

Business, Energy and Industrial Strategy Committee

Oral evidence: Future World of Work, HC 929.

Tuesday 7 March 2017

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Watch the meeting

Members present: Mr Iain Wright (Chair); Richard Fuller; Peter Kyle; Amanda Milling; Albert Owen; Amanda Solloway; Michelle Thomson; Craig Tracey; Anna Turley; Chris White.

Questions 1–70

Witnesses

I: David Widdowson, Employment Lawyers Association; David Halsey, Head of Office, Office of Tax Simplification; and Paul Morton, Tax Director, Office of Tax Simplification.

II: Hannah Reed, Senior Employment Rights Officer, TUC; Sue Tumelty, Founder and Executive Director, the HR Dept Ltd; and Stephen Devlin, Senior Economist, New Economics Foundation.

Written evidence from witnesses:

- [Employment Lawyers Association](#)
- [Office of Tax Simplification](#)
- [HR Dept Ltd](#)
- [TUC](#)
- [The New Economics Foundation](#)

Examination of witnesses

Witnesses: David Widdowson, David Halsey and Paul Morton.

Q1 **Chair:** Gentlemen, good morning. Welcome to the Committee. We are starting our first oral evidence session on our Future World of Work inquiry, so we are very grateful that you are going to help us set the scene. For the purposes of the record, could you tell us who you are and which organisation you are representing, starting you with, David?

David Widdowson: I am David Widdowson. I am a partner in Abbiss Cadres, which is a professional services firm, but I am here with my hat on as chairman of the working party of the Employment Lawyers Association, which responded to the consultation document.

David Halsey: I am David Halsey. I am Head of Office at the Office of Tax Simplification, and I am here with my Tax Director, Paul Morton.

Q2 **Chair:** Thank you. David, may I start with you? Is the status of employment of workers sufficiently clear in law?

David Widdowson: The amount of litigation that there has been about it would suggest not, from one viewpoint at least. One might take the other viewpoint: that the courts fulfil a useful function in adapting their view on employment status as the economy changes. One of the comments that one has heard around this, disapprovingly, is that you can take the same set of facts to two different courts and you will get a different answer. Personally, I would not agree with that, but what I would acknowledge is that you could take the same set of facts to a court today and get an answer that is different from what it would have been, say, 30 years ago. That I offer as an example of how times change.

Q3 **Chair:** What have been the drivers of those changes? Presumably, the drivers have been the structure of the economy, this place in terms of what we want to put on the statute books, and technology. Could you give us a flavour of why rights and protections have changed?

David Widdowson: At present, you have, essentially, the three-tier system that we identified in our response, which is that, at the top, you have employees, who have all the rights that there are available; you then have this intermediate category of worker, who have some rights; and then you have the bottom, tier-three category of self-employed, who have very little in the way of rights. Inevitably, that is going to induce many businesses—not all—to look to minimise their regulatory burden by trying to structure their relationships so that people are slotted into the least burdensome category. A good example of that, of course, is the recent Uber case.

The problem that arises is where what starts out as a clear self-employment relationship, for example, in practice turns into something quite different, and that is really where the courts intervene to allocate



rights if the reality does not correspond to the form. The changing in rights and how status is determined reflects the way in which the world of work has changed, particularly over the last few years—the gig economy, as it is commonly referred to.

I suppose it reflects the equity that courts think should apply. Whereas, for example, 25 to 30 years ago, mutuality of obligation would have been regarded as an absolute irreducible minimum—if there were no mutual obligations on the part of the employer and the worker, there would be no question of a contract of employment—now the courts are much more willing to look at the overall impression that they get of a working relationship without putting primacy on any particular criterion or set of criteria. The trend these days, for example, is to resist and, without wishing to steal Mr Halsey’s thunder, it is the same in tax as well: you resist a checklist approach, and you look at what happens in practice and take a broad view.

Q4 Chair: You mentioned the gig economy, and technology is driving through a lot of changes in business models and disruption in respect of companies and also in terms of what rights workers can expect. How can we reconcile those changes in technology and that disruption while, at the same time, maintaining a good set of employment protections? Frankly, workers just want to work and they want to be protected in law when they do that.

David Widdowson: The two are not necessarily mutually exclusive, in my view. You do not necessarily stunt changes in, as you put them, disruptive working arrangements by then depriving people who work in those arrangements of rights or by increasing their rights.

Going back to the point I made earlier, where there is the option of trying to structure your affairs so that you have the least amount of regulation and burden on you in relation to the people who provide work to you, the tendency would be to try to construct those working relationships so that you can bring yourself within that. Again, however, without wishing to pick on Uber unfairly, in that particular case the form was very different from what the tribunal found to be the reality. The form was an act that was supposedly there to help drivers be better drivers and more efficient drivers, but the reality was that it was a business using the taxi drivers to provide it with income generation.

Q5 Chair: That case of that company and the point about the burden of employment is an important theme for this Committee. The burden, for want of a better term, of employing somebody should rest with the employer—“I will make sure that that worker is safe, that they will get paid and that they will have proper rights”—but they are trying to push that burden on to the worker. It is a case of: “You set up your own company and become self-employed. I do not want that burden.” Is that what is happening in the employment market?



David Widdowson: I would not say that that is, as I perceive it, a general trend, but it is certainly a feature of some of the more radical new business types, and Uber, Deliveroo and CitySprint are good examples of that. In terms of zero-hours contracts, for example, the number of holders of zero-hours contracts, according to the ONS, has increased significantly in the past year, but the rate of increase has slowed down remarkably in the last half of 2016. One might take those statistics and conclude that there is not a helter-skelter towards having models that deregulate the market and provide workers with no rights. That becomes a policy issue then, I think.

Chair: Let us explore this a little. Anna, you wanted to come in.

Q6 **Anna Turley:** The area I would like to address specifically is around umbrella companies, which, at the moment, do not seem to have any legal status. It baffles me how they are legal in the first place. Could you say a bit about umbrella companies? I think they are called personal service companies as well. How do they work and how do they operate in the gig economy? I have come across them in the construction industry. Individuals coming to my surgery have lost £25 a week for reasons that they just cannot explain. They have had to pay this to a company that they have had no engagement with. Could you say a bit about those for the ordinary person to understand?

David Widdowson: Yes. Umbrella companies, as I understand them, are organisations that are very akin to employment agencies, and some of them do fall within the definition of employment agencies for the purposes of the Agency Workers Regulations. They provide a house, I suppose, for a number of workers. It is common in the construction industry, as you say; it is also common in oil and gas. The umbrella company has relationships with end-users and provides the people who are members of the umbrella company with work. It deals with the provision of tax deduction and takes some money for itself. The umbrella company might be owned by the people who work within it or it might be owned by a third party. That is an umbrella company.

Personal service companies have been around for a very long time. They are traditionally used by self-employed people, pre IR35, to provide a more tax-efficient way of receiving income. Money comes in from the end-user to the personal service company. The worker takes it out as dividend, with a lower tax burden, rather than having income tax and National Insurance deducted. They, basically, are the two models.

Q7 **Anna Turley:** Are umbrella companies essentially allowing people to avoid tax? Could I ask the guys from the Office of Tax Simplification?

Paul Morton: Could I begin with a preparatory observation and then answer the question? The Office of Tax Simplification is an independent office within the Treasury, whose role it is to provide Ministers with advice on simplifying the tax system.



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We recognise that people are categorised differently for different purposes. For tax purposes, people may be considered to be employed or self-employed. For employment-rights purposes, people may be considered to be employed workers or self-employed. There are then categorisations for other purposes too, for example for benefits; people may be working in such a way and sufficiently to qualify for certain work-related benefits, or not. The objectives to be met by the distinctions in the policies in these three areas are different. While it is perhaps tempting, in the first instance, to find a way of condensing the different categorisations into a single system, that would, self-evidently, be quite difficult to do.

The drivers providing incentives to individuals to fall into one category or another are undoubtedly different in the three areas we have discussed. From a tax point of view, there can be benefits in being self-employed as opposed to employed in terms of a lower rate of National Insurance contributions and the absence of any employers' National Insurance contributions. There are benefits in incorporating, in that dividends are subject to tax differently from employment income, for example, and earnings can flow through a corporate structure. Equally, there are drivers that would point both the person being engaged and the person engaging them in different directions in relation to employment rights, continuity and substitution.

