HOUSE OF COMMONS

Business, Energy and Industrial Strategy and Work and Pensions Committees

Oral evidence: Taylor Review of Modern Working Practices, HC 352

Wednesday 11 October 2017

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Watch the meeting

Members present:

Work and Pensions Committee: Frank Field (Chair), Heidi Allen, Alex Burghart, Neil Coyle, Ruth George, Steve McCabe and Chris Stephens

Business, Energy and Industrial Strategy Committee: Rachel Reeves, Drew Hendry, Stephen Kerr, Peter Kyle, Mr Ian Liddell-Grainger, Rachel Maclean, Albert Owen, Mark Pawsey, Antoinette Sandbach, Anna Turley

Questions 201 - 244

Witnesses

I: Matthew Taylor, Leader of the Government's Review of Modern Working Practices

Examination of witnesses

Witness: Matthew Taylor

Q201 **Chair:** Welcome. Might you identify yourself for the sake of the record? Then we will begin.

Matthew Taylor: I am Matthew Taylor, and I am chief executive of the RSA, but I am here because I chair the Review of Modern Working Practices that started in October of last year and was reported in July of this year.

Q202 **Chair:** Matthew, thank you for being here. We are anxious both to probe further your report and to think whether the questioning we have today may lead to some legislative reform; and to start that, Alex, do you want to ask the first question, please?

Alex Burghart: Thanks, Chair. Morning, Matthew. I am afraid I have to leave quite soon so, if I walk out, it is no indication of what I think of your answer.

Chair: Matthew, there are a couple of people on the Finance Bill, and that is why they will have to go.

Matthew Taylor: I am used to my audiences walking out!

Alex Burghart: To what extent do you think new legislation will be required in order to drive forwards the recommendations you make in your report?

Matthew Taylor: I think there are a number of things that can be done without legislation, and in the review we deliberately took a kind of system-wide approach. We looked at the factors that would drive better employment, particularly for those at the bottom end of the labour market, and we looked at a whole variety of factors. Many of those factors would not require legislation, and I hope that there can be progress in those areas.

Q203 **Chair:** Might you just list those for us quickly?

Matthew Taylor: For example, the expansion of the remit of the Low Pay Commission to be more proactive in working to sectoral level with those sectors that are going to find an increasing proportion of their workers on the national living wage; the development of a stronger employability framework so we are better able to capture the kind of employability, soft skills, and life skills that people develop as well as the hard qualifications that people develop; an enhanced role for city leaders and combined authorities in addressing health and wellbeing issues at work while engaging with local employers and third-sector organisations; and a stronger emphasis on industrial strategy—and we will see the new industrial strategy in a few weeks—on the one hand on lower-skilled sectors and on the other hand on the relationship between technology and human beings and that interface. That gives a sense of a variety of areas where we felt that action could be taken that is non-legislative and also areas where we felt that action could be taken by employers acting on their own initiative.

Q204 **Alex Burghart:** That is very helpful, and we can see that there are a lot of things that the Government could get on and do now without primary legislation. Do you think there are any parts of your report that would be assisted by primary legislation if the opportunity was available?

Matthew Taylor: You will have to forgive my ignorance as to precisely what is required in terms of primary legislation and secondary legislation, but I think there a number of measures in the review that could be progressed relatively straightforwardly. I think they are reasonably easy measures to enact. To give you an example, the measure that I think would be particularly powerful is the reduction from 10% to 2% of the number of workers or employees who have to indicate that they would like independent representation, information and consultation at work. This is a tiny step towards industrial partnership. It would still leave us in a very different position to continental Europe, but it would provide a better framework of rights and opportunities for people to be heard at work, and that just involves changing the 10% figure to 2%. There are other ideas, such as ensuring that every employee and every worker gets a basic statement of their terms and conditions and take-home pay and worker status in plain English on day one of their employment—so, there are a variety of things that I think with good intention and support across the parties we could easily enact.

The bigger issue is the issue of the definition of employment status, and I think that is a more complex question. I think there are a couple of things that could potentially be done without having to redefine as a whole those categories. My view would be it may take some time to think about a new framework for defining worker categories, but in particular the issue I think that does need to be addressed in that regard is the issue of substitution, where I believe that substitution is used inappropriately as the factor that enables some employers to say that people are self-employed rather than workers. I do not think the fact that you can get someone else to do your round, often an entitlement that is notional, changes the fact that when you are doing your round you are being, effectively, employed by the company. Whilst I think the bigger package may take some time, it would be good to do something about that substitution issue.

Just to finish on that, it is important as well to say, because I looked at the evidence that was given yesterday, to recognise that a lot of what goes on in this area is to do with different business models competing against each other. Sometimes we understand this issue as workers' rights versus businesses' and employers'. Actually, what is often happening is that there are businesses who are treating their workers well and paying employment taxes who are finding it incredibly hard to compete with companies who have found ways to avoid respecting workers' rights and paying business taxes, and in a sense it was a pity that when you heard from the companies that you heard from you didn't also hear from companies who do very similar things but are respecting workers' rights and are paying employment taxes, because they will argue, I am sure, if you speak to them, that their model is becoming increasingly tenuous.

Alex Burghart: That is really helpful.

Q205 **Rachel Maclean:** Can I also just echo that point? Before I came into Parliament I did actually run a small business employing people and have worked in a number of Midlands manufacturers. I have an HR background and so I recognise those challenges that you have rightly mentioned: that actually if you are doing the right thing you do feel at times that you are under attack and being threatened by some of the rapacious examples that we hear about. The question I would like to ask you specifically is: do you think there are any areas of your review where you would like to put forward a more radical recommendation, such as the right to request formalised hours, for example?

Matthew Taylor: No, there were a couple of areas where I made a judgment about the strength of the recommendation we made, but it wasn't that I, as it were, clipped our wings in terms of what I thought was the right thing to do. We said that, for example, we felt that there was a real problem about access to justice and Employment Tribunal fees. We did not explicitly say they should be abolished, because I tried to avoid any recommendations that had spending attached to them, because, of course, once you have made a spending commitment it is not just about whether that's a good idea but what are the other ideas that you may not be able to pursue if you spend more. I was delighted by the Supreme Court ruling, but perhaps if I had known that ruling was going to come through I would have asserted more strongly that we should get rid of the fees.

I think the one area that I have heard about since the review, and of course what is very interesting about this area is that it continuously changes, not just through that Supreme Court ruling, is a view that I have heard David Metcalf argue, which is that we should think hard about the idea that liability for non-compliance within a labour supply chain should go up to the primary contractor—to the top of that supply chain. I did not argue for that joint liability—I argued for transparency in labour supply chains—but I am interested that, from what I have heard David say in public, that he thinks a possibility of joint liability attached to the top of the labour supply chain would be an important way of addressing problems further down, and some of the practices I have heard about even since the review have underlined that.

Just the other day in Manchester I heard about a company that had been providing road haulage services, run by a couple of cowboys, to be honest, who had encouraged all the drivers to create their own small companies. The company had gone bust, the guys had gone off with the money, and not only did the drivers lose their job but they then found themselves pursued by HMRC for the fact that they had clearly not been paying the tax they ought to pay. The question I want to ask is: who were they delivering for? Whose goods were in those lorries? Arguably, the idea of joint liability would have meant that the companies at the top of that tree, which might have been major brands, would have wanted to make sure that that kind of practice wasn't taking place at the bottom of the supply chain.

