

# WORK THAT WORKS FOR ALL

## BUILDING A FAIR AND FLEXIBLE LABOUR MARKET THAT BENEFITS EVERYONE

The CBI welcomes the opportunity to contribute to Matthew Taylor's independent review of modern employment practices and present the business vision for a labour market which delivers prosperity for all.

The CBI is the UK's leading business organisation, speaking for some 190,000 businesses that together employ around a third of the UK's private sector workforce. Its mission is to help businesses create a more prosperous society.

The UK's flexible labour market has been an invaluable strength of our economy, underpinning job creation, business investment and our competitiveness. These strengths cannot be taken for granted, so it is essential that flexibility is retained and enhanced. Fairness – the way you are treated at work, and the opportunities open to you – is equally important. Work can be both flexible and fair. Creating a labour market which delivers both factors requires a partnership between business and government. The law should set appropriate and effective minimum standards, and Good workplace practices should be promoted for the mutual benefit of business and workers in areas where the law is an inappropriate or ineffective tool for change.

The public expects that the core functions of business have a positive impact on society, not only CSR activities – CBI members agree. The fortunes of business and society depend on one another. Businesses operate best in stable political and regulatory environments and this is most likely to occur in a cohesive society where everybody has the opportunity to achieve their ambitions through their own efforts. Business recognises that it must continue to develop approaches that are fair, transparent and which build trust, and are wholly committed to doing so. On no issue is this need more important than with regard to how businesses treat their workforces. The right workplace practices are good for business and for workers – those that drive productivity tend also to have high levels of employee voice and engagement.

### **The UK's flexible and dynamic labour market is a strength that delivers for business and workers**

The UK is widely recognised as having one of the most flexible labour markets in the world. The UK is rated as having the 5<sup>th</sup> most efficient labour market in the World Economic Forum's Global Competitiveness Report 2016-17, behind only Switzerland, Singapore, Hong Kong and the United States.<sup>1</sup> Flexible labour markets tend to enjoy higher employment rates and lower unemployment than those with more rigid approaches and – as CBI research from 2014 shows – over many decades, they have better protected the labour share and delivered more real terms wage growth than more rigid systems.<sup>2</sup> This is why flexibility matters.

The change in frequency and nature of flexibility in recent years has been driven by a wide range of factors. Businesses need more flexibility to respond to growing 24/7 global markets, for instance higher demand on the logistics industry in the run up to Christmas, or to ensure that scarce construction skills can be used by more than one employer. Flexibility in the "when" and "where" of jobs is also an important part of businesses becoming more inclusive to recruit and retain talent from all parts of society. As workplace cultures evolve, flexibility is evolving too, and is becoming the favoured option for many employees outside of the groups –

<sup>1</sup> *The Global Competitiveness Report 2016-17*, Schwab, K. World Economic Forum, 2016

<sup>2</sup> *A Better off Britain*, CBI, 2014

like parents – that these ways of working were initially developed for. Choice is a critical part of the UK labour market – meeting staff needs in a more complex world as well as the needs of business.

### **Flexibility is important to growth and jobs...**

More than nine in every ten businesses (97%) describe the UK's flexible workforce as either vital or important to their competitiveness.<sup>3</sup> It has long been one of our major competitive advantages, supporting employment and acting as a magnet for foreign investment. This is because the confidence to create jobs comes from knowing that you will be able to get the right person, in the right place, at the right time.

The UK has a strong track record. Compared to some labour markets on the continent, for example Italy where the unemployment rate is 11.9% and 36.7% for young people<sup>4</sup>, or compared to India where the economy is growing at 7%<sup>5</sup> but fewer jobs are being created<sup>6</sup>, the UK economy has been growing and creating jobs. Our employment rate currently stands at 74.8%, the highest since comparable records began in 1971. With more than 31.9 million people in work, the unemployment rate has not been lower in 40 years.<sup>7</sup> Businesses are clear that it is flexibility that has allowed them to achieve this.