My first overall observation would be that this is all very complicated, saying that as a director of the Office of Tax Simplification, and it is very important to take a joined-up and holistic approach in finding solutions. Somewhere in there, I did answer your question, because there can be incentives from a tax point of view to point towards one structure rather than another, but I would suggest they have to be balanced against the other incentives relevant to the other considerations.

Chair: Chris wanted to comment on this, and then I will bring Anna back.

Q8 **Chris White:** You opened your remarks by saying that you are an independent office in the Treasury. Why are you independent? What makes you different from any other part of the Treasury?

Paul Morton: We were intentionally established to provide an independent view on simplifying the tax system.

Q9 **Chris White:** I do not understand why it is independent. Why is it not just a standard Civil Service perspective?

David Halsey: I should say that we are a creature of legislation as of last year, which gives us a very distinct legal status from the Treasury as a whole. Through the chair of our board and through Paul, we have an independent voice. In a sense, we have our own editorial control over what we say. Clearly, we consult with people all over the place, including here. We consult with many people within Government, but we decide what advice we want to give.



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Q10 Anna Turley: I just want to go back, if I may. I appreciate that you are probably not in a position to pass judgment on the pros and cons of some of these tax models, but has evidence crossed your desks of umbrella companies pushing National Insurance contributions back on to the individual workers? Are you aware of that and does it concern you?

David Halsey: We are certainly aware that an umbrella company, as I understand it, will charge the end-user a fee for supplying the worker. Because the umbrella company will be employing the worker legally—there will be an employment relationship there—they will be needing to deal with employers' NICs on that income. The worker may well think that what is happening is that the end-user is paying X and they only have half X rather than three-quarters X, and that is why. That is about transparency and knowing what is going on.

David Widdowson: The only comment I would make on that is, certainly, I am aware of situations where the umbrella company has attempted to set up a structure where the people who are the workers providing the services are not its employees but maybe its shareholders.

David Halsey: There are several models.

David Widdowson: Exactly, yes. On that model, that is a device to avoid paying employers' National Insurance contributions. There, there is no exploitation of the people who are delivering the services. If there is any exploitation, it is in not properly accounting for the reality of the relationship, if you like. The tax take is less because there are no employers' NICs.

David Halsey: There is one other thing to say, which is that, in terms of the engager, I am sure there are lots of motivations but one motivation sometimes for having workers engaged in a particular way is to outsource or ring-fence the engager from the risk of inadvertently finding themselves with obligations they were not expecting, whether employment rights or tax. If somebody is working for a company through their own company or an umbrella company or some other such arrangement, the engager may be more comfortable that they know where they are, even if the worker ends up confused.

Q11 Chair: David and Paul, you mentioned transparency. I have had cases where constituents say, "I thought I was an employee and National Insurance has not been paid. I owe tax." Where do you fit in to ensuring that everybody knows where they stand and that HMRC and the whole thing is simple, transparent and clear, and that is then enforced?

Paul Morton: That would absolutely be the ideal position: that an individual would know, intuitively and with some certainty, before the start of an engagement and during an engagement, and also the person engaging them would know, intuitively and with some certainty, what the status was. The law concerning the distinction between the various categories has developed over time in response to changes in working



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practices and changes in commercial law. As with any other law developed in such a way, it is complicated and depends on the facts. Further thought certainly needs to be given as to whether there are bright-line tests or clear tests that can be applied. So far, the combined ingenuity of a great many people has not been able to find those tests.

Q12 **Chair:** That is your job, though: you are there to simplify things.

Paul Morton: We will carry on with that. In addition to finding the legal solutions to clearer distinctions, there is also great benefit in finding administrative solutions to help people, and a great deal of work is being done in this way as well. There are tools available online, which can guide people through some of the judgments that need to be made. These too are very difficult to apply to all kinds of circumstances. They inevitably start to become flexible and complicated, and definitions have to be precisely defined, but that seems also to be an area where further work would pay dividends.

Q13 **Albert Owen:** Just before we move off the umbrella companies, you mentioned, David, the oil and gas industry. Many of those are offshore and do not pay tax or National Insurance. Who gives the guidance to the individual working on an oil rig outside British jurisdiction? Would it be the umbrella company or the owner of the rig?

David Widdowson: It would be more likely to be the umbrella company. As David said, not exclusively but a large part of the reason the end-user uses umbrella companies is to isolate himself or herself from any issue with employment rights or taxation. They simply pay a fee and it is not their concern how that fee gets distributed.

Q14 **Albert Owen:** If, however, that individual is outside the jurisdiction for X amount of days—and this is more to David and Paul—it will be their responsibility to inform HMRC, wouldn't it?

David Widdowson: I think that is right. On that model, yes, there would be no obligation on the end-user to provide it.

Q15 **Albert Owen:** It is messy, isn't it?

David Widdowson: It does not promote good tax take.

Q16 **Chair:** David and Paul, we are coming up to the Budget. The Chancellor will be giving his forecasts in terms of tax revenues. In terms of the way that the employment market is changing—the rise of the gig economy or whatever you want to call it—we are seeing the tax base being undermined and we are seeing a reduction in tax revenues, aren't we? The OBR has said that this is a risk, with a reduction in tax take of about £3.5 billion by 2021. Is this a concern? To what extent do you get involved in this within your independent unit of the Treasury?

David Halsey: Our prime concern is simplification.

Q17 **Chair:** Presumably complexity also has an impact upon tax take.



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David Halsey: It does and it has an effect in two ways: there is an effect on the take itself, and there is also an effect on the administration of taxes. A historical model may have involved 100 individuals employed by a single company, and that company was responsible for all the tax obligations relating to those 100 employees. If, instead, the new company has five employees and 95 independent people engaged on a different basis, perhaps 95 people are now responsible for tax compliance and their obligations, and the company would deal only with five. That increases the administrative burden for HMRC and places a greater obligation and complexity on the 95 individuals.

Q18 **Chair:** What can be done about this?

Paul Morton: The Office of Tax Simplification has proposed that those across Whitehall involved in the various different areas we have discussed—employment law, benefits and tax—together with the Taylor review, co-ordinate their efforts in an appropriate way to see where improvements are possible. As I said before, it is rather complicated and it is certainly clear that making changes in one area can have unintended consequences in another, so it is a matter of continuing what have been well-co-ordinated activities to look for simplification and opportunities.

Q19 **Amanda Milling:** Can I pick up on this point about the implications for HMRC in terms of more self-assessment forms? Are you seeing a significant increase in the burden on HMRC? Is there data to support this? What are the projections?

David Halsey: There is clearly a risk there for HMRC, with a greater number of people not being quite sure what they are supposed to be doing, perhaps, and in situations that they do not find wholly transparent. If there were more sources of income from more people in different bits and pieces, that is inherently less straightforward to handle. Probably the structural feature, which has been referred to, is the employer's NIC position, where, if people who would previously have been employed are not, that is effectively a tax that is applied to one particular area but not applied to people who are not employed. There are certainly risks there.

Q20 **Chair:** David, this question is directed at you: we have talked about simplification in relation to tax and a whole range of things. In respect of employment status and protection of rights, various things have grown in an ad hoc, piecemeal manner. What is the argument, which seems quite compelling at this early stage in our inquiry, for just trying to simplify that as much as possible, so that we have a single status or perhaps a minimum floor whereby everybody is protected in respect of certain things? What would your views be on that?

David Widdowson: Picking up on the last question, if I may, one of the ways in which you might deal with the tax position is to eliminate the difference in status between employee and worker. At the moment, as you know, employees have all the rights and workers have some. You could simply just create one category of worker and, to deal with the tax



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point, the obligation might be to extend PAYE to all those in that category. That would be quite a radical solution, but it would have the advantage of removing quite a lot of the reason for the litigation there has been, which is asking courts to decide whether someone is an employee or a worker and thereby has rights to unfair dismissal and so on.

The issue for the legislature then would be whether you level everybody up to where employees are or whether you level down to where workers are. Obviously, there would be some political debate about whether you should be taking rights away from workers. You might also find yourself, as we speak, in conflict with EU law, if you are looking to adjust some of the rights that workers presently have, but that may not be the case for too much longer.