Q206 **Chair:** Matthew, when you say you were not putting forward proposals that would cost money you were thinking about costing taxpayers, weren't you? You have a number of recommendations that would cost employees who at present are not paying what most of us would think would be their due.

Matthew Taylor: That's right. I think if you were to act on not just the specifics but the general thrust of the review it would be fiscally positive for the Government, because it would address the fact that—of course, it is easy for me to say, because I am not a politician—in my view we are under-taxing self-employed labour. That is the reality. Let me be clear. It is not the self-employed who pays too little tax but we who consume self-employed labour who are not paying enough. We pay more tax for employed labour than we pay for self-employed labour. I believe over time we need to move to equalise that. That probably would be revenue-positive, and it would also enable us potentially to be able to do positive things around the entitlements and support that we give self-employed people.

Q207 **Rachel Reeves:** One of the recommendations that you make in the report is that the Government should ask the Low Pay Commission to consider the design and impacts of the introduction of a higher National Minimum Wage rate for hours that are not guaranteed. What impact do you think that would have on the number of non-guaranteed hours and also the wages of those people?

Matthew Taylor: This was one of the issues we discussed most in the review, and I think it is worth sharing with you the process. For me, it was clear as we went around the country speaking to people that there was this problem of what we refer to in the report as one-way flexibility. That was people on zero-hours—or actually, just as much as zero-hours, short-hours, and some very large companies in this country now put people on four or five-hour-a-week contracts when they customarily expect them to work 30 or 35 hours a week. As you know, there are problems that are associated with that practice in terms of people's security, in terms of their ability to get a mortgage or loan and various other things. Also, of course, if you are on a zero-hours or low-hours contract one of the other things is that you feel that if you ever complain about your conditions or raise issues of concern if you are a worker rather than an employee then hours can simply be withdrawn from you and you have no redress.

I wanted to address that, and the idea that I had was this idea that for people on the Minimum Wage, the living wage, employers would have to pay more for those non-contracted hours. There was some pushback at that idea from other members of the review and officials, and so I said, "Look, if you can find a better way of doing this, then I'm open to it". They spent some time, and to their credit the officials came back and said, "No, unless you are going to start banning zero-hours or low-hours contracts, we can't find a better way of doing this".

Subsequent to the review I have realised that actually this system of paying a higher wage for non-contracted hours is one that exists in Australia and it is one that is being introduced in America. I thought it was a very novel and clever idea; it turns out not to be, which should give us encouragement, because it works in other systems. What I do think is if the Low Pay Commission were to do this there is a strong argument for doing it in a pilot form, testing it for two or three years to see whether it does have any impact on employment.

For me, the benefits are twofold. On the one hand it might lead to slightly more money in the pockets of people on the Minimum Wage, which is a good thing, but secondly, more importantly, it is a nudge to encourage employers to think more imaginatively about whether or not they can restructure their work in order to be able to guarantee people more hours. We have seen some employers, like McDonald's, take initiatives to precisely make that offer to staff. It is a nudge to say, "Could you do a little more to make sure the flexibility is genuinely two-way?"

Q208 **Rachel Reeves:** Can I pick up on a couple of points? You make a point there—and the recommendation is to refer it to the Low Pay Commission—that a higher Minimum Wage for non-guaranteed hours—there are a lot of people who are paid just above the Minimum Wage who might not necessarily then benefit from that. You mentioned international examples. In New York City and in Oregon there has been a ban on surprise scheduling—so, scheduling shifts has to be done at least two weeks in advance or they pay extra for last-minute changes. The overtime regulations in the US mandate that all workers earning $23,000 a year or less and who work more than 40 hours a week are entitled to time and a half for all overtime they work. That is not just about the Minimum Wage; it is about people above the Minimum Wage as well. I am just keen to explore whether your recommendation would just be for people who are paid the Minimum Wage or just a little bit more or whether it would cover a larger number of people and whether you think those US examples are good ones, because most people think the US has a very deregulated labour market, and yet they seem to be doing quite innovative things there.

Matthew Taylor: I do think there is a general issue about the fact that our economy seems to have moved to a situation where a lot of people do overtime without getting any recognition for the fact that they are working beyond their contracted hours. My focus in the review was on people who are the most disadvantaged. That is where I wanted to focus my energies. If you are asking me whether my hope would be that if you were to create that as a norm at the Minimum Wage it would start to become a norm and would, as it were, spread to other parts of the labour market, I would think that would be a very good thing. In the review I tried on the one hand to focus on the most disadvantaged; on the other hand, as I have said a couple of times in public, our approach was more nudge than shove. I wanted to do things that would start to change practices, change norms and could then have an effect on the overall way in which we think about work rather than steps that perhaps would be unrealistic to accomplish from a standing start.

I think in terms of the question, "Would it be a good thing if more workers were to get overtime paid for non-contracted hours whatever their salary?" I agree with that, but in terms of what the priority for action is I would say let us start at the bottom with those people who are most disadvantaged.

Q209 **Ruth George:** I come from an USDAW—the shop workers' union—background for the last 20 years, and we have seen an increase in technology amongst employers then an increasing trend of matching hours within a store to turnover the previous week. There is a constantly changing flexibility required of staff, which impacts, as you say, on the lives of actually millions now with short-hour contracts. You can barely get a full-time job in retail any more. Now that employers have that technology and flexibility—you said there was some kickback—are they able to manage those hours better to enable people to give more certainty to their hours of work?

Matthew Taylor: This is why I think this moment is such an important moment for us, because I believe that technology can be used to really improve the quality of people's lives and provide genuine two-way flexibility. There are major retailers, for example, who are—and we quote Tesco in our report—very imaginative in thinking about the ways in which technology can enable people to work when they want to in flexible ways, but we have to do that in a way that is balanced and fair, not in a way that undercuts people who are trying to do the right thing.

To give you another example, I spoke a few weeks ago to somebody who runs a firm that enables people to provide call centre services from home. They have blue-chip clients and people can then, when they have a few hours free at home, sit at their kitchen table and can take calls on behalf of major organisations. Uber, for example, have surge pricing so you can choose to work at certain hours where you would earn slightly more. This company treats its workers as workers, it gives them workers' rights, and it pays employment taxes on them, but, once again, the person who set up this company says, "My business model is increasingly under threat, as I am facing competitors who claim that people doing exactly the same work are not workers, are not entitled to employment protection and are self-employed and therefore will not be the subject of employment taxes".

If we get the framework right, then this technology, and lots of technology, can provide really good opportunities for new forms of flexibility, for new forms of work, to carry on the very good record we have in this country of creating flexible work for people throughout their life's course. If we get it wrong, there is a genuine danger of a race of the bottom, I think.

Q210 **Albert Owen:** I am just interested in what you are saying in regards to the use of the Minimum Wage. I can understand why you are doing this at the lowest point, but is there a concern that many on the Minimum Wage are under 25 and on an even lower Minimum Wage and that when people reach a certain age they create premiums to people who are on a lesser Minimum Wage. Did that come into your equation?

Matthew Taylor: That is an issue. We did not look at the question of—

Albert Owen: Because it happens in places like McDonald's, I aware that, where lots of flexible people are students, are people of a certain age—and then when they reach a certain age they are going to do different things, yes—they are not really keen at McDonald's to keep them on.

