From the Chair

Mr John Treharne
CEO, Gym Group PLC

26 October 2017

Gym Group personal trainers

In relation to the Work and Pensions Committee's ongoing work on self-employment, we have received a contract (attached) from one of Gym Group's personal trainers. We would like to query a number of features of your "self-employed" business model, which appear to be incompatible with self-employment:

- Restrictions on personal trainers' ability to appoint a substitute: the contract stipulates that substitutes must be personal trainers already working for Gym Group (Section 4.ii)
- A requirement for the personal trainer to give notice of holidays (Section 4.iii)
- The inclusion of a notice period for termination of contract (Section 3)
- A high level of control exercised by Gym Group over its personal trainers: for example, the requirement to wear a uniform at all times (Section 4.iv) and restrictions on the ability to set prices (Section 4.xii). Additional confidential documents seen by the Committee suggest trainers are required to work on a pre-arranged shift/rota system and are subject to a range of controls on how their working time is spent.

Furthermore, Section 6 and Section 4.iv require Gym Group personal trainers to agree that they are neither employees nor workers, but "freelance independent personal trainers". We have seen several similar examples of clauses used by companies with dubious self-employment models. Their legal basis is questionable—and we have taken the view that they are included in contracts largely as a means of putting workers off claiming employment rights and protections that they may be due.

Given all of this, please could you explain the basis on which your personal trainers are self-employed, and how this designation is compatible with the clauses set out in their contracts?

I would be grateful if you would please reply by Friday 10 November.

Best wishes,

Rt Hon Frank Field MP
Chair
Dear Mr Field,

I have read with great interest your work, and that of the Work & Pensions Committee, in relation to "Gig Economy" workers and hope that you will continue to highlight this issue in the current session of Parliament.

I have attached a copy of a worker "Agreement" for the listed company Gymgroup Plc (for whom I have worked in a "self-employed" capacity since 2010). It contains many of those same unfair clauses and contradictory language that you have highlighted in relation to other companies - treating self-employed as effectively employees with no rights, indemnity clauses to put workers off pursuing their rights with threats, taking away in later clauses what they have given in previous clauses, and then bringing in substantial changes and further reduction in rights without revising the "Agreement" (including a recent decision to get rid of holiday leave entirely in some branches, see copy of PT meeting minutes attached).

The company pays no national insurance or related labour costs in relation to its customer facing workforce of 800-1000 self employed "personal trainers"; there is no sick leave (required to find cover when ill or risk termination) and make up time lost; no maternity/paternity rights; no or little pro-rata holiday (varies according to branch), etc, immediate termination without recourse to a human resources procedures, any complaint about conditions or rights met with "a you know where the door is" mentality.

Yours faithfully,
PERSONAL TRAINER AGREEMENT

THIS AGREEMENT is made the
BETWEEN

The Gym Limited of The Gym Vauxhall, 6a St George Wharf, Vauxhall, London, SW8 2LE

And

1. THE AGREEMENT

This Agreement permits the Trainer access to the gym area specified by The Gym to enable the Trainer to market and render his/her business services as a freelance personal trainer, subject to the terms of this Agreement. This Agreement does not constitute a contract of employment between the Trainer and The Gym, nor is the Trainer deemed to be a worker undertaking a contract for services to The Gym. The Trainer is entirely responsible for his/her own tax and National Insurance arrangements.

2. INDUCTION ACTIVITIES

In the mutual interests of the parties and to facilitate the introduction of the Trainer to The Gym members, it is agreed that the Trainer may be offered 12 hours per week Induction Activities slots at mutually agreed times.

"Induction Activities" for these purposes consist principally (though not exclusively) of the activities listed in Schedule 1.
3. TERMINATION OF AGREEMENT

This Agreement may be terminated at any time by either party giving to the other 30 days prior notice in writing. The Gym may terminate this agreement immediately at any time without notice if the Trainer is in breach of any of his/her obligations under this Agreement or commits any act of dishonesty, negligence or misconduct.

Any notice may be served in writing to the Trainer’s last known address on record. The Trainer is required to notify The Gym of any changes in his/her personal contact details.