Q21 **Chair:** How does Brexit fit into all of this in relation to employment protection? We can go off on our own, where we could level up.

David Widdowson: Yes, you could level up without any problem at all, if you felt that was the right way to go. Levelling down is a bit more of an issue.

Q22 **Chair:** This is a political matter rather than, say, a legal argument.

David Widdowson: It is a social-policy issue and, therefore, a political matter, yes.

Q23 **Peter Kyle:** Following up on that, you have just made a very complicated situation sound relatively straightforward, so for that you deserve a medal. I am an MP in the city of Brighton and Hove, where we are almost at the forefront of some of this, because we have two universities and a lot of young people looking for flexible work. We have Deliveroo, Uber and some of the other companies at the forefront, and I am literally stopped on the street by people on bikes screeching to a halt and asking, "Why do I not have this? Why do I not have these rights?" The one thing that you cannot say in these situations is, "It is complicated." The one thing that we are getting back from everybody is that this is complicated. When you look at it through the eyes of the people who are waking up in the morning, picking up a phone, looking at an app and deciding on their working schedule for the day, that is not complicated for them, and they cannot understand why it is complicated for us. You do seem to feel that there is the potential for a straightforward way by the redefinition of "worker".

David Widdowson: Yes, not so much the redefinition as just removing the division between the first two tiers: employee and worker. "Employee" is a construct of the old law of master and servant, so its origins go back a very long way. That is reflected in some of the implied duties; for example, employees have a duty of fidelity, which a worker does not have. There are those on the one hand and then you have independent contractors on the other, who, pretty well until we went into the EU and the EU embarked on its social chapter, had no rights at all.



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Their rights were confined to the contract that they had with the person to whom they were providing services. A lot of the EU rights have been bestowed on people who contract personally to provide services to another, which is that category.

- Q24 **Peter Kyle:** Considering that this is a trend sweeping the industrialised economies, including every EU country, is this not an issue that the EU would be open to tackling? Are you saying that the process of employment law in the EU is a slow one? I do not understand why you think that the EU would not respond to this challenge.

David Widdowson: I am not saying that they are not responding to it. The EU tends to legislate for workers; it does not really see a different, elevated status of employee, because most EU directives tend to be framed in terms of a floor of rights that member states can improve on if they wish. What they cannot do is go below. To some extent, however, that reflects the different approaches to law and work in member states. In Germany and some of the north European states, it is very heavily collectively bargained. National systems deal with terms and conditions for all sorts of people who deliver work, not just what we could call employees.

- Q25 **Peter Kyle:** David and Paul, I wonder if you wanted to comment on the first half of this question about levelling up or levelling down. You were nodding at some points in that; is that something that you have sympathy with—that potential solution?

Paul Morton: The only observation I would make is that any levelling up or levelling down needs to take into account the reasons why we have different levels in the first place. I know there are tax aspects to that, which were broadly intended to reflect the relationship between the parties concerned, and also flexibility for employers and rights for employees or those being engaged. In principle it sounds very alluring to remove some of the distinctions by levelling, but some of the work that has been done indicates that that is difficult, because there are reasons for having the various distinctions. I am not sounding very keen on simplification in what I just said. That is why this requires further very careful thought, and the Taylor review is doing that, to see where the opportunities really lie.

- Q26 **Peter Kyle:** Just finally, listening to your response there—"We need time and we need to look at this"—the world is rolling on and we do not have much time, because people are waking up today and they are engaged in these relationships right now, today. Do you understand and accept the urgency of this type of review? We can think of this in terms of the decades ahead, bearing in mind we are already using ancient law in some parts of employment law; we need to get on top of this very rapidly.

Paul Morton: I fully agree. The majority of people are in a status that is clear, but there are significant and growing numbers of people for whom



that is not the case. There are people with multiple employments, with a mixture of employments and self-employments, or perhaps workerships employments and self-employments, and I fully agree that it is far more complicated than would be ideal. All parties concerned need to be clear, both at the outset and during the engagement, what the status really is.

Chair: Thank you. Gentlemen, we only had you for half an hour, so we are very grateful for your time. We have to crack on, so thank you again.

Examination of witnesses

Witnesses: Hannah Reed, Sue Tumelty and Stephen Devlin.

Q27 **Chair:** Good morning. Thank you very much for coming to give evidence. We are very grateful. This is the first session of our Future World of Work inquiry, so we are very keen to get the issues that are arising and set the scene, crucially. For the purposes of the record, could you tell us who you are and which organisation you represent, starting with you, Sue?

Sue Tumelty: Hello. I am Sue Tumelty and my company is The HR Dept. I am the Founder and Executive Director. We provide outsourced HR to small and medium-sized companies and we currently operate in the UK through a franchise model. We have 86 territories. We are in Ireland, and my daughter Gemma has now opened in Australia, so we are growing and there is a need. We cover about 6,000 SMEs and we have about 165 HR professionals in the business.

Chair: Thank you.

Stephen Devlin: I am Stephen Devlin. I am an economist and I work at a think tank called the New Economics Foundation.

Hannah Reed: Good morning. My name is Hannah Reed and I work for the TUC, which is the main trade-union organisation in the UK. Many of the TUC affiliates organise and represent many of the vulnerable groups of workers who are the focus of this inquiry, and we very much welcome the opportunity to contribute to your work at an early stage.

Q28 **Chair:** Thank you. Hannah, may I start with you? Could you set the scene in terms of what your affiliated organisations and the members of those organisations see? How is the world of work at the moment? There are record levels of employment—that should be applauded—but what is the status of those people in work?

Hannah Reed: Thank you very much, Chair. As I said, I very much welcome the opportunity to contribute to the work of this Committee at an early stage. The TUC recognises that, since the economic crisis, we



have seen an expansion of employment within the UK but we are also very concerned that there is a growing trend and, indeed, a rapid expansion of insecure work within the UK, whether that is zero-hours contracts, agency working or perhaps this new phenomenon of what we term false, often very low-paid self-employment. Research done by the TUC and, indeed, by many other think tanks has shown that these new forms of employment—although many of them are also historic—are accompanied by a number of key factors.

Often, the work is very low-paid, although we are also seeing increased job insecurity among professions such as teachers and lecturers as well. Often, the work is highly insecure. Individuals are at risk of being fired on the spot without any notice, or what is more often the case is that individuals simply find that the phone stops ringing and they are not being offered any future work, with no opportunity to appeal or to challenge that decision.

Individuals are also highly insecure because, as recent TUC research shows, nearly one in 10 workers in the UK are at risk of losing out on basic rights in the workplace. That means that they are often vulnerable to mistreatment in the workplace. They do not have the basic protections they need to be able to challenge mistreatment in the workplace. They also lose out on core protections, including job-security rights and also family-friendly rights, which this Parliament has recognised are important to enable individuals to balance their work responsibilities and their family responsibilities.

The TUC's overall concern, therefore, is that we have a growing insecure workforce and that the power balance between the employer and the individual has become out of balance, with the individual bearing much of the risk of new forms of flexible employment, and with businesses reaping the financial benefits. We therefore very much welcome the decision of this Committee to carry out a full inquiry into the future of work, and we are also engaging with the Taylor review at the present time.

Q29 Chair: That is very helpful in setting the scene. Stephen, you have written on this. One of the questions I have is: do you recognise what Hannah has said? If so, what is driving this—technology? Again, you have written a lot about technology: how is that affecting what the workplace looks like?

Stephen Devlin: Yes, I absolutely agree with Hannah. You are right to point out that there is no obvious crisis in terms of the quantity of jobs in our economy, but there is a very clear crisis in terms of the quality of those jobs. Research that the New Economics Foundation has done has shown that only 61% of the labour force has a secure and well-paid job.

Q30 Chair: Where is that in relation to, say, 30 years ago? How has the structure of the employment market changed?



Stephen Devlin: We have been measuring that particular statistic only over the recent past, and that has decreased over the past four years in terms of the number of people who have secure and well-paid employment. As you point out, however, there are very large structural changes going on in the UK economy, and it is particularly important for our economy because research has shown that the UK is a wage-led economy. Not all economies are but the UK's is, and that means that it is particularly important to put pounds in workers' pockets; in other words, what is good for workers is generally good for the economy as a whole in the UK.