Matthew Taylor: I think that is a fair point. We didn't look at the question of the differential Minimum Wage for younger employees—it was just not a question we looked at—and I think the point that you make is that in a sense when we talk about the labour market there isn't a kind of situation in which everyone makes free choices. All the architecture creates incentives, and the reason that we have the patterns that we have are to do with incentives. You described an incentive to have younger employees because they attract a lower Minimum Wage. We talked in our report about the incentives that result from the way in which our tax system works and the way in which our employment regulation system works.

I think for people who worry about regulation the question is not should there be regulation or no regulation. It is do we have a regulation that serves public purposes and has the right incentives, or do we have regulation that is incentivising pay that is problematic for individuals and the economy? I think you made a legitimate question. We didn't look at it specifically. It felt slightly beyond the remit.

Q211 **Rachel Reeves:** We took evidence, as you know, yesterday, Matthew, from workers and from employers as well. Workers from Hermes and Uber said that either they or people they had worked with often took home less than the Minimum Wage for the hours that they worked. We then put that to the employers in the later session, and although they started by saying they were absolutely certain that people always earned the Minimum Wage they then rowed back somewhat, I think, from that.

From the work you have done, do you think that these platform companies—Hermes is not a platform but employs a lot of self-employed people to do its work—providing services are always paying the Minimum Wage? Do you think it is properly enforced? You made some recommendations in your report about piece-rate work, which does give me, and I think Frank Field as well and others, some cause for concern that if you go down that route you may indeed get even more people not earning the Minimum Wage for the hours that they are doing.

Matthew Taylor: My mother often used to accuse me of being too clever by half, and I think that this particular area of our proposals is in danger of being too clever by half. We tried to find a very subtle way of resolving a particular issue. I think it was the best way of doing it, but I have come to be aware of the fact that it's not one that is easy for people to fully get their head around. Let me try to be really clear about what we argued for.

We did not argue for piece-rate to be applied to people in general. We argued for a very specific solution to a very specific problem. The very specific problem is that one of the things that people like Uber drivers and Deliveroo couriers value is the capacity to work on demand, to work whenever they want to work, and one of the things that those companies claim is that you can work whenever you want; you can work on demand. This is very different from the situation that appertains to nearly every other form of employment. I cannot just walk up at a strawberry farm in February and say, "I'd like to pick strawberries"; there are no strawberries.

Given that the drivers and the couriers like the fact that they can work on demand, what would happen in a world in which those people were classified as workers, as I believe they probably ought to be? You have a real conundrum there, because what the businesses will say—and I think they slightly exaggerate this, but I nevertheless think it is true—that a situation where people are guaranteed the Minimum Wage but they can work whenever they want to could lead to a situation in which thousands of people log on in the middle of the night when there isn't much work but are guaranteed the Minimum Wage. The companies argue that were they to have to pay the Minimum Wage they would then have to move to a shift system. As I say, it is clear that most delivery drivers and couriers do not want to work shifts. They like the on-demand situation.

Therefore, our recommendation—and, as I say, perhaps we were not sufficiently clear about this—was that if the following three conditions applied those workers would not be able to take a Minimum Wage claim even if they were paid less than the Minimum Wage: number one, those companies would have to demonstrate by opening up their data that the average worker working averagely hard got 1.2 times the Minimum Wage, which is indeed the piece-work rule; number two, the firms would have to guarantee that it is genuinely the case that people can work whenever they want and there is no sanction for them working or not working at any particular time; and number three—and this is critical—those companies—and they also have very clever databases and algorithms—would have to provide people with accurate real-time information about how much they will earn if they were to work at any particular moment.

In my view—let us randomly choose somewhere—if you are a student in Ipswich on a Monday afternoon, you go on to the Deliveroo app and it says, "You are probably only going to earn £4.50 now, because not a lot of people want pizzas", but you then choose to go and sit outside the Deliveroo office and do a crossword or whatever because actually £4.50 is better than nothing, as long as Deliveroo is paying the average worker who works averagely hard well in excess of the Minimum Wage I don't think you should be banned from doing that or that you should have a Minimum Wage claim if you choose to do that. I do not want to go on, but politically that was very important, because I did not want when we published the review Uber and Deliveroo being able to say, "These measures will mean that we have to stop on-demand-working", because, as I say, it was clear to me that their workers value that.

Q212 **Rachel Reeves:** I just think it is such a slippery slope. Why not say it for employees as well? "I am not making you, but if you want to work for £4.50, then be my guest. Come and stack the shelves in my supermarket, or drive my minicabs this weekend." I feel there is a slippery slope. There is also an issue about who controls the data. Who says that this is a busy time or not a busy time, and who is verifying and validating that? If you were a delivery company or a platform delivering taxi services, you could say that, "This is a really quiet period and so, I am afraid, sorry, driver, you will only get £4.50 this hour", and I doubt that there are any regulators that are going to be able to understand the huge amounts of data that these companies have better than they do. There already have been, as you know, attempts in Parliament to have, for example, a lower Minimum Wage for people who are disabled, for example. Absolutely wrong: the Minimum Wage should apply for everybody when they are working. I think there is a very real risk if you go down this route, even with the best of intentions, that it could result in more people being paid less of a wage than, frankly, they could afford to live on.

Chair: The Government has been very clear on this. In the response to your report the Government said that the minimum building block is the National Minimum Wage and that they are not prepared to consider exceptions to it.

Matthew Taylor: Well, we have exceptions to that in the realm of piece-work. That is why we looked at that system, because that is one place where we do say if the average strawberry-picker working averagely hard gets 1.2 times the Minimum Wage if you are a very slow strawberry-picker then you wouldn't have a Minimum Wage claim. That principle does exist. We explored the idea of applying that principle to the very specific circumstances of on-demand work. I would say to you I completely agree this would not work without complete transparency. Any company that wanted to be able to claim that it would not be subject to a Minimum Wage claim on that kind of piece-work rule would have to show complete transparency in terms of its data, which I think would be a challenge to those organisations.

A by-product of that would be that we would be able to spot if—and this is a fear that is often expressed—those companies were to flood the labour market with too many people and therefore get to a situation in which people were not earning the Minimum Wage. All I would say to you is that I completely accept the points that you make, but I think you would have also, therefore, to accept that if Uber drivers, Deliveroo couriers and other on-demand workers are classified as workers and get the Minimum Wage we will probably have to end on-demand work. The people who work on those platforms will be disappointed we end on-demand work because they value being able to do it. That is a choice that we have to make. We tried to find a way around it. If you think the risk is too great, I understand that, but the consequence would be the end of on-demand work.

Q213 **Rachel Reeves:** But is it not like the tragedy of the commons where all the commoners can put their cows in the field but then the result of that is that nobody's cows can graze? Is that not similar to Uber drivers, that they can all flood the market and try to earn a Minimum Wage, £4.50 an hour or whatever they think is reasonable, but as a result nobody earns a decent wage? Perhaps the right thing to do is to say, as employers do, "I need this number of people to stack my shelves this weekend", or, "I need this number of people to drive my taxis on Saturday night", and, "Sorry, we cannot take the eighth person, because we haven't got the work for that person, and so we cannot afford the wages".

Matthew Taylor: I think we have to distinguish, if I might say, between the proposal and whether or not you think the proposal is enactable. The proposal deals with that issue entirely, because the proposal says that these companies would have to demonstrate that the average worker working averagely hard got 1.2 times the Minimum Wage. That flooding of the labour market would be immediately exposed, because it would no longer be the case that the average worker working averagely hard got 1.2. If it is your view, and it is a perfectly reasonable view, that those companies can never be trusted to open up their data, then we are in a different kind of world. What we were saying to those companies is, "If you are able to demonstrate these very tough conditions—total transparency of data, average person at 1.2 times the Minimum Wage, absolute freedom to work whenever you want to work, absolutely accurate data on how much any individual will earn if they clock on at that particular moment—in all of those conditions there is a way of reconciling worker status and on-demand work", but I hear your point that you think the risks are too great. I think if it were to be implemented, if the companies could be trusted to implement it, it would actually not only enable us to balance those things, but it would also expose the issues that you are concerned about, to wit the flooding of the labour market.

