

Business, Energy and Industrial Strategy Committee

Oral evidence: Post-pandemic economic growth: UK labour markets, HC 306

Tuesday 10 January 2023

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Members present: Darren Jones (Chair); Mark Jenkinson; Ian Lavery; Andy McDonald; Mark Pawsey; Alexander Stafford.

Questions 237-268

Witnesses

[II](#): Professor Keith Ewing, President of the Institute of Employment Rights, Kate Dearden, Head of Research, Policy and External Relations, Community Trade Union, and Philippa Childs, Head of Bectu Sector at Prospect Union.

Examination of witnesses

Witnesses: Philippa Childs, Kate Dearden and Professor Keith Ewing.

Q237 Chair: Thank you for joining us today. To kick us off, the Government have obviously confirmed that they are not bringing forward the employment Bill, which they had previously indicated they would do. They have noted in correspondence to the Committee that they believe, through the support of private Members' Bills and updates to guidance, they are delivering on a number of the aspects you might have seen in the employment rights Bill.

Could you set out what you think is still left on the Government's to-do list, noting their support for certain private Members' Bills and updates to guidance? In the normal way, I will go from left to right, so with Professor Ewing first.

Professor Ewing: Thank you. The context originally was the Taylor review; I am not sure if that is still where the Committee is, given all that has happened since then, because there have been a number of seismic developments that affect the question of employment rights. One, of course, is Brexit; another is the trade and co-operation agreement; another is covid, and another is austerity.

We have moved a long way since Taylor, but within that framework, there are issues having regard to current developments as well as developments at the time of Taylor. There are issues around employment status that need to be resolved. There are issues around fire and rehire that are yet to be satisfactorily addressed. There are issues around fire and replace, which we saw at P&O, and about the enforcement of labour standards.

Beyond that, there is the question that people do not want to ask, which is the effect of the trade and co-operation agreement on our domestic employment rights. In a sense, we have moved; we cannot go back to the world as it was before 1 January 1973, when we joined the European Economic Community. We have inherited obligations in the agreement to which we must give effect, and obligations from EU membership that we must retain as a result of the agreement. There is a legal framework there that I do not see being spoken about very much, but which I think we need fully to address.

Kate Dearden: We have clearly laid out the economic landscape and the changes since the Taylor review, which are important to consider, but the world of work continues to change. Increasingly, people are switching jobs, careers and sectors, and new technology is facilitating such a growth.

What the Taylor review did really well was open the debate about what good work is and what it looks like, and it set an aspiration for fair, decent and good-quality work. At that point, it is fair to say that perhaps the Government, policymakers and the media became too fixated with the gig



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economy and the extent of the gig economy—it represents quite a small part of the workforce—but those changes in technology require a much broader view of work. I do not think the Taylor review went far enough in that respect.

We are now seeing a much more blended labour market with all ways of working and an increase in one form of working to another, so from traditional employment to side hustles and non-traditional employment. A key question for us is how we make those forms of work—and this form of work—work for everyone in a fair, meaningful and decent way and, crucially, make innovation work for workers.

As I mentioned, new technology is very much enabling those ways of working and those new business models. Non-traditional work is growing, but a key problem we have alluded to is that our system of workers' rights is not adapting from freelancers to platform-based work. How do we then build on traditional employment, I suppose, as a basis of that secure foundation and use it as a broader concept? How do we focus on good work for all, irrespective of employment status, which very much still needs reviewing?

All workers who engage with non-traditional work should also feel empowered to decide how and when they want to engage in that work. That is crucial for us as a union, as is how we rebalance that power. Also, a key part of this is that workers still benefit from the flexibility and the ways of working that they choose, and that they enjoy and thrive on that independence while also having those better protections and rights at work—from sick pay and a basic rate of pay to better rights.

We really want to see our system of workers' rights adapting because, at the moment, it is fair to say that it is creating not only problems for individuals, but a lot of uncertainty for businesses in limiting their flexibility. We need to get ahead of the change. All these years on from the Taylor review, we still cannot accept a race to the bottom on wages and standards because it is very economically damaging. We need to see a modernisation of our legal frameworks that are meant to support workers' rights and which do not encourage lower standards and wages. Looking forward, there are lots of innovative and creative ways we could explore to make work fairer, irrespective of employment status, as I mentioned.

