



# All-Party Parliamentary Loan Charge & Taxpayer Fairness Group

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14<sup>th</sup> July 2022

Dear Mr Bryce,

We are writing to you again, following [our letter to you dated 8<sup>th</sup> March 2022](#). We are both surprised and disappointed at your email response and your refusal to reply to our letter or to answer the questions we asked of the FCSA, questions that we believe are entirely reasonable and also important questions that need answers. The refusal to answer these questions gives the impression to us that, despite the considerable concern about umbrella companies, you and the FCSA are not willing to engage openly and transparently, about very important issues that affect thousands of workers that use FCSA accredited companies.

You have claimed that commercial confidentiality/sensitivity is the reason you are unable to respond, however is at odds with the fact that we have received a full and open (and public) response from Professional Passport, the other accreditation body for umbrella companies. Workers who use umbrella companies may question why they are prepared to answer our questions and yet the FCSA are not. You must surely realise that this does nothing to reassure workers using FCSA accredited companies, which indeed may lead to them having more, not less, concern.

For the second time you are objecting to the fact that we publish our letters where we are seeking answers, precisely because the purpose of our letters is to establish facts and seek answers that can be in the public domain. We publish our letters to Ministers, to HMRC and to all other organisations. The FCSA under your leadership is the only organisation to protest about us publishing letters. No other body has refused to respond to our letters or complained about us publishing them.

We had previously had helpful public responses to letters from the Recruitment and Employment Confederation, as well as from Professional Passport, when we wrote as part of the APPG Inquiry into 'How Contracting Should Work'. We also note that your predecessor, Phil Pluck, was happy to respond to our letters sent to the FCSA and to appear as a witness before the APPG and to have his responses in the public domain. We found his approach open and helpful and we find the change of approach under your leadership to be both disappointing and troubling.

Co-Chairs: Sammy Wilson MP, Greg Smith MP

Vice-Chairs: Baroness Kramer, Dr Lisa Cameron MP, Gerald Jones MP, Sarah Olney MP, Rushanara Ali MP

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We have further questions we wish to put to the FCSA, in the light of the developments regarding the holiday pay issue and in particular, the publicised issues with one of the FCSA's members, Workwell (previously JSA). In addition we have questions around reports that the FCSA has watered down its new compliance code that would have prohibited umbrella companies from keeping unused contractor holiday pay, because a FCSA accredited member (umbrella company) made legal threats.

### **JSA/Workwell Investigation**

Following the allegations made by a contractor, regarding the alleged withholding of holiday pay by Workwell (who were JSA at the time), it was reported that the FCSA conducted an investigation into these claims and concluded that Workwell/JSA had not breached the FCSA accreditation. You are quoted [in this article in Contractor UK](#) as saying, "We are satisfied JSA Group did not breach the FCSA membership compliance codes that were in place at the time the complaint relates to".

As you will be aware, there has been some concerns expressed (publicly) about the robustness of the FCSA investigation and the fact that you have refused to publish any details about it. There has also now been the reported case involving Exchequer. We therefore wish to ask the following questions:

1. For the investigation to have credibility and to inform those following this issue, a report outlining the investigation and what it looked at and what it concluded should have been published. No such report has been, why is this?
2. Are you now prepared to publish such a report into this investigation so that others can see how the FCSA decided that JSA/Workwell had not breach the membership compliance rules (and beyond that had acted properly and appropriately with regard to contractors' holiday pay)?
3. You are quoted in [The Recruiter on 16<sup>th</sup> March 2022](#) that "I am actively pursuing clarification from JSA on this matter and when that investigation is concluded, FSCA will make a further public statement." We cannot see that such a statement has been made, even though the investigation has been concluded. Has such a statement been made, in which case please point us to it. If no such statement has been made, why not?
4. What was the date that the investigation concluded and was it before or after Workwell achieved their FCSA re-accreditation?
5. We understand that if holiday pay was not paid to the contractor, then no employment costs (for tax and NICs) will have been incurred on that unremitted holiday pay. Therefore, can the FCSA's investigation confirm that the "Holiday Acc Employment Costs Reserve" amounts referenced in payslips of the published evidence have been repaid? If they have been repaid, to whom? Have you seen any corroborating evidence of any such repayment?
6. Does FCSA agree with the assertion that retaining "Holiday Acc Employment Costs Reserve" in addition to any unclaimed holiday pay would be an unlawful deduction from the contractor's income?
7. Can the FCSA's investigation confirm that the alleged incident of holiday pay being with-held by JSA/Workwell is an isolated incident, or are other contractors likely to be similarly affected?
8. We are aware that FCSA's compliance requirements in relation to holiday pay were amended last year. From [the FCSA's website](#) it appears that the codes of compliance for new members were updated in May 2021, but not implemented for existing FCSA members until 1st October 2021. This gives current members an additional four months to comply with the