Chair: I am going to move on, because I do not think either of the committees are going to actually propose that reform.

Q214 **Antoinette Sandbach:** You spoke right at the start of your evidence about the substitution rule. Is the failure to look at that in detail effectively a failure of the existing regulatory bodies to look at bogus self-employment?

Matthew Taylor: As you know, this area of employment classification is extremely complex, and that is why we recommended that we need to try if we can—and it is a hard task—to be clearer about the basis for employment classification. We also argue, by the way, that one of the goals that we should also have is to try to align the distinction in tax status between self-employment and employment and employment regulation status between self-employed and worker, because that gap is a source of confusion and scope for arbitrage. My understanding is that it is legitimate for companies to use substitution as grounds for saying that people are self-employed—it is one of the criteria—and our view was that whilst it will always be one of the criteria it should not be seen as being a criterion that is on its own sufficiently strong to distinguish someone who is self-employed from someone who is a worker. It may be considered as part of a package of things, but certainly—I hope I am not being unfair to them—it seems to me that Hermes, for example, relying very strongly on the substitution principle as the basis for saying that their drivers are self-employed, and I think that substitution principle is much more appropriate at the boundary between full employee status and worker status than at the boundary between worker status and self-employed status.

Q215 **Antoinette Sandbach:** You spoke about Hermes, and I thought it was quite interesting in their evidence yesterday that they—or I think it was Hermes, but I am not sure—expected other people to go to the Tribunal in order to claim worker status rather than applying a judgment automatically to those with similar circumstances. Do you feel that companies are deterred from poor employment practices by fines and by visible enforcement?

Matthew Taylor: Yes, I think that companies don't want to have their reputations damaged by being taken to an Employment Tribunal and by losing cases, but what legitimate businesses want more than anything else is a level playing field, and that is what I hear again and again and again. It isn't that businesses want favours. Reading the evidence given to you yesterday, I think if you decode that evidence at least one of those companies was saying, "Okay, if worker status is what has to happen, we can cope with worker status, as long as it applies to our competitors". We want businesses to thrive because they are innovative, because they are productive, because they are creative, not because they have found ways of circumventing the rules. I think it is that level playing field that businesses want.

There will be businesses who will say, "As long as there are ways to get around it, we will get around it and wait until we are taken to the courts", and that is not, I do not think, a very healthy situation, which is why greater clarity in the law would be a good thing, and also, by the way, a greater capacity to use the power that does exist through secondary legislation to keep the law up with emerging practices. I do not really know why it is that we have not used those secondary-legislation powers since they were created.

Q216 **Antoinette Sandbach:** In effect, part of the problem is the failure of legislators to adapt to a rapidly evolving labour market?

Matthew Taylor: Exactly. The phrase I think we used in the review was we felt that the law should do more and the courts should do less in this area. The law should carry more of the burden of clarification. At the moment we are relying very much on the courts on a case-by-case basis to resolve these issues.

Q217 **Antoinette Sandbach:** What do you identify as the main barriers to moving away from the use of individual tribunals and to enforce rights towards more proactive enforcement?

Matthew Taylor: Clarity in the law I have talked about. I come back to the point that I would really strongly urge the Committee and politicians of different persuasions to recognise that there is a package of reforms here that could be put together which are relatively straightforward and would make a difference, and I think to give employees and workers a statement on day one of their terms and conditions, rights and status and for the company to have to write that down in plain English—and therefore if they are playing fast and loose that will be exposed at the beginning—would make a material difference.

Let me just give you one example of this, which is holiday pay. At the moment it is the case that if you are a casual worker, if you are a worker, you are entitled to holiday pay and you are also entitled to be able to roll that holiday pay up, which would effectively mean a 12.7% increase in your hourly pay if you choose not to take holidays. It is clear to us that a huge number of casual workers do not know that they are entitled to holiday pay and their agencies and their employers go out of their way to ensure that they are not told about that, they do their work for a few days, a few weeks or a few months and they go off and have never claimed their entitlement. Simply to tell people on day one, "You are entitled to holiday pay, and, by the way, as a casual worker who is unlikely to working for 12 months full-time you have the opportunity to roll that up into your pay", would make an enormous difference to a lot of people. So, clarity in the law, giving basic information to people at the beginning of the process so that they can see what their situation is.

I also think—and this is something we did not put in the report but actually something I have discussed with David Metcalf—it would be good if the enforcement agencies were to be more proactive. I think the Government's strategy now, particularly on the minimum wage, is to be in a position to be able to say that they respond to every complaint. That is a good thing to do, and we should carry on doing that, but that means that the resources are largely reactive. I would like to see enforcement agencies do deep dives; so, to go to a particular town or city, announce they are coming a month in advance, talk to the trade unions, the Chamber of Commerce and other organisations and try to tease out the things that are going on within that local labour market and raise people's awareness of how the regulations work. I would like to see a slightly more proactive approach to enforcement.

Q218 **Drew Hendry:** Matthew, given that you have said that you would like to see greater clarity in the law and that the tendency recently of courts has been to interpret legislation in a way that is more favourable to workers, do you believe that there needs to be a clearer definition in law of employment status, maybe particularly self-employed status, and should self-employed people therefore receive a written statement of particulars from companies that are using their labour?

Matthew Taylor: Yes, we do state in the report that we should have a clearer definition of the distinction between self-employment and worker status, and we also argue, as I have said, that that should be aligned with the distinction in tax rules between self-employment and employment status. There will always be exceptions, because the labour market is very complex and we should minimise the number of people who can be in the peculiar situation of being a worker in employment law and self-employed in tax law or vice versa.

In terms of the question of what it is we should provide to self-employed people, I am not sure, to be honest. I think that there is a lot of what takes place in relation to self-employment that is very casual. It is people turning up and saying, "I'll clean your windows", or, "I'll mow your lawn". We did argue in the review that we should move to a cashless system for the payment of self-employment, because obviously there was a big issue about the informal economy, but what I suppose I do not think we should do is be in a situation where if someone knocks on my door and says, "I've noticed your garden is covered in leaves. I've got a bit of free time. Can I sweep up your leaves?" I should feel that I have to make sure that, when they are genuinely self-employed, they are getting the Minimum Wage, or that they are getting holiday pay. I worry that that would be a lot of bureaucratic burdens for a lot of perfectly legitimate activity that takes places with people in that kind of domain of casual, self-employed labour.

Having said that, I do think it is important—and we did say this in the review—that large companies should be transparent about what takes place in their labour supply chain. When it comes to large companies that are relying on a lot of self-employed people to provide services to them, I think in those cases then yes, you would want a clearer statement of what those self-employed people were getting and what their rights were.

Q219 **Drew Hendry:** Given what you have said there, what changes to the definition do you think would make the biggest impact if there was going to be a change?

