts for services required by the client. Such contracts may be conducted directly with the client organisation, or via a third party intermediary, often referred to as a 'provider' (a form of agency).

All interims are clear that they operate as a business. Their service supplied to any client is defined by their contract for services provided and this includes the extent of the reward for those services, be it fees and/or some form of success award at contract end, based upon achieving contractually agreed outcomes.

The IIM takes the view that all professional interims should operate outside of IR35, removing any potential confusion over whether the interim is an independent provider of specialised service, or should be deemed an employee. The latter situation is never one intended by either contracted party and will be stated as such within the negotiated and agreed terms of the signed contract.

As a consequence, The IIM supports the view that any future regulations to improve transparency in the UK workplace would be best served by making a clear distinction that this does not need to impact professional interims due to the distinct nature of the service offered and the clear intention of this group to be firmly in business on their own account.

The vast majority of the question in this consultation are therefore not deemed applicable to the interim executive or manager, particularly given the negotiated detail of the engaging contract.

- Q1** **Question 1 - Have you provided a written statement of employment in the last 12 months to: N/A**
- Q2** **In general, when do individuals starting paid work at your organisation receive:**
a) **A written statement**
The contract for service is negotiated, agreed and signed before the commencement of the assignment.
- Q3** **How long, on average, would it take a member of staff to produce a written statement for a new starter?**
N/A.
- Q4** **How often do you seek legal advice when producing a written statement?**
N/A. Always operate to a contract for client service provision.
- Q5** **Are there other business costs associated with producing a written statement, in addition to personnel and legal costs that we should be aware of?**
N/A to written statement.

Section A: Written Statements – Questions for individuals

Q6

If you are employed, have you received any of the following from your employer:

a) A written statement? N/A

b) An employment contract or other employment particulars?

N/A

Q7

If yes, when did you receive the following in relation to starting paid work with your employer:

a) A written statement N/A

b) An employment contract or other employment particulars N/A

Q8

If yes, was the information presented in a way that was easy to understand?

Section A: Written Statements – Questions for all

Q9

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?

Neither agree nor disagree.

Please provide reasons for your answer.

Not relevant to the IIM's interest in the consultation

Q10

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

a) The business's name

Don't know.

b) The employee's name, job title or a description of work and start date

Don't know.

c) If a previous job counts towards a period of continuous employment, the date that period started

Don't know.

d) How much, and how often, an employee will get paid

Don't know.

e) Hours of work (and whether employees will have to work Sundays, nights or overtime)

Don't know.

f) Holiday entitlement (and if that includes public holidays)

Don't know.

g) Where an employee will be working and whether they might have to relocate

Don't know.

h) If an employee works in different places, where these will be and what the employer's address is

Don't know.

Q11

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

a) How long a temporary job is expected to last, or the end date of a fixed-term contract?

Neither agree nor disagree

b) How much notice the employer and the worker are required to give to terminate the agreement?

Neither agree nor disagree.

c) Sick leave and pay entitlement?

Neither agree nor disagree.

d) The duration and conditions of any probationary period?

Neither agree nor disagree.

e) Training requirements and entitlement?

Neither agree nor disagree.

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

Neither agree nor disagree.

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

Neither agree nor disagree.

If you disagree that any of the above additional items should be included on a principal written statement, please provide reasons.

Q12

To what extent do you agree that the principal written statement should be provided on (or before) the individual's start date?
Neither agree nor disagree.

Q13

To what extent do you agree that other parts of the written statement should be provided within two months of their start date?
Neither agree nor disagree.

Section A: Written Statements – Questions for individuals

Q14

Have you ever worked for an organisation that has not provided you with a written statement of employment particulars within 2 months of starting your job?

N/A

Q15

If you answered yes to question 14, did you:
a) Consider lodging a complaint with an employment tribunal (even if you did not end up doing it)? N/A

b) Pursue compensation?

N/A

Q16

If you answered yes to question 15b, were you successful in securing compensation for failing to receive a written statement within 2 months of starting your job?

Not applicable.