Q238 **Chair:** Thank you. Philippa Childs, it sounds like there is still a lot to do in the employment Bill, which has not arrived. Do you agree, presumably?

Philippa Childs: Absolutely—I agree with everything that has been said so far. I want to give an example of how the world of work has changed, particularly in the sector where Bectu operates, which is the creative industries.

For example, in film and TV, the balance between employees and the freelance workforce has shifted very much towards the freelance workforce. When we use the term “freelancers” in that respect, I am really talking about a range of different engagement patterns. For example, as



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was mentioned earlier, short-term PAYE employees are treated as employees but do not have the opportunity to get the benefits that go along with that, because of the short-term project nature of film and TV. There are sole traders and people who operate through personal service companies. I do not think our current framework addresses all the different patterns of working in the economy, so there is much more to do. Some of that has been mentioned already in terms of how we provide a framework for freelance workers that supports them in their family life and future plans.

Q239 Chair: The Government suggested that they have delivered on their obligation of putting together a good work plan by supporting a number of PMBs, providing updated guidance and making a bit of progress in those areas. Beyond the legislation, do we really have a well-defined good work plan?

Philippa Childs: I do not think we do, no. I think we look at the workforce very much on a binary basis; we need to recognise that across the economy there are all sorts of different patterns of engagement and employment. We need to address a plan that is fit for purpose for all those types of workers.

Q240 Andy McDonald: May I address the issue of flexibility in working arrangements? As we heard, we were expecting an employment Bill, bits and bats are coming through, and the Government have made an announcement. We heard from the Secretary of State just last month: "It is important to recognise that what we have said is that people should be able to ask the question. We are trying to set the ground rules, but we are not forcing the answer". What are your thoughts on the Government's flexible working arrangements? Philippa, do you want to start? What are your thoughts on the Government's announcement on flexible working arrangements, such as the right to request?

Philippa Childs: True flexibility needs to be available to everyone in the economy, and it needs to address other issues, rather than just being about working from home. It needs to be available to everyone. To go back to what I was talking about before, I guess freelancers do not really get the opportunity to have career breaks, parental leave, job sharing or sabbaticals. It is difficult and complex, as has been mentioned, to persuade producers and so on that flexible working and job sharing can work on a budget when you are pretty pressurised.

Q241 Andy McDonald: Who will this benefit, Kate?

Kate Dearden: In response to the Government announcement, I think that there should be a right to work flexibly, not just to ask for it, as well as a duty on employers to advertise flexible options. People need to know the options available before applying for or starting a job. Flexible working is a critical part of the toolkit for building inclusive workplaces, with corresponding benefits to businesses in productivity. When a lot of people think about flexible working, it is not just about working from home but about changes to hours, job sharing, flexi-time and how we make sure that we help predominantly women and those with caring responsibilities.



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We did some polling last year showing that about 60% of women who had been working from home during the pandemic said that the ability to work from home helped them in particular with their menopause symptoms.

Ultimately, however, all workers can benefit from flexible working, so I think that the Government, in announcing the next steps, need to go further in making it a right and not just an ask. We support the TUC's calls, in particular, on the "business" reasons and amending those to make flexible working available at the job application stage. Also, the reasons for which employers reject flexible working requests need to be replaced with an objective justification. That then mirrors the language in the Equality Act and means that all roles are suitable for flexible working, unless it can actually be shown that the unavailability is a proportionate means of achieving a legitimate aim. I think that would give workers more ability to request flexible working and give employers clear reasons for why they need to reject.

A lot of research has shown that about 30% of flexible working requests were denied—that was from TUC research in 2019. In particular, for our membership, we have seen how flexible working has been used instead of reasonable adjustments for a lot of our members who are disabled. We have heard of employers seeking to use those requests to accommodate disabled workers working from home, instead of abiding by reasonable adjustments. That is another concern.