Matthew Taylor: I have spent many a happy hour with employment lawyers, some of whom say, "Yes, do this", and others who would say it's completely impossible, but we argued that as well as the point I have just made about substitution, which I would urge you to think hard about, because I do think if we do not address that issue we are going to see some big companies doing good things finding their businesses untenable, because they will be undercut by those using a substitution clause, and what we argued was for the emphasis on control and supervision, which is what is used by HMRC. HMRC, when they pursue cases, and they pursue a lot of these cases, say that people should have been paying higher National Insurance and that the employer further should be paying National Insurance, will use this issue of supervision and control, and we felt that was a good starting point to focus on if we were thinking redefinition. I do not pretend it is simple—these things are complex—and nor do I pretend that any definition in law is going to mean that the courts are taken out of the process—across the world the courts are relied upon because work is complex and every case is different—but I still think we could do better at clarifying the law.

Q220 **Heidi Allen:** We have moved on to what my question was going to be anyway. Reflecting on the piecemeal debate, this subject is really sticky, isn't it? It is hard, it is borne out of the fact that people work in different ways now, and it is about employers sometimes finding the cracks in between a status of a person. I wanted to ask you where you saw new lines should be drawn between employee, worker, self-employed and—there is a new category you talk about—dependent contractor. Just talk us through how you think that new classification could help untangle some of this. Clearly, the piecemeal one is a bit too hot to touch, I think; so, this could be an alternative way of approaching it.

Matthew Taylor: I let go of the piece-work idea grudgingly simply because, as I think we have seen from what happened with Uber in London, we need to be careful about doing things that will take away from people the flexibility that they enjoy as workers and the flexibility that we enjoy as consumers. I just would say I believe platform workers should have workers' rights but if there is a way of enabling that to happen and allow those workers to work on demand we should explore it, because if we take that away there will be a pushback from those people who will say, "I want to work when I choose", and from consumers who will say, "I want to be able to book these services when I choose". I won't push it any further, but I would say we thought very hard about this and our recommendation and is, I think, well thought through.

I think, as I have said, that we can improve the definition of self-employment and worker. In terms of dependent contractor, I think we got confused, and, looking back through the review, I am proud of the review, I think it is a good piece of work, but I think the one thing I would want to go back and rewrite is the way we talked about dependent contractors, because sometimes we talked about it as a renaming of worker status and sometimes we talked about it as a very specific definition of the workers I have just talked about, these on-demand workers who would be subject to a slightly different regime. My view is that we should have stuck to the latter. I think we confused things by making it look as though we wanted to reclassify workers as a whole. The trivial reason for this is because it is just very confusing for the layperson to have a category of people called workers when it looks like everybody is a worker. With everything you ever read people have to say there is a difference between generic workers and specific workers in employment rules. We were trying to improve that semantic problem, but I think we were unclear. For me, "dependent contractor" would be the definition you would use to apply to a specific category of on-demand workers.

Q221 **Chair:** But we are not actually in that market, Matthew, are we? Our views as consumers in one sense do not matter. What matters is what the people who are working view as their status, whether they understand the distinction and whether they understand what their rights are.

Matthew Taylor: I agree, which is why I think that the day one statement is a really important thing, because I think that if those companies that have relied on very lengthy, very complex, very opaque statements of contract had simply to say on one page, "This is the position", "These are your terms of conditions", "This is your pay", and, "This is your status", probably we would have been having debates about whether that was appropriate much earlier and would not have had to rely on quite a long process that is still winding its way through the courts.

Q222 **Chair:** Yes, but I was just picking you up on the point that somehow you have to have a statement about employment that the whole country understands, but the whole country does not enforce, but we may play some role; enforcement agencies do, and it is crucial that they and the employers and employees understand the status, whatever we call it. The worry that has been expressed here is that we get on to different statuses that undermine the National Minimum Wage for workers. The whole country believes when they are using a service that that person is drawing the national minimum.

Matthew Taylor: Again, it is important to recognise that we are talking here about a group of people who are currently classified as self-employed. We are talking about drivers for people like Uber and Deliveroo workers. This category of on-demand platform workers, not exclusively but generally speaking, is currently defined as self-employed. Because we supported the direction of the courts' judgments that they should be seen as workers, this opened up the question of how it is you can reconcile entitlement to the Minimum Wage with on-demand-working, and we have a specific solution to that problem.

If you say actually Uber drivers and Deliveroo couriers are self-employed, then these issues go away, because they can work for 10 pence an hour. That is their choice. There is no protection for them. We are talking about in a world where those workers have more protection how you could also protect their right to work on demand, and that is the solution we came up with.

Q223 **Chair:** And also that employers do not force them into the position of being self-employed so they do not get paid the Minimum Wage: that is what it is really about.

Matthew Taylor: Absolutely; or force them to work at any particular time.

Q224 **Albert Owen:** I am just a little bit confused. You have gone on to the ground I was going to ask about, and you have understood much of it. I am still not clear, however. When you call for clarity in the law, when you say clarity in the law rather than going to the courts, I understand where you are coming from there, but on the specific question of different categories are you saying that the three categories of employee, worker and self-employed should remain and there should be an additional one called "dependent contractor"? Are you clear on that?

Matthew Taylor: Yes.

Q225 **Albert Owen:** And you feel there is some more work to be done on the dependent contractor—

Matthew Taylor: Within the worker status there are already different statuses. Agency workers get different rights to other workers. Agency workers, for example, are entitled on day one to that statement, the statement that I have described. We have different statuses within the worker category. Our proposal was that there would be another status within the worker category that would specifically apply to this category of on-demand workers. That was the simple focus.

Q226 **Albert Owen:** The Government would instead have a mini-law to say that addition so it would avoid going to the courts and there would be clarity?

Matthew Taylor: They would extend the principle that currently applies to piece-workers, which is as long as the average person gets 1.2 times the Minimum Wage if you happen to be a very slow strawberry picker or a very slow apple-picker—

Albert Owen: Yes, I had got that.

Matthew Taylor: You aren't in those circumstances able to make a Minimum Wage claim, and we thought that could be part of a solution to this issue of Minimum Wage entitlement and on-demand working.

Q227 **Albert Owen:** I have got it now. You also mentioned HMRC were doing a good job. I think those were your words; I may be exaggerating a bit. Are they really doing a good job, and are they looking at this issue, or are they just interested in collecting tax, which is their main job, at the end of the day? I have not seen any evidence to suggest that HMRC is on the side of those people discontent with being called self-employed. I have not seen that correlation.

Matthew Taylor: What I said was I think HMRC work with a definition and try to apply that definition. I think they like any other part of the public sector are overstretched in terms of their capacity to address issues, and, by the way, there are major areas of the economy growing now where there is basically no capacity for enforcement at all. For example, if you look at the growth of what is sometimes called side-hustling, which is people setting up businesses on the margins of their work, levels of non-compliance in that sector are very, very, very high. It is hard to see how unless we change our systems and have withholding taxes or cashless systems, we will ever get to that point, because it is never going to be economically viable for HMRC to pursue people who are not just paying a few hundred quid here and there on their Airbnb bookings or whatever it might be. There is that issue.

I do actually think with HMRC too that people suffer from the lack of clarity. There are a lot of people who have been pursued by HMRC for many years for having declared themselves self-employed, having set themselves up as a company, because the firm that employed their labour told them to do that and they thought it was the right thing to do and they filled their tax returns in and now find themselves facing major tax bills. I think the lack of clarity affects people badly in the tax system just as it does in the employment regulation system.

Q228 **Ruth George:** As far as enforcement goes, do you think that it would help HMRC to enforce the Minimum Wage if they could take representative cases rather than as at the moment individual cases where each individual has to suffer potential victimisation and can only gain a case on their own behalf rather than on behalf of all of that similar group of workers?