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- new standards, and arguably an additional four months in which to potentially continue withholding holiday pay and profiting from doing so. What is the reason for the time lag?
9. Given that [Radio 4's Moneybox programme in March 2021](#) covered reports of holiday pay being with-held by FCSA members, why was the FCSA's code relating to holiday pay not made robust enough then, in 2021?
  10. Has FCSA's code standards on holiday pay been updated following the recent JSA/Workwell evidence as promised? We have not seen this announced to date.
  11. We are surprised to note that, at the time of investigating JSA/Workwell, the FCSA's registered address on Companies House was the same as JSA/Workwell's address in Watford. Could you please explain this and also say whether this represents a conflict of interest when the FCSA has investigated – and re-accredited - Workwell?
  12. We also note that Mike Lowndes, MD of umbrella company and FCSA members Exchequer Solutions Ltd, resigned as a board member of the FCSA following a court ruling regarding contractor expenses. Is this situation being treated in the same way as the JSA/Workwell allegations? If so, why did Mike Lowndes resign from his position on FCSA's board but Chris James of JSA/Workwell did not?
  13. Will a report of your investigations into Exchequer be published?

### **The Reports of a Watering Down of the proposed FCSA Code**

According to reports, section A10 (d) was to state: "Save for any holiday entitlement which is carried over...you must not retain any accrued holiday pay beyond the end of the relevant holiday year." However in light of the objection/reported legal threat, this is to be watered down and the words 'must not retain' deleted so the Code A10 (d) is said to state that "[You] confirm that you make reasonable effort to ensure that employees receive their full holiday entitlement each holiday year."

If these reports are true, this is an extraordinary development, with an FCSA accredited umbrella company seeking to prevent the FCSA from (rightly) strengthening our codes. This suggests that the power within the FCSA continues to lie with the large member umbrella companies, which undermines the impression of being a credible sector accreditation body. We believe that it is vital that you make public statements about the worrying development, something that is already being raised with us as an APPG.

We therefore wish to ask:

14. Are the reports true, that an FCSA member company objected to the proposed change in the Code, as reported and is it true that they made legal threats?
15. Are you prepared to name the company concerned?
16. Can you explain why the FCSA have watered down the Code, rather than expelling the objecting organisation from the FCSA?

These are important questions and we believe that the FCSA, that likes to present itself as the leading accreditation body of umbrella companies, should respond openly and fully. To credibly present itself as the leading sector accreditation body requires, in our view, much more transparency and accountability, including public reports of investigations held, their findings and basis for their conclusions and decisions affecting the accreditation Code. We do not believe that accreditation without this is genuine, credible or sufficiently robust.

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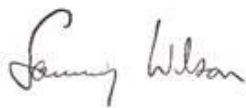
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We would also suggest you reflect on your refusal to respond properly to our previous letter and to answer the questions posed, in the knowledge of the considerable concern amongst workers who use FCSA accredited umbrella companies. At a time when openness is so vital in addressing the much publicised concerns around the withholding of holiday pay, the impact on workers of cyberattacks and various other concerns regarding umbrella companies. You state to wish to have a constructive relationship with us and to engage, but this seems to be in private, rather than being prepared to answer important and perfectly reasonable questions of matters that are already in the public domain . We are considering hosting an evidence session on umbrella companies and we would seek to involve both the FCSA and Professional Passport, however we are only prepared to engage with organisations that are prepared to be openly accountable and transparent about key sector issues.

We look forward to hearing from you.

Yours sincerely,



Sammy Wilson MP  
Co-Chair



Greg Smith MP  
Co-Chair



Baroness Kramer  
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