As well as being a strength when the economy is growing, flexibility has been a strength during economic downturn and recovery too. The collaborative responses of businesses, trade unions and individual workers to the financial crisis in 2008 kept people in work by reducing hours worked. While underemployment – shorter working hours and lower pay – is a difficult situation and must be addressed with the same urgency as a high levels of unemployment, it is better for businesses and workers than redundancies and periods of unemployment.

Contrasting the UK's jobs performance to France's through the recovery from this recession is another good illustration of this strength. Unemployment rose in both France and the UK in response to recession, and both economies have grown since. But while unemployment in the UK peaked at 8.4% in 2011 and has fallen significantly to 4.6% in 2017<sup>8</sup>, unemployment in France has remained high and is currently still above 10%.<sup>9</sup>

Flexibility also helps the UK labour market to operate efficiently, for example by better matching job seekers with employment opportunities. This has the effect of lowering the equilibrium unemployment rate (or NAIRU), allowing the Bank of England to set lower interest rates, reducing borrowing costs for all businesses.

### **...but is also part of the answer on productivity and ultimately the affordability of pay rises**

A common criticism of a flexible labour market is that it maintains high employment at the cost of lower productivity growth. But in many ways our labour market underpins productivity growth. The UK has world-leading companies across all sectors but suffers from a long tail of underperforming companies that are falling further behind them.<sup>10</sup> These frontier businesses show that flexibility and productivity are not opposed.

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<sup>3</sup> *Employment Trends Survey 2016: People and partnership*, CBI/Pertemps Network Group, December 2016

<sup>4</sup> *Employment and unemployment: provisional data*, Italian National Institute of Statistics (Istat), April 2016

<sup>5</sup> *Estimates of Gross Domestic Product for the Second Quarter (July-September) of 2016-17*, Ministry of Statistics and Programme Implementation, Government of India, November 2016

<sup>6</sup> *Statistical Year Book India 2016*, Chapter 32 – Labour & Employment, Ministry of Statistics and Programme Implementation, Government of India, December 2015

<sup>7</sup> *Labour market statistical bulletin*, ONS, May 2017

<sup>8</sup> *Labour market statistical bulletin*, ONS, May 2017

<sup>9</sup> *Labour Force Survey Q4 2016*, National Institute of Statistics and Economic Studies (INSEE), February 2017

<sup>10</sup> *Productivity puzzles*, speech by Andy Haldane, Chief Economist, Bank of England, at London School of Economics, 20 March 2017

Labour Market Flexibility encourages the investment and innovation that increases productivity and pay. Take foreign direct investment (FDI) for example. The international nature of companies was identified in the CBI's research on regional productivity as a significant factor contributing to two of the four drivers of productivity, so this investment is critical. International companies were associated with better management practices and a greater likelihood of exposure to international competition through exporting.<sup>11</sup> In a survey commissioned by the UK government of 1800 multinational companies with operations already in the UK, 60% of respondents identified labour market flexibility as a moderate or high degree of importance when determining FDI location. It is the UK's flexibility relative to other possible investment locations that influences boardroom decisions, so it is hugely positive that 70% of respondents stated that the UK had higher levels of flexibility than other EU economies.<sup>12</sup> Whether the nature of the investment is to create new jobs, or to improve the productivity of existing jobs, maximising the frequency and size of investments is good for the UK economy and good for workers.

Our flexible labour market also acts as a catalyst for innovation – another key component of raising productivity. Start-up firms seeking to commercialise innovative new products and services often carry a high level of risk. Flexibility helps growing firms to take pioneering approaches rather than unduly cautious ones. Flexible labour markets, which facilitate mobility between jobs, help to spread good practices more quickly across the business community. Staff with fresh enthusiasm, new ideas and wider networks are prone to fostering innovation and challenging the status quo. Enhanced mobility between jobs and across sectors increases the chance that people will find the jobs in which they are most productive. Whilst at a broader level, flexible labour markets allow the crucial reallocation of labour to emerging, higher-skilled and better-paid industries.