Q17

If we introduced a standalone right for individuals to bring a claim for compensation where an employer has failed to provide a written statement, what impact do you think this would have? Please consider the impact on:

a) Individuals N/A

b) Employers N/A

c) The Tribunal Service N/A

Section A: Written Statements – Questions for all

Q18

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

N/A

Q19

If you have some knowledge of the Acas guidance on written statements, how helpful did you find it?
N/A

Section B: Continuous Service

Q20

What do you think are the implications for business of the current rules on continuous service? No View

Q21

If you are employed, or represent employees what are the implications for you or those you represent of the current rules on continuous service? No View

Q22

Do you have examples of instances where breaks in service have prevented employees from obtaining their rights that require a qualifying period? No View

Q23

Do the current rules on continuous service cause any issues in your sector? No View

Q24

We have 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?
No View.

Q25

Do you believe the existing exemptions to the break in continuous service rules are sufficient? No View

Q26

We intend to update the guidance on continuous service, and would like to know what types of information you would find helpful in that guidance? (Select all that apply) No View

Section C: Holiday Pay

Q27

Do you think that the government should take action to change the length of the holiday pay reference period?
No View

Q28

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? No View
b) Set a 52 week default position but allow employees and workers to agree a shorter reference period? No View
c) Set a different reference period.
No View

- Q29** **What is your understanding of atypical workers' arrangements in relation to annual leave and holiday pay?**
For example:
a) Are they receiving and taking annual leave? No View
b) Are they receiving holiday pay but not taking annual leave? No View
c) Do you know of any other arrangements that are used? No View
- Q30** **How might atypical workers be offered more choice in how they receive their holiday pay?**
Interim executives/managers have no interest as this does not constitute any relevance to their contract for service engagement with the client.
- Section D: Right to Request**
- Q31** **Do you agree that we should introduce a Right to Request a more stable contract?**
No View
- Q32** **Should any group of workers be excluded from this right?**
Yes. Please explain your reasons. Interims are in business on their own account and have no desire or reason to be confused with employment (protection) rights of any kind.
- Q33** **Do you think this will help resolve the issues the review recommendations sought to address?**
Yes. This will clarify the position of interims in the UK workplace as independent business owners, operating on their own account under commercial contract law.
- Q34** **Should employers take account of the individual's working pattern in considering a request? No View**
- Q35** **Should there be a qualifying period of continuous service before individuals are eligible for this right? No View**
- Q36** **What is an appropriate length of time the employer should be given to respond to the request? No View**
- Q37** **Should there be a limit on the number of requests an individual can submit to their employer in a certain period of time?**
No View
- Q38** **When considering requests, should Small and Medium Enterprises (SMEs) be included? No View**

Section E: Information and Consultation of Employees Regulations (2004) (ICE)

- Q39** Are there formal provisions in your workplace for informing and consulting employees about changes that may affect their work?
N/A
- Q40** *For employees only*
Have you ever requested Information and Consultation of Employees (ICE) provisions in your workplace?
N/A
- If no, please describe why you have not made a request for ICE provisions. Please select all that apply: N/A
- If you answered yes, did this lead to positive outcomes for you at work? N/A
- Q41** How might the ICE regulations be improved? No View
- Q42** Should the ICE regulations be extended to include workers in addition to employees?
No. At least as far as this applies to interims
- Q43** In your opinion, should the threshold for successfully requesting ICE regulations be reduced from 10% of the workforce to 2%?
No View.
- Q44** Is it necessary for the percentage threshold for implementing ICE to equate to a minimum of 15 employees?
No View
- Q45** Are there other ways that the government can support businesses on employee engagement? **Yes. Please give complete clarity that this approach does not intrude on people genuinely in business on their own account and in particular, professional interims.**
- Q46** 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? No View
- Q47** What steps could be taken to ensure workers' views are heard by employers and taken into account? No View
- Q48** Are there other ways that the government can support businesses on employee/worker engagement? **Yes. Ensure that it is completely clear to all organisations that could consider the**

use of professional interims that they are in business on their own account and do not, in any way, have to consider the area being consulted on here.

If you have any queries on the foregoing, please do not hesitate to contact us. We would be very pleased to meet with you as necessary. Could you please add our contact details to your mailing list for any future related consultations?

We should be grateful if you would please acknowledge this reply.

Yours faithfully,

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APPENDIX

Background to the Institute of Interim Management

The Institute of Interim Management (“the Institute” or “IIM”) is a membership organisation for Interim Managers and Executives (“IMs”). It was established in 2001 with the principal aims of championing quality standards and best practice for its members.