Less scrupulous employers might choose deliberately to reject applicants on the grounds that they intend to request flexible working. If that were a breach of the Equality Act, it could change the conversation and that imbalance. We would like to see the Government's announcements go further on flexible working, as well as a wider campaign on who is entitled to flexible working to start to make sure that awareness is very clear—that flexible working can benefit all kinds of workers in different ways, shapes and forms. It is about how we can encourage that and ensure that it is as successful as possible.

Q242 Andy McDonald: I should say, Chair, that I have worked with Kate on previous programmes, and indeed with Keith Ewing. I clarify that for the record. Professor Ewing, do you want to make any comment on the announcements on flexible working?

Professor Ewing: I agree with what has already been said. I would make two points. One is that this is a big issue that has to be looked at holistically. There has to be more than simply a right to request flexible working for those who need to do that, in the sense that it does raise questions about the context in which that right is exercised. It raises questions about affordable day care and, at the other end of the spectrum, affordable social care, so that people are liberated and able to take part in work, if that is their desire.

There are also questions about people who have full-time caring responsibilities and who do want to participate in employment. Is it enough simply to say that they should have a right to request flexible



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working, or should we go further and say that, in some cases, the employer should have a duty to accommodate the interests, needs or requests of the employee?

There is a wider range of issues. A point was raised this morning on the radio by the shadow spokesman for the Department for Work and Pensions, Jonathan Ashworth. He was speaking about bringing older workers back into the workforce. How are we going to do that, unless we can have some arrangements that will facilitate that? It may be that that can be done on a voluntary basis, but that may not be enough. We may need to contemplate a legal measure that would attract those people back.

Apart from that, although it is important to focus on flexibility in its wider aspects, we should not lose sight of the fact that there is an issue of job security. Security is the flip side of flexibility. At the moment, under our current legal regime, as we have seen over the past few years, there is a lot of flexibility on the employers' side, but some would argue that that flexibility is not fully reciprocated in terms of the interests of the employee. There is a balance that needs to be re-struck in how we approach employment.

Q243 Andy McDonald: You touched on flexibility and fragility, and that leads me on to employment status. That is a vexed area for us. The Government issued guidance around that recently. We heard from Matthew Taylor's successor that she found it particularly difficult to follow it through. Do you think it helped clarify the employment status of workers?

Professor Ewing: Do you mean the document—the text—that the Government put on the website? No, I don't think so. The text lists a number of criteria and, if you meet most of those, you are likely to be an employee. That is perhaps misleading in some cases, because you may meet almost all of them, but you may fail to meet one of them—if, for example, you can provide a substitute. It doesn't matter if you meet all the other criteria—the likelihood is that, if you are free to provide a substitute to do your work because you are unavailable, that is likely to take you into the status of being self-employed or a worker, or some other status. That is one example.

If you go back to some of the case law, there was a famous case in 1983 where the court simply listed features of the particular employment that were consistent with it being a contract of service, features that were neutral, and features that were inconsistent with being a contract of service. The features that were inconsistent were only a minority.

The fact that you comply with most does not matter. If the minority of issues you cannot comply with are critical, that takes you into a different status from that of an employee. In that case, there was one critical factor that was not met by the individual, which meant that the individual in question was to be regarded as self-employed for the purposes of unfair dismissal law.



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So I think the guidance that has been given is too simplistic, unhelpful and potentially misleading in certain crucial respects. There are other issues about it. The question is why the Government are doing this. The job of issuing advice about employment matters is a statutory obligation of ACAS. If there is a need to issue advice on this matter, why is ACAS, as an independent agency, not performing this function?

The other question, the third question, is what is the legal effect—the legal status—of this advice. And the answer is that it can have none, because in our system, Parliament makes the law. It is not for Government to try to influence the way in which the law is developed by issuing unilateral advice in this way. So I think, in terms of the contents and of the process, serious questions need to be addressed.