Higher productivity is good for workers as well as improving business competitiveness. Analysis conducted by Oxford Economics for the CBI in 2014 demonstrated that the shares of business income going to profits for shareholders and that spent on employing staff has not fallen over the last 50 years.<sup>13</sup> While the link between productivity and what is spent employing people is strong, it is often questioned because productivity across the economy has grown faster than the median wage. CBI research seeking to explain why this has happened concluded that productivity gains in the UK economy were disproportionately occurring in already higher-pay, higher-productivity sectors. As a result, the growth in pay was also retained in these sectors. This emphasises the importance of broad based productivity growth in order to achieve broad based pay growth. Increasing productivity in five sectors with lower productivity but a high number of workers to the level of productivity in the same sectors in the US would be worth £144bn. Even if this took 10 years to achieve, and if we only reached the productivity that the US achieves already – so we would still be behind – it would be worth an additional 2.4% real pay growth every year for 10 years.<sup>14</sup>

## **Working flexibly is a positive choice for most people and should not be curtailed**

The availability of options to work flexibly is much greater now than in the past. While even part-time working was uncommon when the CBI first surveyed its members about flexible working, this is now used in almost all companies. Other options for working flexibly range from the ability to work from home and make minor adjustments to working hours, through to job shares and even choosing when and where to work through a sharing economy platform. The availability of this flexibility has helped some previously underrepresented groups like parents with primary caring responsibility – often mothers, but increasingly fathers too – to

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<sup>11</sup> *Unlocking regional growth*, CBI, March 2017

<sup>12</sup> *Labour Market Flexibility and Foreign Direct Investment*, Whyman, P. and Baimbridge, M., Department of Trade and Industry, August 2006

<sup>13</sup> *Making Britain Work for Everyone*, CBI, June 2014

<sup>14</sup> *A better off Britain*, CBI, November 2014

access employment opportunities. This is a clear win-win situation as it has also widened the pool of talent from which businesses can recruit the people & skills that they need.

Even the most flexible working arrangements – like zero hours contracts or working via a sharing economy platform – are usually the result of a positive decision by the individual rather than work taken because it was all that was available. Research has found that over four-fifths of self-employed individuals want to keep working in this way rather than looking for employed jobs.<sup>15</sup> Two-thirds of zero hours contracts workers do not want fixed working hours.<sup>16</sup> And estimates for gig economy workers that would have preferred more traditional jobs range from just 1 in 7<sup>17</sup> to 1 in 4.<sup>18</sup> Considered together, these statistics make clear that flexibility is usually welcomed by workers rather than imposed against their wishes by their employers. Rather than targeting a reduction in the number of flexible contracts, the objective should be to offer work, as often as is possible, on the terms that people are looking for and with fair treatment within those contracts expected and offered.

These most flexible forms of work particularly suit people who are not financially dependent on a single source of income and who want to have complete control over when they work and what work they do. It is common among students, for example, who want to be able to decline the work they're offered when their studies need to take priority. There are also a number of older workers supplementing their income in retirement in this way too. Many work in this way to supplement another regular income. Research by the CIPD suggests 58% of workers in the gig economy do it as a 2<sup>nd</sup> job.<sup>19</sup> And CBI members have reported that some of their flexible workforce also hold the most flexible contracts to supplement income when work in their preferred occupation is unavailable – supply teachers, for example.

The growth in flexible working however, is often overstated. Today, almost four out of five people (79%) are permanent employees.<sup>20</sup> This has remained relatively consistent over the last 25 years. Most people still work with regular fixed hours too, either full-time or part-time, and only 2.8% of people have a zero hours contract.<sup>21</sup> While some have predicted that we are on the cusp of all work becoming gig work, this is not realistic. Hiring permanent employees with a guaranteed income in exchange for the employee guaranteeing to be available for agreed working hours is a good deal for business and is the foundation of the workforce. This isn't about to change, but it is about a range of options for companies to create work where a traditional permanent employee contract isn't sustainable. And looking ahead, businesses are if anything more focussed on expanding permanent recruitment rather than temporary roles. In the CBI's latest survey a balance of +19% of firms expect to grow their permanent employment over the next 12 months, while a balance of just +2% expect to increase temporary recruitment.<sup>22</sup>