Matthew Taylor: Yes, I think that is an important idea. I also think—we put this in the review—that we should have a situation in which if a company loses a case and then a case that is exactly similar to that comes along they should then be subject to bigger fines and to bigger punishments because it is clear that they have not responded to the will of the court that is demonstrated in the first case, so, if you lose a case and then someone within the firm who brings up almost exactly the same argument comes along and makes the same case. I think you have to do it that way, because the problem with the way the law works is that the law to look at it on a case-by-case basis, because every case is potentially subtly different from every other one. What we recommended was a cranking-up of fines for companies who were demonstrably not applying to their whole workforce the principles that had been established in an individual case.

Q229 **Ruth George:** Does that not still leave each individual subject to the sort of victimisation that has been shown often happens, that they basically lose their job?

Matthew Taylor: I think it is important that people have access to law. I think the Supreme Court ruling is a good ruling. I think it is important that people can take cases on behalf of workers. There is the question of whether or not, as it were, they should not have to name an individual. I think that is an open question. I would not have a strong view on that. Now that Employment Tribunal fees have been removed I think the access to justice is much simpler than it was before. But I would want to emphasise a recommendation that I talked about right at the beginning but I want to come back to, because if I was to be asked what was the single recommendation more than any other that I think is most important it is this reduction from 10% to 2% for the right of people to have independent representation and that that apply not just to employees but to workers so that there is somebody that you can go to who is a safe person for you to raise your concerns with and who is entitled to raise those concerns with management, because it was very clear to us as we went around the country that one of the biggest problems for casual workers is the sense that were they ever to stand up to management, were they ever to raise concerns, legitimate concerns, concerns that actually might improve the productivity of the company if only they were heard, their feeling is, "If I say anything, I will lose my hours", and those people should have somewhere they can legitimately take concerns to and they can be raised. I actually think not only will that enhance workers' rights it will actually improve the quality of employment relations and ultimately productivity.

Q230 **Ruth George:** Do you agree with the Work and Pensions Committee's recommendation that worker should be the default employment status for all individuals?

Matthew Taylor: I have thought hard about this, and I cannot pretend to have thought it through entirely. I would go back to my earlier answer, which is I would be concerned if what that meant was that if the second I say to the kind of person who said, "I'll sweep the leaves in your garden", "Yes, I'll give you £20 for sweeping up leaves in my garden", I am then responsible and am then liable for a Minimum Wage claim.

Chair: How big is your garden?

Matthew Taylor: Very small; I do not actually have a garden—I have a shared garden— and so it is a hypothetical case!

I would worry about the situation in which ordinary citizens asking self-employed people to take on odd jobs and things like that would find themselves liable to the full panoply of employment law, which would be the consequence of that. I think the way to address this potentially is through some kind of threshold for a company when it employs a certain number of self-employed people beyond a certain level who have the same basic contracts. At that point you may say, "Look, let's adopt a default position and work up". I would be worried if that applied to, as it were, the one-to-one interactions with citizens and sole traders.

Q231 **Chris Stephens:** I have been struck by some of the things you have said, Matthew, about the report trying to be too clever and trying to create a level playing field, but one of the difficulties with the dependent contractor is that it does not just apply to the so-called gig economy; it then moves into social care, agency workers and the food and hospitality sector, and that is a difficulty; and so therefore the Work and Pensions Committee's default position of worker would be better.

Matthew Taylor: Potentially, although I find it hard to see how it is you could have genuinely on-demand working in those sectors where workers could absolutely choose when to work and when not to work, because the nature of the dependency of the citizen patient on the carer, for example, would be such that I do not think anyone would win a social care contract if they were, say, to not be able to guarantee that the labour was delivered at certain times.

I come back to the fact that the proposal we made was in relation to this very specific circumstance of people being able to choose when to work and not being in any way sanctioned for the choice that they make about when to work. There are certain places you can apply that to, like taxi-drivers, like pizza-deliverers, maybe to people working on call centres from home. There are some examples like that, but in most areas of the labour market you could not have a situation of genuine on-demand working, because you could not guarantee who would deliver the service to your ultimate end client.

Q232 **Heidi Allen:** Just very quickly, turning it on its head, as you described there, could people become workers if the company has so many that it is employing in a similar way? What about bottom up, if I am the driver, and if I do so many hours? Or the continuity conversation, can you see or describe to us from bottom up when a self-employed person might in this brave new world be a dependent contractor or worker or whatever you want to call them?

Matthew Taylor: I would say it would be the point at which they were able to demonstrate that in their day-to-day work the level of supervision and control exercised over them made it feel like they were involved in that kind of employment relationship rather than a genuine situation of self-employment where they have control themselves over when they work and how they work. It is a fine line. It is a fine distinction. I am not sure it is about longevity, though. I think you could be legitimately a self-employed contractor, you can do work for a firm for many, many, many years and you are genuinely self-employed.

Q233 **Heidi Allen:** Or hours in the week as well?

Matthew Taylor: I think that is where HMRC would come in, because one of the issues that HMRC would precisely look at is if somebody is working 30 hours—and that is exactly the kind of thing they look at. If they find that somebody who is classified as a self-employed IT consultant actually has a desk in the firm that they are providing consultancy to, that is exactly the point at which they will come in and say, "Hang on, this doesn't look like self-employment to us. This looks like disguised employment". We do have a set of rules that we can apply that should capture, for example, that kind of attempt to treat somebody who is really regularly employed as someone who is self-employed.

Q234 **Mark Pawsey:** Coming back to the issue of control and supervision, which you look to as the primary test for someone's employment status, one thing about substitution is it is black or white; either there is the ability to substitute or there is not. You yourself said that on control and supervision there were real problems of definition, and you have also said that you wanted to see clarity in the law, but isn't the difficulty in this definition just going to keep the lawyers busy if we proceed with your proposals?

Matthew Taylor: There is no definition that anyone can come up with that will not keep lawyers busy, and that is because lawyers are ingenious—

Chair: You could keep them off overtime then, couldn't you?

Matthew Taylor: But it is also because—and this is the case in every system—work is complicated, new business models are constantly being developed, the courts will have to judge on difficult cases and there always will be difficult cases. Let us not make the best the enemy of the good, I would say. I think we can probably do it better than we are doing it now. I think we can get it more up to date with where we are. I think we can address particular issues.

I am not sure I agree, actually, that the substitution thing is black and white. I think that people's contracts often say they have a right to substitution but people's experience is that supervisors take very badly to them saying, "I want someone else to do that", and then they will then lose subsequent—actually the pressure on you is very different from the suggestion in your contract that you have free rights to substitution.

Q235 **Mark Pawsey:** We know there are many senior staff who have very little control, most certainly employees. Did you find in taking your evidence that there were areas where workers were subject to very strict control and they still had self-employed status?

Matthew Taylor: Yes, I think we did, and I am clear that I think some of the gig platform companies that we talk about, some of the delivery companies that you have spoken to—in my view, it seems to me that their relationship with the people who work for them is more appropriately understood as an employment contract or a contract with a worker rather than self-employment. I think those people do not really have a greater discretion over what they do. I think that the pay that they get is pretty much set for them. I think that they have to respond to management in a way that looks and feels much more like an employment relationship than the relationship I have with a self-employed person who agrees a one-off contract with me. That is what we came up with. That is one of the reasons why we argued that we should look at the status issue.