Q244 Andy McDonald: Kate, would that process be assisted by just simplifying this structure? Is there a case for just having it very clear that people are either genuinely self-employed or, alternatively, the control that is exercised by the person, the organisation, that they are delivering the service to actually defines them as an employee, with attendant rights? Would we be better served with a system such as that?

Kate Dearden: We have been exploring a statutory definition of self-employment and how that could help to clear up the maze that is employment statuses. When we look at the question of why so many people are in the grey area between employment and self-employment, it clearly has to be brought up to date for those legitimate self-employed people who are choosing it. A statutory definition of self-employment might be one option to explore. It is not just sole traders; there are freelancers, partners and subcontractors. But legally, those are limited companies, agency or casual workers and fixed-term contractors. There is a real grey area between those. I agree about the current system: I don't think it is demonstrating that it is fit for purpose—guidance or not. There is clearly widespread confusion about the alignment of tax and employment statuses, which has to be addressed.

Q245 Andy McDonald: Philippa, do you have anything to add, perhaps from the freelance perspective?

Philippa Childs: I certainly agree with what has been said already. I think our view is that more companies need to undertake proper status determinations rather than forcing their contractors inside IR35 without due consideration. Obviously, the Government's announcement and then U-turn also caused quite a bit of confusion. I think we think a clear set of rules needs to be developed—ACAS would be a good vehicle through which to do that—to enable individuals, hirers and HMRC to see whether the appropriate employment tax status is being applied in every case. A statutory definition of self-employment that includes an agreed set of rights and obligations would reduce the problem of misclassification. We think that would certainly help. When statements of particulars, which everybody should receive, are issued, that should state clearly what the employment status is and whether you are an employee, a PAYE

freelancer, a sole trader or whatever. This would certainly help, and everyone would have clarity from day one.

- Q246 **Andy McDonald:** Keith, can we come back to the misclassification of people, because we have a confusing picture in terms of the tax regime opposite employment status? Would we not be better served by simplification and an alignment of those different classifications?

Professor Ewing: That is a good question. My starting point for this is to say that you cannot address a question of status in the abstract. You have to ask what purpose or objective you are trying to achieve by changing or amending the law, and my starting point would be to say that the purpose of employment law is to ensure that people are protected, and we should be drafting a definition that is as inclusive as possible, so that we catch as many people as possible. People who work for a living should be entitled to be protected by the labour laws that the state provides. That would be my starting point. There are at the moment two private Members' Bills—Chris Stephens' one in the House of Commons and Lord Hendy's one in the House of Lords—that in my view achieve that objective.

There are then separate questions about tax. I think the issues of employment status and tax are different; the policy objectives are different, and there will be borderline cases in which we cannot determine whether someone is an employee for employment purposes or self-employed, or an employee for tax purposes.

In my view, we should be prepared to say that in borderline cases, somebody may be an employee for employment law purposes, but may be self-employed for tax purposes. It depends on the objective that you are trying to reach, or the goal you are trying to achieve. In a sense, that would be my starting point: everybody should be in. If there are special rules whereby people should be treated differently for tax reasons, or for national insurance or any other purpose, then do that.

- Q247 **Andy McDonald:** Kate, you have done a lot of work on the protections and rights of self-employed people. What is your perspective on better alignment? Do you concur with Professor Ewing?

Kate Dearden: We need to have a conversation about a safety net for the self-employed before we dive into all the different taxes and statuses, because it is very clear that self-employed workers need more of a safety net; they need more support in their work. In our opinion, the pandemic and the experience of the self-employed demonstrated that, with the decline in numbers of self-employed. A lot of self-employed people enjoy that flexibility—the freedom and control over their work—but would want to have a conversation about a safety net on things like sick pay, for example, and how that then feeds into status, tax and so on.

We did an analysis of self-employed experiences during the pandemic, in particular on the test and trace support grants, and one in five applications came from the self-employed. That is an over-represented group applying for that grant, and it clearly demonstrates the need: the self-employed workforce are looking for more support in the workplace across the

benefits spectrum, but particularly on sick pay. That is a key issue for our members.