## **Business and government must work in partnership to address the challenges we still face**

While celebrating the strong base created by the UK's labour market flexibility, it is also important that we are honest about areas where business and government action could improve the ability of companies and individuals to flourish. There are cases of poor treatment in some companies and it is right that these are

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<sup>15</sup> *Just the job – or a working compromise?: the changing nature of self-employment in the UK*, D'Arcy, C. and Gardiner, L., Resolution Foundation, 2014

<sup>16</sup> *Employee views on flexible contracts*, UK Commission for Employment and Skills (UKCES), 2013

<sup>17</sup> *To gig or not to gig? Stories from the modern economy*, Chartered Institute of Personal Development (CIPD), 2017

<sup>18</sup> *Good Gigs: A fairer future for the UK's gig economy*, Balaram, B., Warden, J. and Wallace-Stephens, F., RSA, April 2017

<sup>19</sup> *To gig or not to gig? Stories from the modern economy*, Chartered Institute of Personal Development (CIPD), March 2017

<sup>20</sup> *CBI analysis of labour market statistical bulletin*, ONS, April 2017

<sup>21</sup> *Labour Force Survey: Zero-hours contracts data tables*, ONS, May 2017

<sup>22</sup> *Employment Trends Survey 2016: People and partnership*, CBI/Pertemps Network Group, December 2016

highlighted and appropriate action taken. More broadly, action to spread opportunity and inclusion more effectively would make the UK economy fairer and more successful in the years to come. Despite the well-documented progress on challenges like the number of women on FTSE 100 board positions, your background still has far too strong an influence on whether you find a job, remain employed and receive pay increases over time.

Research commissioned by the CBI in 2014 showed that while most workers in lower paying jobs are able to improving their earnings over time and move up the income distribution, too many do not.<sup>23</sup> 1 in 3 of these workers were still in the lowest earnings group 14 years later, meaning that they are as likely to remain in the bottom pay group, as they are to have moved up to median earnings. This is a real concern for business as well as the individuals who have not been able to progress. Businesses want to make the most of everybody's talent and while not everybody will want to progress, 1 in 3 making no progress over a prolonged period is a cause for concern.

As well as the challenge of there being only limited ability to move up the relative income distribution, slowing real wage growth has also been challenging. During the 1980s and 1990s real wages grew by 20% for every pay group – albeit with the lowest paid receiving the smallest increase and the highest paid receiving the largest uplift. But the pace of real wage growth and distribution of pay rises changed from the late 1990s onwards. Between 1998 and 2011 only the real wages of the lowest paid 5% and the highest paid 5% exceeded 20%, and every group other than the lowest 5% saw a slowdown.<sup>24</sup> This reflects a productivity slowdown that it is important to address to enable pay to grow faster in future – and better employee relations is key to this. But it also shows that some interventions can make a real difference – like the successful and partnership-based introduction of a National Minimum Wage in 1999.

## **Fairness in our labour market is also required – policy must be well grounded in the realities of the labour market to be effective**

While having a job at all is the first fundamental step to benefitting from a thriving economy, and our high employment rate cannot be taken for granted, the quality of people's experience at work matters too. Poor experiences at work damage workers health and wellbeing, and mitigate against the engagement and productivity we need to drive prosperity in Britain.

The CBI agrees that spreading good working practices through the economy is important as it will improve company performance through higher productivity and greater consistency of treatment across the UK workforce. As we define what good work is, it is important that there is a focus on actual workforce experience and that the trap of lazy generalisations informed by outdated assumptions about the ways that people want to work are avoided. Business strongly believes that work can be both flexible and fair – whatever the form of contract.

As the CBI set out in its manifesto published ahead of the 2017 general election<sup>25</sup>, businesses recognise that they must continue to develop approaches that are fair, transparent and which build trust. The case for doing so in relation to how businesses treat their workforce is particularly strong. New laws have a role to play in ensuring fairness and building trust in business, but the UK already has a strong floor of rights and the examples of poor practice that have come to light in recent years have most often been about how people are treated, rather than a question of rights and employment law. While passing a new law has become the lever of choice for successive governments, government must rediscover its role as a steward of good employee relations rather than a regulator alone.

