Rt Hon Frank Field MP  
Chair  
Work and Pensions Committee  
14 Tothill Street  
London  
SW1H 9NB  
21 December 2017

Dear Mr Field,

Personal Trainers – The Gym Group

Thank you for your letter of 30 November 2017.

Our proposed new business model is very different to our existing model. We started to work on the plans for these changes in early 2017. I refer to my previous letter where I said “Managers increasingly feel they need to be able to exercise a level of control which is currently missing to provide the service that our members want.” It is this commercial reason, one that we believe is fundamental to the success of any service business, that is the driver behind the changes we have announced.

To address your specific points:

- Our Personal Trainer Agreement (“PTA”) clearly states that, “Trainers can individually negotiate and agree prices”. Although “The Gym would expect prices to be consistent with current market values” all the contract allows is for The Gym to “give guidance as to those minimum market values from time to time”. Guidance will vary from gym to gym depending on local market conditions, but it still remains guidance only. As an organisation, we do not get involved in negotiations between Trainers and their clients, attempt to police their pricing or set a minimum charge.

- The PTA makes it clear that opportunities to market their services “may be offered” to Trainers (emphasis added). There is no obligation on us to offer marketing opportunities and we have no power to discipline Trainers who do not accept any offers that are made. The reality is that Trainers do take up the opportunities offered because it is a very effective way for them to showcase what they do and enable them to be introduced to prospective new clients.

- The hours that the Trainers give for induction activities are marketing opportunities. As such, if an opportunity has to be covered by another Trainer, we would expect the Trainer who does not attend to want to ensure that they make up their marketing opportunity by offering to cover in future for the Trainer who has covered for them. We also ask the General Managers to confirm with each Trainer if and when they will do the hours that are offered to them. This is simply to ensure that Trainers are able to market their services effectively. We believe, both of these are common sense approaches to implementing the arrangement we have with the Trainers.
The distinction between personal trainers “working for the gym” and personal trainers “operating their businesses in our Gym locations but [who] work for themselves” is not purely a matter of phrasing. There are fundamental differences between the two arrangements. The restrictions on substitution are limited to ensuring that substitutes are, crucially from both a health and safety and a liability perspective, (1) qualified to provide cover; and (2) authorised to be present to provide cover. I do not regard these as substantial restrictions but, again, a common sense and legally justifiable approach to providing the level of service that the Gym members want. In practice Trainers can and do make use of substitutes whenever they wish.

I understand that the Employment Appeal Tribunal case you referenced stated that a contract which included a right to delegate to an approved substitute when unable to perform could be an employment contract. However, the EAT confessed it was “far from saying that the only possible proper conclusion of the matter is that the Appellants were employees”. The EAT effectively said that a number of factors (rather than reliance on just one factor) needed to be considered in determining whether there was employment or self-employment and, in particular, suggested that a fixed notice period was unlikely to be compatible with employment. In our case, we have a wealth of indicators pointing to self-employment and to Trainers being in business on their own account (including a fixed notice clause), and we do not rely (or need to rely) on the substitution clause.

Regarding the extract you quote from our strategic report, I mentioned the rationale for our low-cost business model, and how this operates, at some length in my letter of 10 November. Our current operating model involves relatively few individuals who are impacted by the National Living Wage, as our salary structure is generally well above the NLW. You published along with my letter the correspondence that we sent to the Personal Trainers outlining the structure of the new model and that letter sets out the proposed new arrangements in more detail. Where there is a fee payable under the new proposals, this will give the self-employed Trainers access to operate their businesses in our gyms. This has been a very common arrangement for self-employed personal trainers for many years in other gyms. Where they take up any of the part-time or full time employment roles on offer, we will meet or exceed our obligations to pay NLW. We plan to trial the new arrangement in the New Year before a wider rollout in 2018.

Once again, my invitation for you to visit one of our gyms, perhaps local to Parliament, still stands. Please let me know if you wish to take up my offer.

Yours sincerely,

John Treharne
CEO
The Gym Group plc