On universal credit in particular, we saw that the numbers of self-employed workers claiming it increased by 270% during the pandemic, which is massive. I think that really shows a picture: we need to explore how we can further support this section of the workforce by providing protections, and securing fair and good-quality work for them as well. There is a whole conversation to be had around the self-employed section of the workforce, and how we make sure that that is good-quality, well-paid self-employment, too.

Q248 **Andy McDonald:** Philippa, do you want to add anything?

Philippa Childs: I largely agree with what has been said, but I would also just say that it might be quite attractive to have a very simplistic view of employment status. What we saw through the pandemic was that tens of thousands of our members fell between the gaps of the job retention scheme—which was for employees, and people had to be employed within certain dates—and the self-employed income support scheme because of the basis on which they were engaged. That was the reason why they fell between those gaps, so I agree with Kate that there needs to be much more support for self-employed workers more generally, but I think the pandemic really exposed that lack of support and understanding of the complex nature of the employment market.

Q249 **Andy McDonald:** Finally from me, Chair, with the trade and co-operation agreement, we have clearly entered into a relationship with the European Union and this new regime. Is there anything coming out of Government subsequent to that that gives you any cause for concern as to whether we will continue to align, and what are the potential pitfalls that we may be facing in these particular areas? Professor Ewing, do you want to start?

Professor Ewing: I am sure you are very familiar with this, having lived through the process, but there is a huge obligation arising under the agreement. Let me begin with the first, because it relates directly to the Retained EU Law (Revocation and Reform) Bill, which I believe is currently in Committee. There are provisions in the free trade agreement; I will just refer to article 387, which provides for non-regression of labour standards in five specific areas where these relate to trade and investment. I think this has a huge impact on the removal of workers' rights in those five areas, as appears to be anticipated in the current Bill. To do that, I think, would be to violate the terms of the agreement.

Secondly, several obligations in article 399 of the agreement require us to effectively implement various obligations arising under the ILO treaties to which we are party and the European social charter of 1961 to which we are party. That is clearly relevant in terms of the Bill that is about to be announced today on minimum service levels in the event of industrial action. To what extent have the Government's proposals been tested against the obligations that arise under the free trade agreement,



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although they arise in any event? We are already bound by these obligations, but they have been reinforced by the terms of the free trade agreement. Just to simplify this, we cannot remove the EU social rights inheritance, because of article 387, where the removal is motivated by trade and investment, which seems to be the motivation here.

The other thing that we must do under the agreement is effectively implement, not derogate from, our obligations under ILO and the European social charter. The question is to what extent—the Government will have to be very mindful of this, I think—the Bill, which is yet to be published, is compatible with these obligations. It is just an indication. It comes back to the point I was trying to make earlier that, in a sense, the landscape has changed. We cannot return to the halcyon days. Brexit does not mean release from international obligations or even from our continuing obligation to comply with European law. We can improve on the working time directive, and we can improve on agency workers regulations, but we cannot remove them. We can replace them—a substantively similar term—but we cannot remove them. Nor should we be doing things that violate our treaty obligations in terms of the ILO and the European social charter.

Q250 **Andy McDonald:** That is very specific and erudite. Do other colleagues want to make any contributions?

Kate Dearden: No, other than that we share the concerns about the erosion of workers' rights in the UK. We are very concerned.

Q251 **Mark Pawsey:** I have a couple more questions on self-employment, but first a question for Professor Ewing. You spoke a bit about the right to flexible working and about a balance needing to be re-struck. I wonder if I could put the same point to you that I put to the previous panel, which is that businesses are short of people. We hear it from employer organisations and from our own constituencies. Why do you think there needs to be a legislative change in respect of offering flexibility? Why do you think that employers facing staff shortages are not finding it the obvious and sensible thing to do?

Professor Ewing: There is no evidence—I have seen none. What you are saying is that the market should operate and that market pressure will force employers, if they want good staff, to—

Mark Pawsey: Why is that not happening? That's my question.

Professor Ewing: You tell me. I have no evidence or data.

Q252 **Mark Pawsey:** Why do you think employers are intransigent then?

