

Matthew Taylor – interim Director of Labour Market Enforcement

Resolution Foundation Speech – Thursday 13 February 2020

Thank you Torsten, to you and your colleagues at the Resolution Foundation, for hosting this event. I was pleased to hear that the Foundation is undertaking a major project on labour market enforcement and compliance. As an admirer of the Foundation's work I hope today is one of several future collaborations with my Office.

This is my first speech in the role of interim Director of Labour Market Enforcement, a role I took on roughly six months ago. As those who know me will attest, such reticence is uncharacteristic, but I have been very much in learning mode. Today, with the publication of my first annual report a couple of weeks away I want to explain how I approached the role at the outset, what I have learned so far, to identify my emerging general priorities for the Office and to make a couple of more specific policy recommendations.

There are two perspectives which have framed my approach. First, I look at the issue of compliance through the lens of public value theory. This involves thinking of state interventions in terms of their direct, their indirect and their broader systemic effects.

Failures to comply with labour regulations and to act on non-compliance have direct effects for those who are denied their rights and entitlements and, in more extreme cases, are subject to forced labour. Systematic non-compliance also has a knock-on effect in that non-compliance in one area of regulation makes other breaches more likely and, also, because bad employers who break the rules can make compliant firms uncompetitive. This latter phenomenon is particularly noticeable in relation to the savings on tax and workers

entitlements made by companies bending or wilfully flouting the rules on employment status; an issue I will come back to later. Finally, the experience, or even the perception, of widespread non-compliance can more broadly undermine the faith of citizens, businesses and civic institutions in the efficacy and reliability of public policy and implementation.

My second stating point is an unerring focus on achieving impact. In the face of the frequency of public policy failure or under-achievement, the RSA has developed an approach to change referred to as 'thinking like a system and acting like an entrepreneur'. The systemic context for compliance comprises not only rules and their enforcement but also social awareness, norms and practices as well as an appreciation of the range of incentives operating on labour market actors. I favour a pragmatic, even opportunistic, approach to change, focussing not just on the improvements that might ultimately be desirable but what might be most achievable at any particular moment. Or to put it more simply 'the art of the possible'.

I am performing the role of interim Director one a half days a week and I am relatively new to the detailed issue of compliance. I have had to rely on the patience and experience of the excellent small team in my Office and the insights of a variety of helpful stakeholders to bring me up to speed. What have I learned so far?

First, I have developed great respect for the managers and staff of the three bodies whose work I oversee – HMRC National Minimum Wage, the Gangmasters and Labour Abuse Authority and Employment Agency Standards based in BEIS. There is no conceivable future in which the resources dedicated to compliance and enforcement match the scale of the problem we are trying to tackle. Even when the bodies make progress, as they often do, a

combination of business innovation, the creative skills of accountants and lawyers, and criminal intent, mean they are aiming at a moving target. Furthermore, labour market rules exist alongside with a range of other regulatory frameworks in areas like health and safety, environmental protection, immigration enforcement and taxation. Nevertheless, from leaders to front line staff, the people I have met in the bodies are both committed to making a difference and open to new ideas to make their work more impactful. My forthcoming annual report will show good progress in relation to the many recommendations made in the ODLME's 2018/19 strategy (although, by the way, we are still to receive a Government response to our 19/20 strategy which was submitted almost a year ago).

In terms of progress, within HMRC the Serious Non-Compliance Teams are tackling businesses who deliberately flout the rules with significant consequences for workers. EAS are working hard – despite their modest capacity - to raise their profile among agency workers. The GLAA have established and deployed the Labour Abuse Prevention Officers with their PACE powers and Labour Market Enforcement Undertakings and Orders are now being increasingly used by all the bodies as enforcement tools. Overall there is better joint working between the bodies and in relation to other agencies and stakeholders; a development which augers well for the prospects of a Single Enforcement Body.