If notice is given to terminate this Agreement, the Trainer shall at once:

i) Provide The Gym with a list of all clients who have pre-booked individual training sessions and

ii) Either refund the clients the fees paid for any unfulfilled session or transfer the fees and any such session to another Personal Trainer of The Gym

4. TRAINERS OBLIGATIONS

The Trainer agrees:

(i) to be punctual and present for the agreed induction slots
(ii) to arrange substitute cover, with a personal trainer of The Gym, should the Trainer not be able to be present for the agreed Induction Activities. The Trainer will be wholly responsible for the arrangements with that substitute to provide the cover
(iii) to notify The Gym Manager, giving 30 days notice, of any holidays the Trainer will be taking
(iv) to take good care of all equipment within the gym area and operate in accordance with manufacturers’ guidelines only
(iii) to adhere to the expected standards of service including being punctual, polite and courteous and never to be critical of The Gym or staff to any member or client
(iv) to solely bear the cost of any promotional materials and to purchase and wear such distinctive The Gym uniform
(v) ensure that he/she is always well presented and maintain a high level of personal hygiene
(vi) not to warrant that he/she is an employee of The Gym or associated with The Gym (other than as a freelance independent personal trainer)
(vii) to maintain full and comprehensive public liability insurance with a reputable insurance company to a minimum value of two million pounds (£2,000,000) which insures against all risks associated with the conduct of the Trainer’s business and such insurance shall be evidenced to The Gym prior to entry into this Agreement and annually thereafter
(viii) not to do or permit any act which would make any insurance policy on the premises void or voidable
(ix) not to do anything which may cause damage to the premises or property of The Gym or otherwise cause a nuisance or annoyance
(x) to ensure that all information obtained by the Trainer about The Gym, members, prospective members or the practice of The Gym is treated in the strictest confidence and that such information shall not, either during the term of this Agreement or at any time after the termination of this Agreement, be divulged to any outside party
(xi) to act in good faith towards clients of The Gym in all respects at all times
(xii) to ensure that all clients to be personally trained are fully paid up members of The Gym and enter into a direct separate agreement between the Trainer and those clients for the provision of personal fitness training services by the Trainer. The Trainer can individually negotiate and agree prices with the member for each session of personal training with the proviso that to protect its reputation with its members and those members from exploitation The Gym would expect the prices to be consistent with current market values and may give guidance as to those minimum market values from time to time
(xiii) not to conduct training sessions unless the Trainer holds a minimum NVQ Certificate at Level 3 as a Personal Trainer or equivalent and also a minimum of an appointed person First Aid qualification. Proof that these qualifications are still valid and up to date must be provided on an annual basis
(xiv) to comply with all statutory regulations and requirements affecting the Trainer’s use of the gym area, including the Health and Safety at Work Act 1974, the Bribery Act 2010 and all anti-discrimination (including anti-harassment and bullying legislation) as may be in force from time to time.
(xv) to comply with all fire regulations and directions relating to fire regulations made by The Gym and following appropriate training to actively assist with all emergency procedures as they arise from time to time in The Gym premises
(xvi) to endeavour to settle any client complaint or query relating to service given by the Trainer expeditiously and in a fair and reasonable manner and so as not to harm the goodwill or reputation of The Gym or other personal trainers operating with the club and if there is any dispute between the Trainer and a member which cannot be resolved then to submit to the adjudication of the Gym Manager of the club whilst The Gym will not interfere with how and when the trainer conducts personal training sessions, those sessions given by the Trainer must be appropriate to the member’s weight, experience and level of fitness and in no way put that member at risk of danger (including injury or death)

5. THE GYM OBLIGATIONS
The Gym does not guarantee to offer the Trainer any Induction Activities slots, whether now or in the future. The Gym agrees with the Trainer:

i. To maintain The Gym premises and equipment in a good state of repair and reasonable decorative condition;

ii. To allow the Trainer free control over the content of each training session and how and when each training session is carried out, subject only to the terms of this Agreement

6. STATUS

Nothing in this agreement shall render the Trainer an employee, worker, agent or partner of The Gym and the Trainer shall not hold himself out as such.

This agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Trainer shall be fully responsible for and shall indemnify The Gym for and in respect of:

- any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Induction Activities, where the recovery is not prohibited by law. The Trainer shall further indemnify The Gym against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by The Gym in connection with or in consequence of any such liability, deduction, contribution, assessment or claim

- any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Trainer against The Gym arising out of or in connection with the provision of the Induction Activities

- any liability arising from the Trainer's relationship with his/her clients with whom the Trainer has contracted to provide his/her services as a freelance personal trainer.

The Trainer acknowledges and agrees that The Gym shall not be liable to the Trainer for any salary, sick pay, holiday pay or pension contributions or any other payments.

7. GOVERNING LAW AND JURISDICTION

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

SIGNED by The Gym
SCHEDULE 1 - Induction Activities

The Trainer is expected to exercise his/her own discretion in organising the Induction Activities, with those Induction Activities to include the following:

- Undertaking member inductions/ PT taster sessions/ Gym floor classes
- Maintaining a safe and clean workout environment, including by re-racking weights, re-stacking mats and steps and clearing the floor of any object that may be in an unsafe place. Clean gym equipment according to Cleaning rota provided by managers
- Greeting and helping prospective members by providing them with a tour of the facilities and helping in the joining process
- Offer support, advice and assistance to members
- Build his/her profile and client base by interaction with members
- Other specified duties from time to time – as specified by The General Manager