Professor Ewing: We are not legislating for now. We are legislating for times when the market may not be quite so tight. We are looking into a future when there may be higher levels of unemployment. We are operating at the moment in what may be a very narrow window of experience. Things could be different in the future. Even if the overall picture is that employers are happy to offer flexible working arrangements, why would you not want to legislate to ensure that they did



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and to ensure that employers who were intransigent were required to? Even though you might have a situation in which a majority of employers for commercial reasons are bound or feel bound to be more flexible, there will always be those who are intransigent. We are legislating to deal with the antisocial, as is often the case. There are people who are making things worse for the employers who are prepared to behave well. That is typically the purpose of employment law.

Q253 Mark Pawsey: But you would agree that those employers who are not behaving flexibly perhaps are doing themselves a disadvantage right now because they do not have access to workers that those offering flexible working do. I am trying to ask your view about why they would not do that.

Professor Ewing: I have no idea why they wouldn't do it. It would be irrational not to do it. But the fact is that not all employers are rational, kind, generous, well-intentioned people. It is to deal with those employers who do not behave in that way that we need legislation.

Q254 Mark Pawsey: So your premise is that we need to assume that everybody behaves in the worst possible way and create our legislation to deal with that?

Professor Ewing: No, that is precisely not what I am saying. I am accepting your premise that many will behave, but I am offering you—

Q255 Mark Pawsey: It is in their interests to do that.

Professor Ewing: It may well be, of course, but there will be people who don't. It may not be in their interests to behave that way, but there will be victims of their bad behaviour who need the support of the law.

Q256 Mark Pawsey: Let's move on to self-employment. Kate, you said that self-employed workers need more support, they miss out on support and they do not have a safety net, so you are presumably pretty happy with the report from Prospect that there are around 800,000 fewer self-employed people in the workforce than there were pre pandemic?

Kate Dearden: It is true that those numbers have declined, but perhaps—

Mark Pawsey: Is it a good thing?

Kate Dearden: No, I don't think it is something we should be championing when people move out of work. Obviously, we do not know the circumstances of where those self-employed workers have moved to, but I do not think it is to the extent that we thought it was from the labour force survey. It was a joint research report, I should say, with Prospect and Community trade unions—an inquiry into the future of self-employment analysing the experience of the self-employed and freelance workforce during the pandemic. Just to go back to the figures, it is perhaps not as significant as we thought from the labour force survey and the estimation of the fall by 700,000 individuals to 4.3 million. The employment data from the 2021 census shows that the overall number of



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the operating self-employed is closer to 4.7 million, but still, obviously, it is a decline in figures.

Q257 Mark Pawsey: That is 700,000 fewer workers who are subject to the disadvantages of self-employment. That is a good thing, surely.

Kate Dearden: A lot of people—our members in particular—enjoy this way of working. They enjoy the flexibility, freedom and control that self-employment brings. They love what they do, and I think that is what is brilliant about self-employment. However, a lot of our members are on the lower-paid spectrum of self-employment. Unfortunately, that does sometimes mean less security, more hours and less pay, and more worry about finances for those workers. We want to have a conversation about how we make all work good quality.

Q258 Mark Pawsey: If these people are less well paid and have no protections, they would presumably be better off being employed.

Kate Dearden: Not necessarily. It is about how we can make self-employment as meaningful, good quality and successful as we can within the labour market. Those workers and our members choose that way of working, and they enjoy the benefits and the positivity that self-employment brings, but they want to see more support, a safety net and security when times get tough and when they are struggling—many did throughout the pandemic, as I alluded to in those figures as an argument for looking at sick pay—but also stronger maternity support for the self-employed. Adequate parental leave is absolutely vital and critical for everyone.

Q259 Mark Pawsey: But they get all those things if they are employed, so why isn't switching from self-employment to employed status a good thing?

