

REGULATION OF THE PRIVATE RECRUITMENT INDUSTRY

Response to the Consultation Document by GOODMAN DERRICK

Introduction

Goodman Derrick Solicitors have specialised in the field of recruitment law for over 20 years. During this time, we have acted for clients in the recruitment sector whose businesses range from large national operations to small sole-proprietor agencies. We also act as the legal advisers to the Federation of Recruitment and Employment Services ("FRES"). This has given us a considerable insight into the recruitment industry.

The Government's Consultation document and accompanying draft regulations have many laudable aims. However we have concerns about the way that those aims are to be implemented and these concerns are shared by a significant number of our clients.

We must first stress our view that the Regulations, as currently framed, would have an immense impact upon the industry. It is not the case, as the DTI would have it, that employment businesses who are presently following "best practice" would not be affected by the proposed new regime. The Regulations significantly increase the administrative burdens upon the industry in a manner which seems excessive and this is regardless of whether an agency/business is following best practice already. Overall, a sense of proportionality seems to have been lost.

We have seen the comprehensive response submitted to the DTI by FRES. This sets out in detail the concerns of the industry. We whole-heartedly endorse these representations. Rather than repeat the detailed comments of FRES, we have confined our response to those "headline" points which are of major concern.

Comments on the Consultation Paper

6.5.34: The DTI has proposed that all temporary workers or "work-seekers" must be supplied by employment bureaux clearly acting as employment businesses. Employment agencies will not be able to supply temporary work-seekers. This will have a significant impact on certain sectors of the industry and a consequential impact on their clients. The effect of VAT having to be charged on the full amount of the work-seeker's wages and on the employment bureau's charges will have serious repercussions for non-exempt or partially exempt hirers. FRES have highlighted this point, particularly in relation to the domiciliary care sector of the industry where the hirers are less able to shoulder such a huge increase in charges.

6.9.5: The Conduct Regulations of 1976 prohibit an agency from re-approaching a candidate for a permanent job if the agency had placed that candidate with his employer. The DTI proposes to abolish this rule and instead allow a form of self-policing. Whilst we have already made clear our views about over-regulation, this is one area where we are in favour of a form of restriction. To preserve the good name of the industry and protect the majority from the few disreputable agencies, the prohibition on approaching such candidates should remain but there should be a time limit after which such an approach could be made. We would suggest a maximum period of one year.

6.9.10: The DTI has proposed to abolish the rule that an employment business cannot supply a worker to a hirer if that worker has within the last 6 months been an employee of the hirer. We agree that this is a sensible proposal. A hirer always has the option to choose whether or not to

engage an individual via an employment business and there seems little purpose in making this a matter for regulation.

6.9.11: The DTI's proposal that employment bureaux need not supply copies of their terms and conditions to the Secretary of State but instead make them available for inspection seems realistic and reasonable.

Comments on Specific Draft Regulations

Regulation 5: This regulation requires an employment bureau to state on all of its business stationery whether it is acting as an employment business or an employment agency. It is our view that the meaning of this distinction is lost on the majority of those who use our clients' services - be they temporary workers or hirers. In addition, a number of our clients act in both capacities supplying both temporary workers and candidates for permanent vacancies. This regulation would require them to have two sets of stationery. It would also present such bureaux with a quandary when it came to sending out terms of business to a client that wanted both permanent and temporary workers. There seems little to be gained by introducing this requirement.

Regulation 6(2): We note the proposal to consider whether to relax the present rule that prohibits employment bureaux from offering incentives to encourage work-seekers to use their services. From enquiries that we have received from our clients in the past, such a relaxation would be welcomed.

Regulation 8: The abolition of "Temp to Perm" fees:

Whilst the draft Regulations do not explicitly state that Temp to Perm fees are prohibited, it is our view that the practical effect of the rule would be tantamount to this. Employment businesses are not presently under any obligation to provide work to their work-seekers and therefore limiting the ability to charge a fee to such circumstances effectively does away with the fee completely.