Q31 **Chair:** Forgive my ignorance, but which economies would not be wage-led economies?

Stephen Devlin: An example in Europe is Austria. In some other countries, like Singapore, profits are particularly important. Countries, just like companies, have different business models. Different policies might be more appropriate in different countries. For the UK, it is particularly important for workers to be doing well. That leads our economy more than profits do, compared with other countries. That is why it is especially concerning, not just on a micro scale in terms of workers for their own sake feeling good about their employment and being well paid; it is also important for the macro economy more generally that we do well by workers.

Big changes are happening. The labour share of our economy—the percentage of total income in the economy that goes to labour rather than capital—has been decreasing, which is worrying. As you say, technology is at least somewhat a driver of this. There is a lot of concern at the moment about whether technology is leading to, or is going to lead to, technological unemployment or the loss of jobs altogether. You do not have to agree with that hypothesis and there are good reasons to be sceptical about that—in the past, that has not come true—but what is clear is that technology is facilitating an increasing concentration of power among employers in relation to employees. It is probably right to be sceptical about whether that leads to more technological unemployment, but it does lead to technology-facilitated changes in employment relations that are going to and are already systematically undermining the power that employees have over employers.

There is a range of things that we should do about that, and we will talk about that some more, but I completely agree that the role of trade unions in this is especially important. We need to listen to workers and give them more voice. The key way in which we can do that is through trade unions, so that is a key aspect.

Q32 **Chair:** Thank you. Sue, as a practitioner on the ground, is this something that you recognise? You provide flexibility, though, don't you?

Sue Tumelty: For the SME—our biggest employer—it is not quite the same. A lot of the issues that Hannah has been raising are about the



corporate. In an SME, they are much closer to their workers. What they find is that it is confusing and they are getting poor advice. On their business model, they go to the bank, and the bank says, "Make them self-employed—it is safer," or they say, "Zero-hours contracts or casual." They are not getting mature advice and they do not understand the difference between worker, employee and self-employed. It is all a bit of a fudge. What they need—and what I hope you are going to provide—

Chair: No pressure there then.

Sue Tumelty: —is simplification. We want flexibility for SMEs. We do passionately want protection for workers as well, because you do not build a good business by treating people badly. We want genuine choice and clear definition about self-employed. That is really where the SME market is.

Chair: That is very helpful, thank you. We will be coming on to a bit of that with Anna.

Q33 **Anna Turley:** I would like to dwell on the false self-employment point that you made, Hannah. I would be grateful if you could expand a bit more on your experience at the TUC of the kinds of things that you are seeing coming through. I mentioned umbrella companies earlier as well, and I would be quite keen to get your perception on those. I have had an experience from a constituent who was signed up to an agency and, unbeknown to him, was then obliged to have an umbrella company underneath the agency, which then took a further cut from his wages. Is this something that you are seeing more widely? Does this have a basis in law?

Hannah Reed: Thank you very much for the question. The growth of false self-employment is one of the TUC's and our unions' major concerns at the present time. We are finding increasingly that, not just in high-end IT jobs or consultancy jobs but often in lower paid workplaces, individuals are being forced to sign up to contracts that label them as being self-employed, even though, very clearly, the employer in the workplace sets the work that has to be done, sets the pay rates, oversees the work and even exercises discipline. There are examples that we have seen in employment tribunals recently, where the courts have said, "The employer might be labelling this person as self-employed; in reality, they are dependants." We have the Uber case; there was Deliveroo just this last week; we saw Pimlico Plumbers, where the Court of Appeal said, "Yes, these individuals work to the direction of the employer; they have employment status."

A real concern for the TUC is also that, while some individuals might say, "I quite like the flexibility of self-employment," they are often not aware of the consequences of signing a contract: that they are signing away all their basic rights in the workplace or that they lose out on employment or income security if they are sick or off on maternity leave or paternity leave. While the TUC is not opposed to self-employment per se, our real



concern is that, for most individuals employed in low-paid self-employment, it is not currently a positive choice, and many will not be aware of the situation that they are facing.

You also helpfully raised the issue of umbrella companies. The TUC has perspective in terms of the debate on the gig economy—and there is lots of discussion at the present time. Some lawyers and commentators say, “This has totally changed the labour market. Everything has changed. The notion of the employment relationship has changed.” Our perspective is that, no, many of these employment relationships are exactly the same: the employer sets the terms, the employer sets the work rate and the employer sets the pay rate, and the individual needs to respond to those directions. What has changed in recent years has been the growth of complex supply chains and complex employment relationships, such as the emergence of umbrella companies, the increasing use of personal service companies, and also increasingly, in construction, for example, long supply chains.

Whilst, for example, a construction worker might think that they are working for the main construction firm building a site, or indeed teachers might think they are working for the local school that they are teaching in, when they get behind the paperwork they often find that they are employed by an umbrella company. They may find that they have suddenly been set up as a business in their own right and they did not realise what was happening to them. That creates confusion for individuals. It creates a power issue for individuals. It also makes it very difficult for them to enforce their rights and to access basic protections. It also presents real challenges for our enforcement agencies to make sure that everybody who is entitled to the minimum wage receives it, and that individuals are paid on time and in full.

One of the challenges we would ask this Committee to look at is to ensure that the Government take action to clamp down on false self-employment but also look at ways of ensuring that the employers who are really responsible for mistreatment in the workplace are held accountable for that.

Q34 Amanda Solloway: Going back to Hannah, I am just trying to get my head round something that you said that really struck me as quite a powerful thing to say, which was around the vulnerability of employees and being at risk of being fired on the spot. What exactly did you mean by “at risk of being fired on the spot”? Is that as a result of legislation? Is it a result of zero-hours contracts? Could it be that somebody is no longer competent? What did you really mean by that?

Hannah Reed: Many of the individuals we are talking about—people on zero-hours contracts, agency workers and the false self-employed—legally may not qualify or are unlikely to qualify for unfair-dismissal protections or job-security rights, which means that the employer does not have to give them any notice if they are going to end the employment relationship, even though they may have worked for that



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business or organisation for many years. We have also come across instances—and this is very regrettable and it is unlawful—of women employed in warehouses, for example, who have become pregnant, go into work and say to the employer, “I am pregnant and I want to notify you of this,” and they are simply told either to leave immediately or are not contacted the following day or offered any future work. That clearly is sex discrimination and a breach of the law, but when you are talking about a low-paid individual who may not be aware of their rights and who certainly cannot afford to go to an employment tribunal, they are highly vulnerable in those circumstances.

All vulnerable workers and all workers in the workplace should be offered decent treatment. That means having a sense of the hours that they are going to be offered on a regular basis, but also not being able to be fired on the spot simply because the employer does not like the way they look or simply decides they do not want to offer them work on an ongoing basis or, more worryingly, because they want to discriminate against them because they are pregnant.

Q35 Amanda Solloway: “The way they look”, you are saying. If someone has worked there for a long time, that look would have changed. The way they look would not have changed over a period of—

Hannah Reed: By that I meant that they may say, “You do not quite fit in our organisation—we do not want you here anymore.” Under the law at the present time, in terms of somebody in permanent employment as an employee, the employer has to find a good reason and has to have some evidence to say, “It is right and proper for us to now bring this employment relationship to an end”—maybe misconduct. In relation to those in insecure forms of employment, the employer does not have to follow any procedure at all. It does not have to give the worker any notice and it can simply say, “I am terminating the employment now—do not come back tomorrow.”

Q36 Amanda Solloway: Sue, you mentioned SMEs phoning for advice. You were saying they could be advised to put people on a zero-hours contract. Do you think the advice given is geared towards the employer as opposed to the employee?

Sue Tumelty: There are different situations. But when we deal with the company, we are HR, so we try to be even-handed, because there are very strict rules, as Amanda said. If it is an employee, there has to be a reason and there has to be process followed. The Acas code makes it very clear and it is very good. Where you have people who are on false self-employment, however, there is no protection, so you can get cleaning companies that take these often eastern European cleaners, give them a uniform, put them in a van, drive them to the company and make them clean, but they call them self-employed. They have no rights whatsoever and they can get rid of them that day.