Q236 **Peter Kyle:** One of your recommendations is for new workforce-reporting requirements on companies. Do you have reason to believe that greater transparency will change behaviour in reporting?

Matthew Taylor: Yes, as I said, I think in our report we favoured nudge over shove, and I think there were things that we recommended that we hoped would work; if they did not work, then I think one would have to look at them again, but let us try to see whether a relatively incremental step can achieve our goal rather than a big stick. I think for companies beyond a certain threshold to be transparent about who is in their labour supply chain would encourage them to think a bit harder about what is going on, for example to discover cases like the one I gave earlier of the dodgy road haulage company. I think for companies to have to report how many people have requested fixed hours and permanent jobs, which is an entitlement we were arguing for in the review, after 12 months, to have to report how many requests they have had and how many requests they have acceded to, would incentivise them to not want to be in the situation of saying, "Well, everyone who's asked for this we've said no to".

I think it is a bit like the gender pay gap. I think we have to look at this and we have to see whether transparency is achieving the effects that we want. If it does not, then we would have to look at it again, but my general view of how to go about policy change is let us try measures that are relatively straightforward and incremental and that go with the grain of good practice first before we think about big sticks, because the problem with big sticks is they may achieve the goal that you want but they may also have unintended consequences.

Q237 **Peter Kyle:** Don't we live in a world now, though, where, if you look at Uber, who are now almost revelling in their bad-boy status, you see that rather than actually fearing regulators, they are going to war against regulators? It seems to me that the people who use the Uber app now know it is a bit of a sin doing it but it is a kind of, "To hell with it", kind of thing. People know now because of the awareness around apps like Uber that there are probably some pretty dodgy working practices going on behind it, but they are still doing it. When you have that bargain, is transparency going to work in this day and age? Because convenience for consumers seems to be trumping everything.

Matthew Taylor: It is a very important point, and—this is where I will sound, I am afraid, like a broken record—that is why I think it is very important to think about what it is the workers and citizens value of these platforms. I think part of the reasons that well-intentioned people use Uber is that when they speak to Uber drivers generally speaking Uber drivers say they enjoy being Uber drivers. I use Uber from time to time, and if I got in an Uber car and the Uber driver said to me, "My life is one of misery and oppression", then I would not do it again, but they do not. They say, "It is good to be able to drive when I want to be able to drive", I think there are certain benefits about that platform in terms of what you know about the driver, the way you rate it and those kinds of things, and I think it is a legitimate business model as long as it accords with the general regulatory framework that we want for our labour market.

I would exactly say, as you say, we need to get that balance right, and that is why we recommended what we did recommend, because I worry that if in ensuring that Deliveroo drivers and Uber drivers have worker status—and I would agree with you about this: they may not want worker status, but it is important that they have worker status, otherwise it will create a race to the bottom because of the effect it will have in the labour market as a whole. It is important that those rights exist for those people whether or not they are demanding them, in my view. But if the consequence of that is that those drivers say, "I cannot work whenever I want to work", and if the consequence of that is people who value those services find that those services are not available when they want them, there is a danger that people will say, "Well, if that is the price we have to pay, then we do not want the regulation". That is the balance that we have tried to get here.

Q238 **Peter Kyle:** The tension in your answer—this is my final comment, Chair, if I can—is that you say that people want these jobs, they are happy doing the jobs, you would not be riding with them if they were not in any way and yet you are also recommending some quite profound changes to their working status. Even though perhaps they are not marching in the streets demanding it, you accept the premise that something needs to change. Just to take it up a level, for a helicopter view of this, at the BEIS Committee's evidence session yesterday we had we had frontline workers for several of these companies and we had staff from their head office who are on full-time contracts. It was as if they were in entirely different organisations when you saw them speaking. When people describe what it is like working for the frontline, even if they enjoy the jobs the insecurity—even the ones who are well educated feel that they are basically trapped with no alternative in these jobs, and they feel very disempowered in their relationship with the app and the company above it. Then at the second hearing you get people from head office defending it, the stereotypical metrosexual Silicon Valley tech entrepreneurs on one side—these people are in the same company. It feels like they are on different planets, and yet they are in the same company. Is this the future of work, these organisations that have such massive inequalities within them?

Matthew Taylor: I chaired this review for 10 months, with a really good review team and a great set of officials, and what we tried to do was to address across the system the things that would be needed to be done to improve the quality of work and to try to do that in a way that did not stop innovation in business models, which did not lay any extra burdens on good employers—there is absolutely nothing in the review that should increase the burdens on decent, well-run organisations—and that was the balance that we tried to strike, because the issue is that it is not simply that there is a conflict between what you hear from the workers and what you hear from the managers. I found at the public meetings that I had—there was one public meeting where there was almost a fight between two Uber drivers, because one Uber driver was saying, "I absolutely love it. Don't regulate me at all. What are you talking about?" and there was another Uber driver saying, "My life is a misery". A few days before I published the review I went to a party, and someone arrived with a Deliveroo box on their back. Flippantly, I said, "I may be hoping to enhance your rights in a few days' time", and he said, "I don't want any bloody rights. I drive my bike to make money for the weekend to buy beer".

People's experience in jobs is different. How do you get this right? In my view, the way you get it right is you have a strong regulatory framework, which is why these people should be workers and have workers' rights, because if you do not you will have a race to the bottom and you will find those business models driving out companies that do respect workers' rights and do pay employment taxes. You need that basic framework in place, but you need to be imaginative about how it is you can have that framework without stopping legitimate, innovative business models that most workers enjoy using and that citizens enjoy using as well, which is why we went to some lengths to try to find a way of resolving this issue.

I think what you have seen in London over Uber is the challenge here, is that when the Uber judgment was made that they would not be allowed to practise in London half of London went, "Yes, fantastic. We've cracked it", and then within three days half a million people have signed a petition saying, "Don't do this". There is a way through this, I think, but you have to be quite creative about it, and you have to recognise that no solution is without risks.

Q239 **Rachel Maclean:** I recognise what you are saying. I think it is important to remember that yesterday we heard from only three people out of the thousands, the many thousands, of workers, and when I read the previous reports provided to us there was evidence there from other workers in these exact same companies that put a very, very different slant on it. I think it is important that we do bear that in mind and are mindful of the benefits that the good employment that can offer at times. I want to ask you specifically: did you consider the IT contractor sector in your review? Because obviously most of the Government IT that we rely on is provided by the IT sector, that is almost exclusively a contractor model, I think, and I just wonder whether you considered any unintended consequences on that, given that we have a shortage of IT skills in general in this country at the moment, were we to move their employment status and possibly damage the ability of these contracts to be carried out in the NHS and other public services, for example.

Matthew Taylor: I think we have touched on that issue in relation to this need over the medium term to have a more consistent and equal way of taxing labour, because I do think that the incentives are too strong at the moment for people to use self-employed labour rather than employing people, and it is better generally speaking, because of the benefits that employers provide to their employees, that we encourage people to take them on as employees, because otherwise we have to pick up some of the safety net that is not available to self-employed people. We recommend that in terms of tax.

In terms of protection, the Resolution Foundation did a report a few months ago that distinguished between what they call the precariat and privileged when it comes to self-employment, and they argued that the privileged, those who are above-average-earning, IT being a very good example, are actually doing quite well, enjoying their status and enjoying the tax benefits associated with it. To be honest, good luck to them is my view. I think that we are not probably paying enough tax for their labour, but I was not really particularly concerned about them; I was much more concerned about people at the bottom end of the labour market who do not have any choice.