Kate Dearden: It might be a good thing for some people in their circumstances. That is what they might choose to do if self-employment is not for them, and the positives that self-employment brings might not outweigh the potential negatives for some workers, but I do not think the answer and the solution is moving everybody into employed status just for those benefits. I think we have to acknowledge and embrace self-employment and the benefits that it brings to our economy and local communities, and make sure that it is good quality and meaningful. That means things like sick pay and stronger maternity allowance—increasing that to bring it in line with SMP—and looking at things like shared parental leave and keeping-in-touch days. These are relatively small policy issues with which we can really help a wide section of the workforce, to keep them in that way of working, because that is what they enjoy doing. They bring a lot of benefits to our economy in creativity, and so on and so forth, as I am sure Philippa will touch on from her members.

Q260 Mark Pawsey: Philippa, I am a bit confused. I am not sure whether this decline in the number of people who are self-employed is a good thing or a bad thing, or of no consequence at all—in which case, why did you draw attention to it?



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Philippa Childs: I think there has been a decline in some areas—as I said earlier, in the creative industries less so, as there is more reliance on the self-employed due to the very nature of the industry. It would be very difficult to turn the tens of thousands of freelancers who work in film and TV into employees. Likewise, our members enjoy the freelance nature of the work they do, but they do argue—and we argue and campaign on their behalf—for more of a safety net and more of a framework within which they can—

Q261 **Mark Pawsey:** But if the safety net or framework arises through employment, why don't you argue for them to become employees of the organisation that is paying them to do the work?

Philippa Childs: Because it simply would not work, on the basis of the project nature of film and TV production. The move over the years has been very much towards the freelance model.

Q262 **Mark Pawsey:** Is that because it suits the workers just as much as it suits the employers?

Philippa Childs: To a certain extent, yes. Our members do enjoy working on one production, and then being able to go and work for Netflix or whoever; they enjoy the variety that goes with it. But there are downsides, which relate to family life, flexibility, long hours, planning for their future lives, and all those sorts of things. We could put in place some kind of safety net that does not involve them becoming employees as such.

Q263 **Mark Pawsey:** But don't those workers weigh up the advantages and disadvantages when choosing which career to pursue?

Philippa Childs: They do, but unfortunately in film and TV there is a propensity for women to leave the workforce when they have families, because they just cannot cope with that model and the long hours expected of them. There is a shortage in the workforce, so if we want the UK film and TV industry to be as successful as—and more successful than—it has been to this point, we should be looking to bring people back into the workforce and skills back into the industry. Even within the freelance environment, I think there are things that can be put in place that support family life and work-life balance better than the current model.

Q264 **Chair:** I should have said earlier that we invited Deliveroo to come and give evidence today, because I wanted to hear the voice of an employer. Although they agreed initially, at the last minute they were suddenly unavailable; nobody at all at Deliveroo was available to give evidence. I just wonder why that might be. There has been a bit of case law in the last couple of years, including with Uber. Organisations such as Deliveroo have tried to think about the benefits of that model of work. Are they running away from giving evidence because there are still major problems with that employment model, or has where they have got to with their self-defined benefits package improved the situation? Does anyone want to comment?



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Professor Ewing: I can understand why Deliveroo would not want to come here: there is a Supreme Court case pending, to which they are a party, on the question of employment status. It is about whether Deliveroo riders are employees or workers for the purposes of the trade union recognition legislation. If I was them, I wouldn't come, in case something was said that might be unhelpful.

Chair: They did not give that as the reason, unfortunately, but that sounds pragmatic.

Professor Ewing: It is not for me to speak for Deliveroo, but it might be a plausible reason for not coming.

Q265 **Chair:** Kate or Philippa, from your experience, has working for those types of organisations improved sufficiently in the last couple of years or is there more to do?

Kate Dearden: There is always more to do. We have seen quite innovative ways of making work fairer, in particular with the GMB working with Deliveroo and Uber. It would be really interesting to see how those partnerships play out and how we ensure those models succeed in the best interests of working people and distribute that power more to the riders and those who work for Uber.

It will be interesting and innovative for the trade union movement to explore partnerships with people who we might not traditionally have worked with, but this is absolutely the way in which work is going for a lot of people. It is really important that unions, in particular, are in the room and speaking with a lot of these companies, with increased platform-based work. I think it is really exciting that we have seen those partnerships and deals. There is a hell of a lot to do.