Q37 Amanda Solloway: Just to extend my question, I was really thinking



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about how you said that you can contact somebody as an employer in terms of how to employ people. Are you saying that the advice that they are given is more around this false working?

Sue Tumelty: Yes, and that is typical of the bank or the accountant. When they are putting together their business plan and their growth plan, they do not always understand it and they certainly do not understand all the nuances and the difference in categories, and they are getting really poor advice. If they went to Acas or to employment lawyers, they would get sensible advice, but they just do it on a business plan and money.

Q38 **Craig Tracey:** Sue highlighted some of the benefits of flexibility of working, but what seems to come back and be a recurring theme over the panels is people's awareness of what type of contract they are on. My question is: whose responsibility should that be? Should that lie with the employer? Should it lie with the Government? Should it lie with HMRC? What are your thoughts on that?

Sue Tumelty: I would say that the first thing is to get the categories clear. Acas do a really good job and so does the TUC. They could do an awareness campaign that should reach employees as well as employers. They both have a responsibility for understanding it but, at the moment, I agree with the TUC that the balance has gone. Ultimately, employers have to take the responsibility for getting it right.

Stephen Devlin: Another suggestion is in terms of the burden of proof. Another example of the imbalance of power is that, at the moment, it is up to the employee to become aware that they might have been miscategorised, take that to a tribunal, incur costs and go through all of that. Why should the burden of proof not be the other way round? I think that is a proposal that the TUC also endorses. In a lot of these cases, there is a distinction to be made between very large companies and very small companies. In the case of something like Uber, from my perspective it is very clear that the burden should be with the employer to make sure that they are doing right by their employees and that they are taking care of all of the legal responsibilities that they should have. That is very clear in my view.

Q39 **Albert Owen:** Coming back to Sue's response with regard to Craig's question when he asked whether it was the employer or the TUC or Acas not giving the correct guidance, you did not mention Government at all. Do you think Government should set the framework? Years ago when people were unemployed, they went to the Jobcentre. When they saw the job description, it was scanned by an official and it was pretty much watertight. Those were the conditions of service that that person expected to undertake. Do you think the Government has lost that role due to the nature of agencies?

Sue Tumelty: It is very difficult, is it not, in a job description to say what that status is? It will give the things that they have to do. They say it is a job and they say the hourly rate, which, for the Jobcentre, will always



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meet the national minimum wage, but they do not know if the agency or the cleaning company is then raking off a percentage. That is another problem. It has to be clearer, and that is why I said the employee needs to take responsibility and understand what their rights are.

- Q40 Craig Tracey:** In your evidence, Sue, you said that the term “worker” is not defined clearly enough. We heard from the previous panel about whether we should do away with it. What are your views on that? I was an employer for 20 years and I just found out, looking at this, that there was a difference between the two. My staff were employed on full contracts, but if somebody who ran a business for 20 years does not get that difference, does it have relevance in today’s labour market and in what other ways can we simplify the system?

Sue Tumelty: We should get rid of the worker status. It came in with Working Time Regulations and has confused everybody ever since. If you have employees, you can have full-time, part-time, fixed-term and casual/zero-hours. We are not quite as anti-zero-hours when they are used properly to flex demand, so that an SME can grow, but get rid of that status altogether and let’s make it simple, please.

- Q41 Richard Fuller:** Ms Reed, does the TUC endorse the on-demand model of employment?

Hannah Reed: Do you mean zero-hours contracts or casual employment?

- Q42 Richard Fuller:** I mean an on-demand model of employment, where there is variability in employment based on demand.

Hannah Reed: The TUC recognises that, in some businesses, particularly where there is seasonal work and seasonal demand, employers’ need for workforce will shift over time and they will need to respond to peaks and troughs in demand. As a response, the TUC has never had a problem with the role of agency workers being used in order to enable businesses to respond to shifts in demand. Our concern, however, is that, in a lot of businesses now where demand does not shift very rapidly and the needs of the business are relatively static, employers have moved towards more of an on-demand model, expecting individuals to be available for work at very short notice. We have heard from many individuals that, when they leave their home, they have to take their mobile phone and their work uniform with them at all times, because they could receive a text at any point to say, “We need you on a shift in an hour’s time.” That is not uncommon in some industries.

- Q43 Richard Fuller:** Is that a “yes”, a “yes, but” or a “no”?

Hannah Reed: We recognise that, in some industries, there are fluctuations in demand for labour. We are concerned, however, that some employers, where there is not a high variability in work needs—

- Q44 Richard Fuller:** You want a test, do you? You are okay with it but you



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want a test. I am just trying to work out where the TUC is. There is a difference where there are things that go wrong, and we can all agree that we do not like those, but there is clearly something here that goes right. I think you were talking about seasonal employment, but I want to know what the TUC's position is on this, because, as Ms Tumelty was saying, there are some positives from this. Now you are saying that there needs to be a test of demand. Is there an industry test? What is the TUC's position? It is by industry?

Hannah Reed: The TUC is not advocating a test. What we would encourage, however, is greater transparency by businesses. For example, in public companies' annual reports, it would be helpful if companies could publish a breakdown of the number of zero-hours-contract staff that they employ and the number of agency workers, in order to have a genuine debate among shareholders and board members around whether the employment model in the business is the most successful to build a successful economy.

Q45 **Richard Fuller:** Where you are taking me, then, is that you do not have an in-principle position against it and you do not have a view that there are certain industries where it is appropriate or not. What the TUC says is that, if we are going to do it, we need to have transparency to shareholders in annual reports and transparency for employees or potential employees so that they know what type of contract they are or will be on.

Hannah Reed: We would totally agree that there needs to be increased transparency. We would also argue that, even if individuals are employed on an on-demand basis, they nevertheless should be entitled to the core floor of basic employment protections within the workplace.

Q46 **Richard Fuller:** Thank you. That is very helpful. If I could just move you on to that, we have been given a list—and you have referred to it implicitly in some of your answers—of the rights that employees have, which goes on, and then a list for workers or whatever we might want to call that group, which goes on and then stops. Is it the TUC's position that it is appropriate in the workforce to have different types of employment with different levels of rights?

Hannah Reed: No. The TUC is concerned that the current three-tier approach to employment protection is causing, first of all, confusion for working people and confusion for employers, but is also leading to inequalities within the workplace. At the present time, UK employment law works on the basis that stable, permanent employment is the norm. If you have a contract of employment, you are entitled to the full range of employment rights. If you are in a non-standard contract, however, you only get basic protections for pay. From our perspective, we believe that we should move towards a single status for individuals who qualify for the full range of statutory rights.

Q47 **Richard Fuller:** If I could just summarise, to be clear, I think what you



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are saying—and tell me if I am wrong—is that the TUC’s position is that it is okay to have variability in terms of on-demand employment, as long as there is transparency about that, but that, if someone is an on-demand employee or a full-time employee, the rights should be exactly the same in terms of being enumerated in the list.

Hannah Reed: Absolutely, because we are concerned that many individuals employed on a zero-hours contract or a casual contract or as an agency worker work for many years for the same business, and yet they are not entitled to redundancy pay, which means, for example, that they are more dependent on the welfare state if they lose their job. They do not have the resources to access the necessary skills to find a new job. We are also concerned that women employed on a zero-hours contract or a casual contract or a false self-employment contract do not have the right to return to their substantive job once they go off on maternity leave. All governments have taken the perspective that they want to maintain high levels of women’s participation in the labour market and to close the pay gap. The absence of basic, core employment rights for women in insecure forms of work—

Q48 **Richard Fuller:** To be clear, they are not core at the moment because they are not included for a number of employees, but you want them to become core.

Hannah Reed: We believe that all working people who are economically dependent should be entitled to the same floor of rights, including job-security rights, family-friendly rights and, of course, trade-union rights.

Q49 **Richard Fuller:** Thank you very much. That was very helpful for me to understand. Ms Tumelty, you work with a lot of small and medium-sized businesses, which is fantastic. I think you have already mentioned a couple of things—make it simple and get rid of the worker status—but what else could we do to make our small and medium enterprises successful in meeting the new challenges of employing people?

Sue Tumelty: That is key. By making it simple, you are allowing the business-owner to focus on growth. If you are dragging them in to all sorts of bureaucracy and complications, they are spending more time with the accountant, which the accountant probably likes—

Chair: There is nothing wrong with accountants.