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<sup>23</sup> *A better off Britain*, CBI, November 2014

<sup>24</sup> *Making Britain Work for Everyone*, CBI, June 2014

<sup>25</sup> *Backing Britain's prosperity – CBI business manifesto 2017*, CBI, May 2017

The CBI agrees that good work is fair, engaging and affords the scope for development. With the right mix of targeted changes to the law, improvements to enforcement of the law, and a pro-active approach to promoting good employee relations, business and government can work in partnership to improve business performance, to improve fairness and trust in business, and improve individuals' experiences of work. Having engaged throughout Matthew Taylor's review and heard proposals from a wide range of stakeholders, the rest of this paper responds to some of the most significant proposals and sets out actions that CBI members believe would boost fairness and retain flexibility.

### **The UK's framework for employment status is effective and should be retained...**

The UK's employment status framework has served businesses and workers well. It grants basic rights to everybody who works in the UK and enhanced rights to employees, who have a longer-term mutual commitment to their employer. It has proven a reliable and predictable test, giving businesses and workers confidence about their rights and responsibilities. This framework is not in need of a radical overhaul.

New ways of working emerge periodically, creating periods in which there is uncertainty about how the law applies, or even whether the law can be applied. The 'gig economy' is the latest example. Any law – whether evolved through case law or passed in legislation – will have to change over time to remain relevant to modern working practices. Some have suggested that the UK's employment status framework should be replaced with definitions set in legislation, but this would prolong uncertainty. Statutory definitions would mean new legislation would be needed to respond to every new way of working in the future. It is clear from ongoing cases that employment judges feel the current framework can be applied to the 'gig economy'. Once these cases have been heard then precedent will be set and our labour market will change to respond to it – as it has in the past. The policy objective should be to reach this point as quickly as possible by accelerating these cases. New statutory definitions of employment status sound more definitive, but in practice the opposite is true. The boundaries of all laws are tested and set through case law. Creating new definitions in legislation would only reset this process, delaying certainty.

Ever since the status of 'worker' was created as a category between 'employee' and 'self-employed' for those who are dependent on an employer but without ongoing commitments to work, it has been challenged by some stakeholders. Successive governments, however, have recognised that this status is a significant strength of our labour market rather than a weakness and have rejected calls for it to be removed. The introduction of 'worker' status helped to extend employment rights to more people, and formalise work that had previously been more informal and open to abuse. The existence of 'worker' status has also allowed for new rights to be introduced for 'employees' that do not easily translate, if at all, to the relationships that 'workers' have with their employer. Retaining the 'worker' status is also important because some 'worker' arrangements have more in common with 'self-employment' than the relationships of 'employees', meaning that while some workers may gain more rights, others would likely lose them.

### **Recommendation**

- The UK's employment status tests are clear and should be retained – codifying them in primary legislation or changing the tests would delay rather than accelerate clarity about how the law applies to new ways of working

### **...but awareness and enforcement of employment status could be significantly improved**

While the UK's employment status test is effective, the guidance given to individuals and businesses and the processes to clarify status should be improved to minimise uncertainties. The first component of the package of reforms that business would support to achieve this goal is to extend the right that 'employees' have to a written statement of key terms and conditions of employment to all 'workers'.

The second element is to create a new, faster and cheaper way to be sure of your employment status. Improved guidance and an online status indicator tool have roles to play in this. So too does the advice that an individual may seek from bodies such as ACAS or the Citizens Advice Bureau. The CBI believes that all parties would benefit from the question of employment status being resolved without recourse to a full employment tribunal. This is one of the reasons why the CBI opposes reversing the burden of proof, which would still require the issue to be heard in a long and costly tribunal process – and is not simple to achieve legally in any case. Creating a new, fee-free fast track in the employment tribunal for swiftly resolving a claim in which the only complaint is the question of status, would be hugely beneficial. Separating the question of which rights are due from whether rights have been breached would also allow employers who want to do the right thing to test new ways of working, rather than only finding out a period of time later that their staff should have had a different status.