FRES have put forward a number of forceful arguments against this regulation. These include the huge financial impact upon the industry where 170,000 temp to perm placements occur each year. Clients will soon realise that they can do away with the services of employment agencies altogether since they can "try before they buy" and find a temporary worker to whom they can offer employment without any fee being payable.

The draft regulation presupposes that an employment bureau may decide to enter into an obligation to find work in favour of certain members of their pool of temporary workers. In such cases, a fee could be charged. It is highly unlikely, given the fluctuating state of the pool of workers, that all would be engaged on such terms. A client using the services of the agency would have no means of distinguishing between those temps where a temp to perm fee would be charged and those whom it could recruit without a charge. This will only cause confusion. In addition some unscrupulous clients may soon become wise to this and ask the bureau to supply only those workers who were not engaged on terms which would allow a fee to be charged.

If the DTI is concerned to eliminate fees which seem unfair or extortionate in the circumstances, the FRES counter-proposals, including a sliding/diminishing scale for long-term assignments, are a sensible alternative.

This draft regulation also aims to restrict an employment bureau from charging a hirer a fee if the temporary worker is engaged by a third party as the result of the hirer's use of his/her services. This would eliminate an area of protection for our clients. Some hirers have tried to avoid a temp to perm fee by arguing that they themselves have not recruited the temporary worker but that it is a different (albeit related) company that has done so. As there is no contract in place between the

employment bureau and the employing company the bureau has no right to charge a fee to that company.

We believe that our clients should still be entitled to charge a fee in such circumstances. We therefore suggest that the regulation be amended to allow, at the very least, the ability to charge a fee to third parties who are connected (in the sense defined by the draft regulations) to the hirer.

Regulation 12: This regulation requires terms of engagement of work-seekers to be agreed and signed before any work-finding services are supplied to the work-seeker. This would mean that signed terms would have to be received by the bureau before it could actually register the worker. Given the fast moving nature of the industry, where rapid response times are key, this is completely impractical. The additional administrative work caused by such a rule would be considerable. In some sectors, such as the IT field, work-seekers can send their CV to dozens of employment businesses at a time by one click on an Email button. If each employment bureau then has to obtain signed terms of engagement simply to log that person onto their system, this represents a huge amount of work for little gain. Instead it ought to be possible for the work-seeker to be sent the terms of engagement at a slightly later stage when there is an assignment which he/she is interested in.

Regulation 13: This imposes a similar obligation for signed terms to be obtained between the client and the employment bureau. For similar reasons as those outlined in relation to Regulation 12, this is not practical in the very common circumstances where clients require a rapid turnaround.

Regulations 18-22: Again these regulations impose considerable burdens upon employment bureaux who will have to obtain, collate and supply various categories of information at a very early stage before any further action is taken. If written agreements or the supply of written information is always a pre-requisite, there will be a considerable negative impact upon our clients' ability to service the needs and deadlines of their own clients and to find assignments for their workers.

Summary

We are concerned that the industry should not be regulated in a way that seems disproportionate to the perceived "evils" that are to be eliminated: that would be a case of regulation by reference to the lowest common denominator. Some of the proposed changes cause concern both from a practical and a financial perspective. We trust that the views of the vast majority of the reputable members of the industry will be heard and considered so that our clients may operate under a regime that allows them to serve their customers effectively.

NEWSFLASH

Unfair Dismissal

The Dti has finally made an announcement about the new £50,000 unfair dismissal compensation limit. The new cap will apply to dismissals taking effect on or after 25 October 1999. However employers must still be careful about dismissals before this date since there may be arguments that the new limit might apply in certain circumstances.

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further information:

If you would like more information about any of Goodman Derrick's Employment Law services please telephone and ask to speak to a member of the Employment Group.

Goodman Derrick
90 Fetter Lane
London EC4A 1PT

tel +44 (0)20 7404 0606
fax +44 (0)20 7831 6407

e-mail law@gdlaw.co.uk