Sue Tumelty: But they are not focused on growing the business. Particularly with Brexit and everything else, we need small businesses to grow. Again, that support and simplification would make such a difference.

Q50 **Richard Fuller:** When it comes to a recognition of employee rights, in your paper you said that sometimes small businesses get bad advice and that sometimes they do not know what they are doing. Is there a lot of paper and form-filling that companies have to do regarding employees when it comes to the various rights, and could we reduce that?



Sue Tumelty: Acas is a wonderful source of information. They have the codes of practice, they are very clear and they are very supportive of people. There is the Chambers of Commerce and various other people—and, of course, The HR Dept. If we just had the two statuses, however, and we kept that ability to be able to flex to meet demand, and we gave the employment rights and the protections there, a lot of this would go away. We get tied up on fancy terminology as well, like “zero hours” and “gig economy” and all of this, and we forget the basic principles.

Sue Tumelty: If you keep it to employment, you have a contract. It can be very simple: fixed-term, full-time, part-time etc. A casual one or a zero-hours one does need to be slightly different. Then you also have another category of the true freelancer who is self-employed but who does not quite meet the current definition. If you have a graphic designer working for a design company, they suddenly have a big contract and they need to bring in additional help, so they choose a freelancer who has chosen to be self-employed for work-life balance and to work across industries. One of the tests of being self-employed, however, is the right to substitute. There is no way that that freelancer can substitute anyone, because they want him or her and their skill, so there is that category as well to sort out.

Richard Fuller: Can I ask a question to Mr Devlin, if I may?

Chair: Yes, certainly.

Q51 **Richard Fuller:** You and your organisation have talked about secure and well-paid employment. How does that goal fit with a desire for people to have more ownership over the amount of time that they work? Can you be someone who wants to work variable hours, choose what you want to do and still fit in to your category of being secure and well paid?

Stephen Devlin: It is absolutely right to recognise the benefits of flexible working. We know that there are a lot of workers who do value that type of work. They want to choose when they want to work and how they want to work. We know from various surveys that there are significant numbers of people who want to do that. There are, however, a couple of things that we are concerned about in terms of that general model of flexibility. The first is that there is feedback between developing the tools and the ways of working that allow those types of work to occur. That then makes it easier for other sectors to adopt the same ways of working and makes it easier for them to force those on to those who do not necessarily want to take up that type of working.

The other thing we know is that there are, overall, more people working in flexible models without enough hours and who would prefer to have a more permanent job with more hours. Although that works for a lot of people, we know there are a significant number of people who are in that model without having chosen it. The other thing that we know is that there is a substantial body of evidence, which is increasing all the time, about what makes good jobs and what makes people happy at work. We



know that there are a few key things in that: one is security, another is dignity, and the third is a feeling of agency.

While it is important to recognise the benefits, there is no point being blind to the costs of moving the economy more generally towards this type of model, when we know that there are already people who are forced into that type of work without wanting it and that there are tangible, measurable and evidenced impacts of that type of work on their wellbeing. This is especially the case when new forms of technology are threatening not just security through the types of business models that they allow, but also some of those other key planks in terms of their dignity, the level of surveillance that they are being exposed to, and some of their agency through the routinisation of some of their tasks.

I recognise that there are benefits, but I guess my perspective is that I want to understand the costs and not rush headlong into this assuming that flexibility is a good thing per se.

- Q52 Richard Fuller:** If you do not mind, I would just like to press you on that. There are clearly some aspects of employment that are not the old-school, nine-to-five, 40-hour week—or whatever it is now—and where there are concerns. We can all see that and we can all be concerned about that. I am trying to get at, however, the core issue. There is another model of employment that is emerging; nine-to-five work—the old Model T Ford—is only 70 or 80 years old. Does your organisation have, in principle, concerns that we should not, in our inquiry, endeavour to make good and look at the right ways in which the on-demand labour market works and instead we should reject it? You seem to be saying, “I do not really want it but, if you solve all these problems, maybe I could.” You are more sceptical, perhaps, than Ms Reed. Where should we be going? What is your advice to us? Should we try to improve it or should we try to stop it?

Stephen Devlin: We do not, in principle, object to flexible working at all. What we object to is people being forced into models of employment that they do not want. Although that was a pessimistic assessment, I am potentially very optimistic about the impact that technology can have on our working lives. It is giving us fantastic new ways to make things flexible and give people more dignity, control and all the things that people value in their work. I am concerned, however, that the existing dynamics of power are such that these technologies can be used for both good and bad, and that, if we go down a path where these technologies are adopted solely or primarily for the benefit of businesses, we are losing out on the opportunities to maximise the improvements to the quality of people’s lives. I have no objection to technology or flexible working in principle, but it has to work for workers as much as it works for businesses.

- Q53 Chair:** Before I bring Chris in, this is an important point, Stephen. You said that you were inherently optimistic about this, but automation or the rise of the robots—whatever you want to call it—is making huge parts of



the employment market obsolete. Professions are going. When you have that, combined with, as I think you said in your earlier comment, the fact that wealth is accruing towards capital as opposed to labour, these trends will continue, if not accelerate, in the next 20 years or so, if not longer. What are the interventions that we need to make to keep your optimism alive?

Stephen Devlin: There are a few things and I will just mention a couple of them. Going back to the first principle, technology is inherently neutral. It can be used, as I said, for good and bad, and we should be able to create a world in which the gains from technology are very widely shared and do not accrue to the individual. My optimism, I suppose, comes from my hope that that world can come about.

There are two broad strategies that you can take as an economy towards making sure that those benefits are shared widely. One is to redress the imbalance of power between capital and labour, and we have talked about that a bit. For me, a large part of that is buttressing the role of unions. That is a key thing. We see that in other countries. For example, we have had a lot of discussions with people in Germany, where they are in a very different place with this debate. They are not concerned at all about technological unemployment; they have a much more optimistic debate, which I believe is largely because they have a much greater role for trade unions. There is a much healthier discussion between governments, employers and unions about how that technology is going to be implemented. You can see that is going to work for society more widely. That is one strategy.

The other strategy is to think more radically about models of ownership of technology. We need to be thinking about the role of the state in developing technologies but also just making sure that it gets its due gains from the research that it already does. This is a line associated with Mariana Mazzucato—that the state is responsible for a lot of the technology that we already have but does not really receive the benefits of it and is less able to distribute it as a result. There are also other models of ownership that we could be considering. A lot of people are talking about co-operative models for platform companies. There could be more of a role for municipalities in that kind of thing as well.

There are two broad things: redressing the power between labour and capital, and ownership.

Chair: That is very helpful.

Q54 **Chris White:** My questions are really to you, Hannah. You have been talking about new models, not least the on-demand model, and you have raised a number of concerns that I personally think are very valid. I suppose I have three questions to you: one is a bit of an extension of Richard's question. Do you think these new models have contributed to the fall in unemployment? The second question is: do you think that these new models will reach an optimum, where the concerns that you



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have raised will cause more reputational damage to the businesses and impact on profits? Thirdly, do you think that these new models are being created so rapidly, and that businesses are being created so rapidly, that legislation is finding it difficult to keep up?

Hannah Reed: Thank you. That is many questions, and thank you very much for them. Certainly since the economic crisis and the recession, we have seen a growth in employment, and much of, although not all, the growth in employment has been in insecure, new forms of employment. It is clear, however, that some businesses have chosen not to go down that route and have adopted the route that is advocated by Sue today, which is recognising the best way to succeed and to expand is if businesses are willing to make commitments on a longer term basis in terms of guaranteed hours and more stable income. They recognise that, by treating staff well, they are more likely to receive loyalty, motivation and commitment from individuals.

Also, there is much evidence that suggests that businesses that tend to use more stable employment as the basis on which they operate are much more likely to invest in training of their staff, which means that their businesses are more likely to be innovative and ready to respond to changing economies.

The concern for the TUC is that, in some parts and particularly within the low-paid sectors within our economy, businesses have opted to go down the insecurity route and have expanded their employment on that basis. We are concerned that that may have a detrimental impact, certainly for the Exchequer in terms of lost revenues, for the individual workers in terms of heightened insecurity, but also, indeed, for the labour market as a whole, because some rogue employers—and we know in this country we have pretty appalling working practices, regrettably, in some firms—are undercutting better businesses and creating unfair competition.