As we have mentioned before, I do not think the employment status determined by the courts is particularly helpful for these companies. Obviously, I cannot speak on their behalf, but I think there is concern for a lot of companies around the extent to which they can actually deliver for workers at the moment. For example, if they provide training for self-employed workers without additional support, and those companies themselves provide a safety net, perhaps they could end up in the courts about that. So it feeds into the wider picture of the grey area and the maze of employment status, but there are interesting developments that we should watch closely.

Q266 **Andy McDonald:** I want to come back on this self-employment status issue. Is not the nub of the problem that the only gainful employment available to people is through a bogus self-employment structure? There is nothing self-employed about it. The total control of the working day is in the hands of the company. Is that not something we should be giving great attention to? Yes to that freedom for people to explore genuine self-employment, but when it is dressed up as self-employment when it clearly is not, that cannot be helpful for a better working out of these relationships, can it?



Kate Dearden: I agree. Where there are those murky lines, you would hope that a worker definition, or looking at a statutory definition of self-employment, would clear up certain issues and prevent bogus self-employment from occurring far too much in different sectors. We have touched on IR35 and how it has unintentionally made it harder, not easier, to define contracting and freelancing, in particular. We should clamp down on bogus self-employment, and where people are perhaps being navigated into an employment status and not having the benefits and rights that they should have been entitled to, that absolutely has to be prevented. We have to make sure that workers are in the right status, as suits them, and make that as feasible as possible. Where we see bogus self-employment, we absolutely have to make sure that those workers are supported, and we have to make sure that that does not take place in more sectors.

Professor Ewing: May I come back on your point, Chair, about Deliveroo? I am sure this is not the reason they did not come, but I think the issue is not resolved. The fact that we have a case in the Supreme Court as to whether Deliveroo riders are workers for the purposes of trade union recognition legislation is itself a problem. In a sense, it reveals that the problem continues, in that, at the moment, they cannot even get a recognition agreement or engage in collective bargaining with the employer because of the way in which the law is currently structured. There is also the question, which relates to Uber and other companies, that if they are deemed to be employees or workers, what will they get paid for? It is not just a question of status; it is also a question of what counts as working time for the purposes of payments. That is a big problem, which is also exposed by a recent Supreme Court case, which I think needs to be fully addressed. When I go to work for my employer, am I entitled to be paid for the whole period I am engaged by the employer, or am I entitled only to be paid for the short periods in which I am actively engaged in work for that employer? That is a huge abuse that needs to be addressed.

Q267 **Chair:** We will keep an eye on that Supreme Court case. My last question before we finish today is around the right to disconnect, which I know some European countries have put into law. Has there been any evidence yet about whether it has been effective and whether we ought to consider that in the UK?

Professor Ewing: I get lots of students who write papers and dissertations of various kinds on the right to disconnect in various countries. They are all very interesting. I think I would support something like that here. It is something that is growing in popularity, and I can see no reason why we do not have that here. In a sense, it is the flipside of the points I made earlier. Why should I be expected to be on call to my employer when it is a period for which I am not being paid? It just seems to me a no-brainer.

Q268 **Chair:** Do the other witnesses agree?

Kate Dearden: Yes, the more we can protect the boundaries between life and work, the better. The right to disconnect would have to be managed



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quite flexibly and depending on workers' preferences, but we should allow a time when workers can expect not to have to respond to emails, phone calls or other contact from their employer out of contracted hours and to be protected from the demands to work. Alongside that, we have to ensure that those good working practices keep in line with the increased flexibility we have touched on during this session, ensuring that there is genuine flexibility and that workers benefit from the opportunities that new technology brings.

Philippa Childs: I agree as well. We have done quite a lot of work at Prospect on the right to disconnect, and we very much think that legislation, while it would not necessarily solve the whole problem, would help employees manage the relationship with the employer and put boundaries into the working day. So, yes, absolutely, we agree.

Chair: Okay. That is us done for today. Thank you to all three of you for your evidence. We are very grateful to you.