Second, the work of compliance and enforcement is inherently complex. There are many different business models and forms of employment to understand and seek to regulate. Employment regulations are complicated and not always easy to interpret. It was welcome this week to see the Government announce measures which should reduce unintentional non-payment of the minimum

wage. The range of non-compliance stretches from common forms of what are sometimes referred to as technical breaches, particularly in relation the NMW, to less common but more harmful examples of labour exploitation. The bodies work as well as they can but their priorities and practices are also shaped by institutional habits, organisational capacity and varying statutory powers.

Third, my Office is charged with assessing the scale and nature of compliance but in doing this we are, to a significant extent, flying blind. While there is a great deal of data and improving systems for gathering and sharing intelligence, we lack authoritative research on just how widespread non-compliance is. To do such research well is challenging and costly. The method has to overcome issues like finding hard to reach people – those unlikely to seek redress either through fear of reprisal or limited knowledge of employment rights, which can be exacerbated by limited language skills.

Indeed, addressing this research challenge is one of my priorities. Building on work commissioned by my predecessor Sir David Metcalf and with the expert advice of the ESRC, our ambition is to launch a major piece of research this year that will address the gaps in our knowledge and also provide a strong base line from which to assess the impact of the proposed Single Enforcement Body.

Participating in the development of the SEB is a second priority for my Office. The Government's commitment to create a single body provides a stronger focus for this work. I provided a substantive response to the BEIS consultation on the SEB. I have suggested to DLMEs sponsor departments that with some modest additional funding my Office could play an important role as a bridge between the detailed Whitehall process of designing the SEB and the wider community of stakeholders with an interest in its success.

The SEB is a major opportunity for the UK to be, and to be seen as being, at the forefront of effective compliance and enforcement and it is vital to gain the insight and build the enthusiasm of business, trade unions, campaign groups, academics and research bodies and other regulatory agencies.

One specific avenue I intend to explore further in the coming months is the scope for more robust forms of voluntarism. Despite the good work they do in publicising employment rules and encouraging compliance, the existing bodies will never have the capacity to inspect anything more than a small fraction of employers. In certain areas compliance capacity seems particularly inadequate. It is in no way a criticism of EAS to say that, despite some increase in their staffing, it is difficult to see how they will have the capacity to tackle non-compliance in umbrella companies or the burgeoning on-line recruitment sector.

Yet workers, consumers, investors, organisations at the top of supply chains and public procurers are keen to have some assurance that the organisations they are dealing with are trying to do the right thing. I have been pleased to see in Scotland, Wales and city regions like Manchester various forms of charters which encourage employers to sign up to good work principles. I support the Government's announcements this week to make the minimum wage naming and shaming scheme more timely and focussed.

There is a multiplicity of schemes and forms of validation which claim to help labour providers and users make good choices. Most trade associations claim to have systems of vetting and sanctions which are applied to their members. But I think more could be done. In particular, I want to explore the role that the bodies – possibly in the context of the SEB – might play in either establishing or auditing voluntary schemes. Of course, no kind of assurance

scheme guarantees compliance, but it can substantially reduce risks and give labour consumers useful guidance. I note for example, that since 2012 public procurement of security services by the Scottish Government has been restricted to members of the Security Industry Authority's voluntary approved contractor scheme.

Before taking on the role of interim Director my primary focus in the area of employment had been on regulatory reform and particularly the measures recommended in my Good Work report of 2017. Although the brief for my role doesn't explicitly include the development of regulatory policy recommendations, my predecessor did advocate investigating the potential of reforms like joint responsibility across supply chains and the impounding of hot goods. We await the Government's response to these suggestions. Our capacity to tackle non-compliance is clearly shaped by the adequacy of the regulatory framework in light of evolving business models so I believe it is my role to recommend changes if they are necessary to improve compliance and enforcement.