Q55 Chris White: When you use the phrase “rogue employers”, do you mean that they are using illegal practices?

Hannah Reed: There are certainly many instances of even large retail firms using insecure forms of employment to try to avoid payment of the national minimum wage. That clearly is unlawful and, yes, we would consider those to be rogue operators.

Q56 Chris White: Do you think that sufficient prosecutions are happening in terms of that?

Hannah Reed: We certainly need to see greater investment of resources. We welcome the fact that Government have been responding to our calls for increased investment around enforcement, but we would also like to work more in partnership and for Government to recognise the role that trade unions can play in terms of exposing poor working practices and working with employers to deliver better standards of employment.



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In respect of your second question in terms of whether new models have reached their optimum level, certainly this week's statistics have suggested that the rate of growth in zero-hours contracts has started to slow. That may be partly as a result of the impact of awareness-raising and that more individuals have, over the last couple of years, realised they are on a zero-hours contract. We also suspect it is partly a result of successful union campaigns exposing the problems of zero-hours contracts and the heightened insecurity that they create, and encouraging employers to listen to what their workforces are saying and to move towards more stable, guaranteed-hours contracts.

Q57 Chris White: I pay tribute to the work that you are championing and the role trade unions have played in this, but what do you think about the non-exclusivity clause in terms of zero-hours contracts? Has shifted the model at all?

Hannah Reed: The TUC supported the Government's proposals to ban exclusivity clauses. We felt it was completely unreasonable that an employer could be willing to offer an individual only a couple of hours' work a week but expect them nevertheless to remain constantly available. However, our view is that the Government's proposals really did not touch the major abuses that individuals on zero-hours contracts experience, which include the complete lack of notice when they are offered a shift or, indeed, when shifts are cancelled. It is not uncommon for people in hospitality, for waiters or for people in food manufacturing or elsewhere, to turn up at the workplace, only to be told, "Sorry, your shift has been cancelled and we are not going to pay you."

Q58 Chris White: Do you have any models of where zero-hours contracts have been successful or where a business has used them successfully and employees have seen that as a successful working model?

Hannah Reed: We recognise that a minority of individuals enjoy the flexibility of zero-hours contracts. There are two examples that I would use of that: perhaps older workers in retirement who would like to occasionally take up work but also want the flexibility to be available for their grandchildren. Also, in the health service there is the operation of the bank model, whereby nurses, who often have a permanent job in a hospital but, around Christmas or the holiday season, want to top up their hours to top up their income, can opt for bank working, which is offered on a zero-hours basis. We do recognise that those systems have provided benefits.

Q59 Chris White: It is just interesting to know what your view is. What would you ban zero-hours contracts?

Hannah Reed: Generally, the TUC believes that, with the exception of the examples that I have given, the way that zero-hours contracts are being used is not to the benefit of individuals and often not necessarily to the benefit of employers. We would like to see a move towards more guaranteed hours for people employed in these types of employment.



Q60 **Chair:** Sue, you wanted to respond to Chris's point there.

Sue Tumelty: Yes. In the SME market, it is a little different. Golf clubs have had a tough time recently. They rely very heavily on things like weddings and events to balance the books. They have core staff during the working week to serve afternoon teas and drinks but, at the weekend, they are probably doing weddings. They cannot afford the permanent staff. They do not know the numbers and they cannot plan ahead. That is where the zero-hours or casual contract is used properly and is essential in the small-business model. It is, however, about using it properly, not as a stick to beat somebody with and to treat them badly. For small businesses, it works well.

Hannah Reed: May I come back?

Chair: Very quickly.

Hannah Reed: I have one very quick point and I do not want to drag it out, but it is partly in response also to Richard Fuller's questions as well. The key role of collective bargaining in relation to this current debate about flexible working is that trade unions recognise that businesses operate in different models. They have to operate at different hours in order to respond to global markets etc. The best way of ensuring that business needs are met, as well as that respect is given to individuals, is for employers and unions to sit down around the negotiating table and agree a model of employment that works in the business's interests but also respects working people's rights. That is the route that we would like to go forward.

Q61 **Peter Kyle:** I have a quick question for each of you. Hannah, 11 years ago I was involved in a roundtable at the TUC that talked about the future of work. In those days, it was about the fact that the third sector was booming in terms of employment, yet there was very little union representation. We were also talking at exactly the same time about the rise in self-employment and the fact that it had very little union representation. Yet here we are, 10 or 11 years later, and still those groups have very low union representation. We are seeing the impact of the lack of union representation. Why have unions been spectacularly poor at getting people who are moving towards individualistic modes of employment into union membership?

Hannah Reed: I am not sure I would accept the conclusion that unions have been spectacularly poor. Indeed, many unions are organising very vulnerable groups of workers. Take, for example, BECTU, which organise freelancers operating in the entertainment industry. Many of those individuals are classified as self-employed; nevertheless, the union works with them to agree common terms and conditions and to provide expert advice. Take also the CWU, which is organising agency workers employed in parts of the telecommunications sectors. Take, for example, Unite's work in Sports Direct.



Peter Kyle: I get all that.

Hannah Reed: Take also the GMB's campaigning around companies such as Uber. Certainly, the trade-union movement and trade unions recognise the major challenge that we face in order to recruit and organise vulnerable groups of workers and to ensure that the whole workforce—not simply those in permanent employment—benefits from decent pay, decent hours and decent working conditions.

We recognise, however, that unions operate in a very difficult environment. We do not have easy access to workplaces. It is very difficult for unions to make contact with individuals, and individuals in highly insecure workplaces do not have a right to request to see a union rep in order to get better access to employment rights, in order to get representation in the workplace and, ideally, to have a union come in and negotiate pay and conditions.

Q62 **Peter Kyle:** What you are asking for is for Government to rethink the way it represents and provides rights, but has the structural side of unions adapted to the fact that the workplace is, for many millions of people, now their home or their car? How can the unions adapt to that?

Hannah Reed: We certainly recognise the role of Government in terms of providing a framework of individual employment rights. But we would also say to the Government that they have a challenge at the present time to work with trade unions and to provide a better framework of rights for voices in the workplace, which would enable unions to have easier access to vulnerable workers, so that they have a voice within the workplace. The Government also need to promote and encourage collective bargaining, for example through modern wages councils and generally encouraging employers to recognise the benefits and the best means of achieving genuine flexibility in the workplace, which is by sitting down with trade unions to negotiate.

Peter Kyle: There is loads that I would like to go into, but I can feel the Chair breathing down my neck.

Chair: Yes.

Q63 **Peter Kyle:** Stephen, very quickly, I too am an optimist in terms of the use of technology going forward, and it is great to hear somebody talking about the optimism, because sometimes we can revel in the gory details of what is happening out there at the moment. The other thing that you and I have in common is that we are both quite empowered workers: we are both very highly educated, we both have good CVs, and we both have quite a solid foundation to move forward on. Therefore, whatever relationship we move into with our future employers, be it via an app or in person, we are probably going to be quite empowered in that relationship. Do you think it is possible to identify groups of workers who, by definition, are going to be disempowered and will need extra work in providing rights for them, because they are not, by definition,



empowered in that relationship?

Stephen Devlin: Yes, absolutely. This goes back to the trade-union question and that should be the trade union's job. Trade unions are getting a very tough ride at the moment. I agree that they have been doing some amazing work, and what has been launched against them has been unprecedented, and not just in terms of Government policy; one of the most insidious things working against trade unions is some of the ways in which large companies and platform companies are using technology against them. Uber can detect which drivers are associated or trying to unionise and keep them away from other drivers.

Technology is a problem in that, and we do need the Government to stand up for these workers by empowering trade unions to do that and to go into these workforces, and by requiring companies like Uber to facilitate organisation among those workers. One thing we could do that would be very simple is that we could require platforms like Uber to allow anonymous communication between their workers. That is not something that they have at the moment.

Q64 **Peter Kyle:** I am really sorry to interrupt. I really get and agree with the thrust of what you are saying but, in terms of a person entering the workforce and entering the economy as a worker, do we know the people who, for example, are beneath a certain educational level and will struggle to have power within the workplace? What we need to do is to start identifying groups of people who will need statutory protection as they enter this new world of work. Do you think there are characteristics that make people vulnerable in this new world of work that the regulators and the legislators can tackle, or is it just too generic?