The membership is drawn mainly from IMs resident in the UK, although their assignments can take them world-wide. There are also overseas members drawn principally from other EU Member States. The IIM has ongoing relationships with similar organisations internationally, including Italy, Germany, Netherlands, Poland, USA, Canada, Singapore, Czech Republic, Slovakia and Balkan states.

In addition to its website (www.iim.org.uk), the Institute has a significant web presence through its on-line LinkedIn group, Interim Management IIM (www.linkedin.com/groups/Interim-Management-IIM-2339933/about). The group is open to all-comers with an involvement or interest in Interim management, and therefore comprises a cross-section of all participants in the industry.

The on-line group currently has just under 15,000 members, comprising principally IMs (76%) and niche agencies (known in the industry as “Providers”) that specialise in ‘matching’ IMs with clients (11%). The remaining 13% consists of clients, management consultants and others. The on-line group remains the largest group globally dedicated to the Interim management industry.

The Institute conducts annual surveys of the Interim industry, and the 2018 IIM interim management survey is currently ‘live’ (<https://www.surveymonkey.co.uk/r/iim2018p>). The conduct of the survey is overseen by independent external scrutineers. This annual survey benefits from several thousand responses each year and has become the UK industry standard for ‘Provider’ service performance assessment.

About Interim Management

Interim management is a proven and highly effective way for organisations to utilise the high end expertise and skills of independent senior and experienced professional managers and subject matter experts.

IMs come from a variety of backgrounds but are mainly highly experienced business executives and are frequently professionally qualified. They deliberately choose to work as independent freelance suppliers of their specific management skills, knowledge and experience to fee paying clients, either for a period of time or for defined scopes of work.

IMs are not temporary employees, but are professionals running micro businesses on their own account, accepting the associated risks and rewards which being in business implies.

IMs are different from management consultants, who limit themselves to gathering information, giving advice and guidance, and recommending action. Whilst IMs can and usually do provide advice and develop solutions, and, indeed, often play a key role in mentoring and coaching the client’s staff, their strength and benefit lies in their independent decision making freed from office politics, plus skill in delivering results-driven implementation. Interim executives contract with the client such that the client surrenders line authority for the period of the assignment and within that contracted brief. Contractually and in practice, interims do not come under any form of supervision, direction or control. In practice, the client accepts that the IM carries the power to deliver the contracted assignment objectives.

IMs are a key part of the UK’s flexible economy, particularly adding value to organisations in both public and private sectors which require temporary, but high impact, interventions, without involving on-going and unnecessary ‘employment’ costs for the client such as pensions, or ‘disengagement’ issues such as wrongful dismissal claims. They are a resource that can be turned on and off like a tap, to the mutual benefit of the client and the IM.

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At one time, the UK's use of IMs matched that of all the other EU Member States in aggregate. Interim management has long been an established feature in The Netherlands and Belgium, but recently, given changes in employment legislation across the EU, the Interim management market in other EU countries is considered to be growing rapidly, particularly in Germany, Poland and France.

Overseas working is common amongst IMs. According to earlier research (*The International Interim Market 2012*) published in March 2012 by Russam GMS (a leading UK Provider) international assignments made up around 11% of the overall activity of UK-based IMs. Out of the 460 IMs who responded to Russam's survey, 80% had completed assignments overseas, and 67% of them had clocked up between five to 10 years of international Interim experience. This proportion has remained fairly stable with time.

The 80% also said that demand for UK Interims overseas is strong because international firms need specialist skills on a temporary basis when they can't resource projects locally. Half of them also said that UK qualifications and the 'British' Interim manager 'brand' was prized highly abroad.

How do IMs operate, and why?

IMs find their assignments in a variety of ways. There are no hard and fast figures, but it is thought that, as a rule of thumb, about 60% of assignments are found by the IMs themselves through contacts in their own personal networks. The remaining 40% of assignments are sourced through Providers, and through introductions from other intermediaries such as banks, venture capitalists, law firms, and accountants.

However, there is anecdotal evidence to suggest that corporate governance requirements dictate that assignments at the most senior levels are more likely to be placed through Providers. This is likely to be true particularly in the public sector, where procurement procedures are more constrained than in either of the other sectors.