Today I focus on two policy issues. First, I want strongly to encourage the Government to address the issue of Employment Status in the forthcoming Employment Bill. The bogus attribution of self-employed status to workers is currently one of the most widespread and deliberate ways of denying people their rights. Furthermore, as long as workers are wrongly categorised, the bodies are unable to enforce their rights and individuals have to rely on the risky, slow and impractical route of Employment Tribunal. I do not underestimate the challenges of getting status rules right. Indeed, from what I can see, it is an issue in just about every national labour market. Nevertheless, and notwithstanding the impact the new IR35 arrangements may have, I

continue to believe that it is a priority to strengthen, simplify and align the rules on status.

Finally, I spoke earlier of the need for pragmatism in the face of the evidence and the opportunities for change. In scanning the intelligence generated by the three bodies and by other enforcement agencies, including the police, my Office draws up a list of priority sectors where the risks of non-compliance and labour exploitation are greatest. Each year as part of drawing up our annual strategy we choose some of those sectors for particular focus. This year the sectors on which we will report in more detail are construction, agriculture, social care and hand car washes. But even between these sectors there is I believe a distinction to be drawn.

While there are major issues of non-compliance in construction, care and agriculture, most activity in these sectors is law abiding. However, having spoken to staff in the bodies and among those who are experts, I have concluded that a range of forms of non-compliance are endemic in the hand car wash sector. The problems extend beyond employment regulations to issues of health and safety and environmental protection. Enforcement officers I have spoken to have told me they have literally never visited a hand car wash which did not exhibit non-compliant behaviour and HMRC/NMW believe that wage theft is endemic. The nature of the sector also means that the risks of serious labour exploitation are much higher. Without action I believe it is only a matter of time before we see further incidents of harm occurring in the sector.

The problems with hand car washes have been raised before not just by ODLME but by a wide range of other bodies including the Environmental Audit Committee. We have seen useful initiatives, particular the Clewer App and the

Responsible Car Wash Scheme. While these schemes have not made substantial inroads into the problem, they have played an invaluable role in both highlighting the extent of non-compliance and the limited efficacy in this sector of voluntary approaches.

Following a recent workshop on the sector hosted by ODLME I have concluded now that the only answer to the endemic nature of non-compliance and abuse is to establish a mandatory national licensing scheme for hand car washes. It is not for me to try to design such a scheme in detail. My instinct is it should be nationally managed – probably by the GLAA with their experience of licensing - but administered by local authorities with licensing fees set as far as possible to cover the costs involved. Local authorities already have experience of administering such licensing and there may be other upsides for councils given evidence from Nottingham Trent University that most car washes are not registered for business rates. I also think such a scheme should widen liability by making it an offence to knowingly rent land to an unlicensed car wash business. I am not someone who supports regulation for the sake of it. Nor do I think there is some kind of philosophical reason why hand car washes should be licensed but I am responding to the evidence that has been presented to me and to the urgent need to tackle the problems and dangers associated with this sector.

Since 2016 when Prime Minister Theresa May announced what became my Good Work Review, we have seen a process of incremental reform designed to improve the rights and protections available to workers. Many of the measures I recommended will become law in April, including the day one statement of terms and conditions, the abolition of the Swedish derogation and a massive reduction in the threshold for workers to request the right for representation,

information and consultation. We await the Government's response to a number of other proposals including the Low Pay Commission's proposals to tackle unfairness and the abuse of zero hours contracts and, as I have said, the important issue of Employment Status. The establishment of a Single Enforcement Body is another opportunity to achieve a step change in compliance and enforcement.

It is important that the momentum is maintained. Far too many people in our country suffer exploitation or unpleasant, stressful and dead-end work. It is clear the public want more to be done. I said in the Good Work report that it is possible to combine the strengths of our labour market, particularly the diversity of work available and our high employment rate with the ambition to improve the quality of work so that every job is fair, is decent and offers scope for fulfilment and progression. Four years on I am if anything more confident that the goals of full employment and good work are not only compatible but integral to building a better economy for all.