Q240 **Rachel Maclean:** Absolutely. I take that on board. I totally agree with that sentiment. However, I was just wondering if we were to put these IT contractors into that bucket, in terms of their being dependent contractors as you have outlined in your review, did you consider any possible unintended consequences of that in terms of the shortages in that labour market?

Matthew Taylor: I run an organisation that occasionally brings in IT contractors. It is very hard to imagine how you would have an on-demand platform working in that sector, because I want people to be there to do a certain job at a certain time. This on-demand system only works in particular large markets with particular kinds of tasks. I do not think that the recommendations that we have around dependent contractors or on-demand workers would apply to many sectors.

Q241 **Neil Coyle:** You mentioned the race to the bottom, but where bogus self-employment is used to undercut the Minimum Wage this is beneath the bottom and has direct consequences for the state intervening with housing benefit and other benefits, for example, but even an over-reliance on self-employment has longer-term costs to the state. I think you were just touching on this. One or two of us will get cancer, so, there are long-term health conditions and the issues around sick pay and entitlements, but also with pensions only a third of those in self-employment are saving for a pension. Is there a case for higher National Insurance contributions for companies that have a disproportionate number of self-employed in their workforce?

Matthew Taylor: There is, but I think the way we would address that would be to say that the tax system should be more consistent so that those companies would not have the tax incentive they currently have to use self-employed labour rather than employed labour. The problem at the moment is that that incentive applies. We did not get into the detail on this, and we were not really empowered to talk about tax issues, but we have to talk about them, because it is one of the things that drives the behaviours.

If you imagine, for example, a world in which all labour carries the same tax whether you employ somebody or they are self-employed there is a 10% labour tax that is applied to everybody, then that would shift the incentives of those companies. They would no longer have an incentive to use self-employed people unless they genuinely have the kind of work that is very intermittent where you would want those people to come in because you do not need somebody on the payroll.

Let me open up one of the conversations that we had in the review. I wanted in the review to make a connection between the idea that we should probably be paying more tax for self-employed labour or the companies should be paying more tax and we as individuals should be paying more tax for self-employed labour and the fact that we probably should be investing more in improving the entitlements of self-employed people and thinking about incentivising self-employed people to save for pensions and other things. There was quite a strong pushback from the Treasury on that, partly because of the hypothecations implication of it and partly because the view is that self-employed people make a choice. The RSA has done a lot of work on self-employed. Most people who are self-employed are happy to be self-employed, choose to be self-employed and enjoy the autonomy. If you choose to be self-employed, you do not get the benefits that you get when you are an employee. There was a view from the Treasury, which I understand, which is it is a slippery slope for the Government to start to say, "We will take on the responsibilities of the employer in relation to various protections and entitlements, which you have chosen not to have, because you have chosen self-employment".

I understood that there were reasons for that. At a political level—I am not a politician—I am attracted by the idea that you might say if we paid a bit more for self-employed labour that would create a sum of money some of which could be used to improve the protections, for example, particularly the pension-saving, amongst self-employed people. That seems to me to be an interesting quid pro quo.

Chair: Can we stay on that?

Q242 **Steve McCabe:** Sure. Matthew, you have explained why you did not make any recommendations on pensions, but you have at various times talked about this issue of people, particularly the self-employed, possibly needing to pay more National Insurance. What should we see in the Government review on pensions in terms of auto-enrolment for workers and the self-employed? If you were not prevented by the Treasury view, what should we be looking for when the Government comes to report on this?

Matthew Taylor: I suspect that because of the fiscal situation and also because of the pushback that the Chancellor had when he put his proposals in in the Budget earlier in the year it feels to me as though it is going to be quite difficult to talk about measures in the short term. I think in the longer term that precisely the package that I have described is the package that we should be pursuing, which is that—going back to my famous garden, my enormous garden, which is shared and small, but let us imagine I have a huge garden—if a gardener who is employed works in my garden part of the fee that I pay to the firm that employs that gardener is to pay for certain benefits, including the employer contribution to their pension, and that is why I pay more. When I employ a self-employed gardener, I do not have to pay as much, and I do not pay for those protections. It seems to me logical that we would move to a world where I would pay more for that self-employed labour and that more that I pay, that top-up, which is, as it were, equivalent or getting towards equivalent to what employers pay in National Insurance contributions, some of that would go towards incentivising, for example, self-employed people to save for pensions or to save for sickness. You can join auto-enrolment if you are self-employed now. The problem is there is not the incentive to do so that exists if you are an employee, because there is no equivalent employer contribution. I think over time we should explore changing that. I think it would probably be too expensive to do it in the short term, which is why it is I think the package has to go together.

The point I want to emphasise here is really the difference in the individual's contribution to National Insurance is one part of this; the bigger question is the employer contribution. That is the really big wedge. The reason that the companies that you have spoken to want to portray the people who work for them as self-employed is to avoid that, and of course do not forget the fact that we have a very high VAT threshold here. We have a double whammy. The way you could address that is via the VAT that you recoup on self-employed people and sole traders, but because we have a high VAT threshold we do not even get that.

Q243 **Rachel Reeves:** One thing that has not been covered but one of the recommendations that you make in your report is about the Swedish derogation for the Agency Workers Directive. Can you just explain that and why you made that recommendation?

Matthew Taylor: The Swedish derogation was introduced as part of the deal to bring in the Agency Workers Directive. The Swedish derogation is a detailed area, but as I understand it it is the rule that says that if an agency worker is guaranteed work paid between assignments then they can forgo their right to equal-pay conditions after 12 weeks. The Agency Workers Directive says after 12 weeks you should get the same pay and conditions as people you are working alongside who are not agency workers. The Swedish derogation enables you to waive that right in exchange for payment between assignments.

What we were told and indeed told by agencies was that this was being misused. Interestingly, it was some agencies that said, "We'd like to get rid of this, because we are asked by unscrupulous employers to get people to waive this right", and that the pay between assignments can be very notional. Somebody could basically be working for 11 weeks, be pulled back into the agency for a couple of hours where they just sit and have a sandwich, they get paid for those two hours, that is paid between assignments, and then the clock starts again. What we saw was quite widespread abuse of that, and really the benefits that can be associated with payment between assignments you can still do without the derogation. If agencies want to have that way of doing things, they can do it without needing the derogation.

I do not want to lose friends on this, but I did talk to the CBI about this quite early on and said this was my view of what we were going to do, they expressed concerns, and I said to them, "If you can come up with a way of closing the loophole short of getting rid of the derogation, then I'm open to hearing it", and I did not hear a way of closing the loophole that fell short of closing the derogation. I think that there is very little agencies want to do that they cannot do if you get rid of the derogation, but it will stop something which is widely abused and which, as I say, many agencies would rather not be able to offer.

Q244 **Rachel Reeves:** The Agency Workers Directive says that after 12 weeks an agency worker is entitled to the same terms and conditions as other words, and the Swedish derogation gets out of that with the pay between assignments?

Matthew Taylor: Precisely; which if it is authentic would be fine—if you have a big gap and you are paid for that, yes, it is great—but a lot of times it is being abused, because your period of payment between assignments is just a few hours and then the clock starts ticking again and the 12 weeks start again.

Chair: Matthew, thank you very much. I have six very clear recommendations from your evidence this morning that we may wish to consider. I am sorry that all of us failed to get our head round your idea of fracturing the national living wage, but thank you very much.

Matthew Taylor: Thank you.