Stephen Devlin: There is a distinction to make. I would not want to separate out particular groups and give them additional statutory rights above others. I agree that there should be a minimum level in terms of the statutory requirements, so I would not necessarily agree that we should go out and say, "Because you are less educated, you have a right that someone else does not have." I do think, however, that the Government have to play a role in being proactive about identifying the issues that are going to come up in the next five to 10 years.

It is not just about people entering the workforce now. For example, a key thing is going to be truck drivers. We know that, probably within the next 20 years, that could be something that is completely automated, with self-driving lorries. That is probably a good thing and it would be safer, but we are going to completely eradicate the livelihoods of that group of people, so it should be the Government's role to pre-empt that, figure out where this going to happen and put in some strategy that asks, "What are we going to do about truck drivers in 20 years' time?" We need some sort of skills strategy. We need some other idea of how those people are going to become a productive and empowered part of our economy.



Peter Kyle: Have I got one more?

Chair: Very quickly.

Q65 **Peter Kyle:** Sue, is it your contention that, as an HR expert, it is harder to engage a workforce that is very highly flexible and do the kind of employee-engagement work that many in your profession would do?

Sue Tumelty: Very simply, yes, it is, because you cannot have collective meetings and you have to do it through technology. You are right that not everybody is technically minded, particularly some of us older ones, and therefore you need more help to support that.

Q66 **Michelle Thomson:** I will be quick. I suppose that, at a macro level, I can see from a business perspective why it might be valuable to have a section of your business operating on zero-hours contracts, and I can see the impact that that would have on the bottom line. I wonder, however, if we are doing enough thinking and who should be doing the thinking about the cost versus the value of it. We have touched on employee engagement, which is an important point, but there is also the economic potential cost of employee engagement. I wonder if you have any thoughts on that. I suppose the main one is: who should be taking responsibility for looking at the big picture? I appreciate that it is dead hard to measure economically, but probably Stephen and Hannah will have a view and you may have done some work on this. Particularly as we move forward, I am concerned that we are looking at a very low level. That was not very quick, was it?

Chair: It was not that quick at all.

Stephen Devlin: I completely agree. It is important to realise that businesses as a whole understand that it is a good thing for them to have highly paid, happy workers. That is good at a macroeconomic level because it means their customers are wealthy and happy. There is, however, a collective-action problem in that every individual business would like everyone to be well paid except their own workers, because that means their customers are wealthy but their own wage bill is low.

That is why, in my view, it is the Government's responsibility to solve that collective-action problem, bring the standards up across the board, and make sure that everyone, including businesses, is benefiting from that. The short answer is that the Government have to take a strategic view. That is not to say that individual businesses cannot take an enlightened view on this as well, but there is no substituting for the Government's role in all of this.

Q67 **Michelle Thomson:** Hannah, do you have anything to add?

Hannah Reed: Just very briefly, I agree with what Stephen has said, but I would also add that, too often when Government assesses what the impact of employment rights is, they only quantify—and, we would say, overestimate—the cost to businesses. There is very little analysis within



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official government documents on the benefits of employee engagement and higher security for individuals. We would certainly encourage, whenever there are regulatory reviews of employment law, Government to look at and invest in the benefits.

We also need much greater research from Government on what is happening in our labour market. The Labour Force Survey is a tool to a degree, but how far does it accurately quantify what is happening in terms of job security? We need more investment in resources. We would also argue that organisations such as Acas have a key role to play. They have done a lot of work on job insecurity, highlighting already the potential costs to businesses of going down the low-end, low-skilled, highly insecure forms of employment. They have started to talk about genuine benefits for businesses in terms of innovation, performance and ability to expand by adopting more secure forms of employment models, and we would like to engage with them more around that debate.

Q68 Amanda Milling: I will keep my question short. With the Sports Direct situation, we saw a kind of triangular relationship between Sports Direct, the agencies and the workforce. We have not really touched on that today. Briefly, what are the implications of that kind of relationship in terms of employee engagement, working practices and contracts?

Hannah Reed: We have a number of concerns about the growth and use of agency working in some instances. Companies such as Sports Direct—but there are many other companies that do the same thing—often think, “If we use agency workers, we can simply outsource our responsibilities in terms of employment rights and tax obligations.” They feel that they have no responsibilities for those individuals. The TUC believes that, ultimately, the top end of the supply chain should have responsibility. Particularly the major national companies should have a responsibility to ensure that everybody working for them through their supply chain receives decent pay and conditions, and certainly that their suppliers are complying with minimum legal standards.

The TUC is also concerned with what is happening in the agency sector at the present time. Back in 2010, we secured the Agency Worker Regulations, which were meant to deliver equal pay for agency workers. We know that, as a result of one major loophole within those regulations, many agency workers are being employed on a permanent, ongoing basis, often for many years, by the same employer, but are receiving much less pay per hour. Sometimes that is £5 or £8 less per hour or up to £140 less per week for doing exactly the same job as a permanent member of staff working alongside them. We believe that is detrimental for those agency workers’ incomes for their families and that it is also not good for the economy—the Exchequer loses out. We would like to see the Government move, as a result of the Taylor review, to close that loophole and to say, “Yes, agency workers have a very legitimate role to play within the labour market to respond to peaks and troughs in



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demand, but they deserve the going rate for the job and they deserve decent treatment in the workplace. Let us deliver that once and for all."

Q69 **Chair:** Thank you. I have two very quick final questions to all of you. I would like very quick answers, if you do not mind. You all seem to be in favour of simplicity and simplifying the current system. What does that look like? What recommendations would you give us to help simplify the system, starting with you, Sue?

Sue Tumelty: As I have said, I would like the "worker" category to go. I would like "employee" and "self-employed", but with subsections. For the self-employed, it could be a sole trader or a freelancer at the top end of the market who is genuinely self-employed but does not meet the category now. I would like protection at the lower end, so that nobody is forced into self-employment where there is not genuine choice.

Stephen Devlin: I suppose the main recommendation for simplicity is the idea of having this minimum floor of standards across the board, which reduces the incentives to flip between different categories. The other thing is, in order to communicate the simplicity, we need to get more serious from a public-policy perspective about the role of unions and the positive role that unions can play in communicating the system to their members.

Hannah Reed: I have three very quick responses. Yes, there should be a floor of rights for all working people and a single "worker" definition. Secondly, we need better resource and more strategic enforcement to clamp down on unlawful practices. Thirdly, we should recognise that trade unions can play a key role in stamping out Victorian working practices, raising employment standards and working with businesses to deliver flexible, profitable and productive businesses.

Q70 **Chair:** My final question is to you, Hannah, but to all of you as well. Hannah, you mentioned earlier the example of the pregnant woman who, if I remember, was sacked on the spot. That is clearly in breach of existing legislation, so what is the solution in terms of protecting workers? Is it expanding the statute book or is it a harder focus on enforcement and compliance? What do we need: more laws or just complying with existing laws?

Hannah Reed: We need clearer laws but we also need better enforcement. What major issue that desperately needs to be addressed is employment tribunal fees at the present time. That woman would have had to pay £1,200 to enforce her statutory rights. If you are pregnant, and planning and budgeting for a larger family, you simply cannot afford that.

Chair: Stephen, more legislation or enforcement of existing legislation?

Stephen Devlin: It is a bit of both. Clearly, we need to enforce the legislation. That should be obvious: if you do not enforce the legislation, what is the point in it? What is particularly concerning, however,



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especially within the example that you gave, is that there is not enough clarity around data laws and around the ways in which employers are allowed to monitor their employees, what data they can store and how they can share it. That is somewhere where the law is probably not tough enough and is certainly not clear enough.

Sue Tumelty: Similarly to the TUC, I would like to see greater access to tribunals for workers, so that, if they have been forced into self-employment, they do not have to wait two years. They will never get there under the current system, but they would have an automatic right to challenge it.

Chair: Thank you. I think I speak on behalf of all the Committee by saying that we really enjoyed your giving evidence. It has really helped us a lot. That was a great first session, so thank you very much. Thank you, colleagues.