Contractual Basis

IMs operate through contracts for services (commercial contracts), rather than contracts of service (employment). IMs form part of (or possibly even lead) the client's management team, and expect to have delegated and to exercise the appropriate line authority required to fulfil their role (including at 'C' level in the public sector). Depending on the circumstances of the client and the assignment, this can include becoming an officer of the company through formal appointment as director and/or company secretary for the duration of the assignment.

It is nevertheless important to understand that IMs are not employees of the client. IMs are typically operating in circumstances which are not 'business-as-usual'. They are usually providing specialist skills and knowledge on an outsourced basis. It is essential that they stand apart from the client's staff, and are perceived by the staff as 'different'. If this is not possible, their ability to provide independent advice and voice controversial opinions is jeopardised, and the growth and development of the organisation will be hindered.

Where the IM finds his/her assignment through their own network or through an intermediary which is not a Provider, the IM will negotiate the contract for services direct with the client. Where a Provider acts as the intermediary, there are two models:

- Usually there will be an 'upper' contract between client and Provider, and a 'lower' contract between Provider and the IM's legal entity. The terms of the two contracts should mirror one another in all material respects (save as to the day-rate fee level), but do not necessarily do so.
- Less frequently but becoming more common, there will be no contract of any sort between the Provider and the IM's PSC or other legal entity. The client will contract direct with the IM's PSC or other legal entity and will pay the IM's day-rate fees direct; the client will have a separate

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contract with the Provider for its 'introducer's' fees.

Business and Financial Risks

From a legal standpoint, IMs operate through a variety of legal structures. The Institute's 2013 survey data suggest that the vast majority (88%) of IMs work through their own PSCs. About 7% of IMs operate as sole traders or in partnership, including limited liability partnership ("LLP"), but these tend to be IMs drawn from the accounting and similar professions, where such legal structures are commonplace for all practitioners, not just IMs. The remainder operate through umbrella companies.

IMs are not employees of the organisations to which they provide their services. If an employee makes an error which causes loss to their employer, the employer bears the loss and any cost of rectification. By contrast, if an IM makes an error, the loss and cost of rectification is their responsibility, increasing their financial risk compared with an employee.

Typically IMs have to determine what needs to be done, in the same way and with the same risks as a management consultancy firm if they get the advice wrong to the detriment of the organisation. Having decided what needs to be done, they are responsible for implementation with further financial risks involved, both as to negligence and breach of contract.

IMs therefore understandably protect themselves by operating through the corporate structures mentioned above. In addition, they usually seek further protection through professional indemnity insurance ("PII"). Most clients in both the public, private and not-for-profit sectors insist on such cover as a term of the contract for services, but senior IMs carry it anyway, even if not contractually required.

IMs are also not employees because they do not approach work in the same way. IMs are paid by day rate to their PSC, reflecting the fact that they do not enjoy the benefits and protections of employment. Furthermore, they have no interest in becoming permanent employees – indeed, their business model requires the delivery of outcomes, so that, in effect, an IM's *raison d'être* is to achieve their own 'redundancy' – not the behaviour of a typical employee seeking permanency of employment.

In addition, having made her or himself 'redundant', the IM must then bear the sales and marketing costs of finding their next assignment, and face the real financial risk that this may take some time. It is rare for an IM to move from one assignment to another without a gap between each client. However, keeping this to a minimum is an indication of effective marketing, not a clue to someone being 'employed'.

The Institute's 2013 survey shows that the average assignment lasts 7.2 months, 66% of assignments are completed in less than 12 months, and 94% in less than 24 months. In the last 12 months, the IMs who responded averaged only 161 billable days out of approximately 230 workable days (after allowing for bank and other holidays), and the average time between one assignment ending and the next starting was between two and three months.

In other words, the typical IM's life is one of relatively short term assignments, interspersed with significant periods of 'down time'.

The use of PSCs enables IMs to manage the financial risk of these periods of 'down time'. The receipts from its invoiced sales will be used by the PSC to meet the expenses of running the IM's business, which will normally include payment of a salary to the IM on which PAYE and NI is accounted for. The level of salary will be such that reserves are built up, so that, should a period of down time occur, the expenses of the business, including the sales and marketing cost of obtaining the next assignment, can continue to be met. The retention of profits in this way enables the IM to continue in business and means that they do not claim state benefits.