### **Recommendations**

- The right of employees to receive a written statement setting out key terms of their employment should be extended to workers to give them the same clarity about rights
- The options for receiving advice on their employment status needs to be clearer to individuals, and a faster and fee-free track within Employment Tribunals is needed to swiftly resolve status-only claims

### **Flexibility should benefit both parties – dialogue is key to making this the case**

A policy objective that targets a reduction in the number of flexible contracts or an increase in the number of guaranteed hours in employment contracts would be misguided as it assumes that all employees want the same thing. As we have already shown - this categorically is not the case. Adopting objectives that have these generalisations at their heart would prevent many people from working in ways that they choose. The proposal that a higher minimum wage should apply to non-guaranteed hours is an example of this. It risks undermining the success and enforcement of the minimum wage by making it more complex, and would create an incentive for businesses to move to a model of having more fixed short-hours contracts rather than offering additional hours, which would penalise those who want access to more work.

The way to increase the frequency with which flexibility benefits both parties, without damaging the ability of people who want to work flexibly to do so, is to improve the dialogue between an individual and their employer about predictability. An arrangement that suits both parties cannot be developed unless there has been a discussion about what the business and the individual want. There is a mechanism for the individual to initiate this discussion where they want more flexibility, but not where they want less. A right to request fixed or more fixed hours should be introduced on the same basis as the right to request flexible working as a more effective tool to address these issues, without undermining workers' options or the enforcement of the minimum wage.

### **Recommendation**

- A right to request fixed hours should be introduced on the same basis as the right to request flexible working so that employees always have the confidence to discuss what they want from flexibility with their employer

### **The 'pay between assignments' model for agency work is an integral part of the UK's agency regulations and must be retained**

Article 5.2 of the EU directive permits that Member States may 'provide that an exemption be made to the principle [of equal treatment] where temporary agency workers who have a permanent contract of employment with temporary-work agency continue to be paid in the time between assignments'. This type of

arrangement, also referred to as the Swedish derogation model, was referenced in the CBI-TUC agreement and legislated for in Regulation 10 of the AWR.

Since the regulations came into force in 2011 some trade unions have unfairly attacked this type of arrangement, falsely labelling it a 'loophole' or a form of evasion. Depicting the pay between assignments model in this way fails to acknowledge that it is an arrangement explicitly permitted within the Directive as an alternative means of improving the working conditions of agency workers. It also ignores the fact that workers have freely opted to trade a degree of short-term remuneration for longer-term job security and a greater range of employment rights, and that in some instances these arrangements have the strong support of trade unions. Agency workers engaged on this type of arrangement will have a contract of employment guaranteeing them a minimum weekly wage. The value these workers may attach to this degree of security should not be dismissed lightly.

These regulations have not been reviewed since their introduction, and it may be appropriate to review the legislation – without undermining the core goal of the Directive – including the terms under which a pay between assignments arrangement is permitted. There is no justification, however, for removing this arrangement entirely.

#### **Recommendation**

- The 'pay between assignments' model must be retained as an integral component of the Agency Workers Regulations, but its terms should be considered as part of a wider review of the regulations to ensure that it is used appropriately

#### **It is incumbent on business to engage their employees and give them voice in the workplace**

There is widespread recognition across the business community that high levels of employee engagement has real benefits. That's why it has regularly been the most frequently cited workforce priority for the coming year in the CBI's Annual Employment Trends Survey.<sup>26</sup> They recognise the positive impact on productivity and performance (73%), on customer and client satisfaction (57%) and on employee retention (44%). Employers use many strategies to engage staff both individually and collectively, but while there are pockets of excellent practice there is also a long tail of underperformance. This is highlighted in the findings of the Workplace Employment Relations Study in which 52% of employees consider that management were 'very good' or 'good' at seeking their views, but only 35% would say the same about their ability to influence business decisions.<sup>27</sup>

While it is recognised by all stakeholders that no one intervention will guarantee increased levels of employee engagement in every workplace across the country, the Information and Consultation of Employees Regulations are one tool to support this. Take-up by employees has been low, however, partly because employees expectations have increased – why would an employee wait for a month to raise an issue in a staff forum when they can share their view instantly with colleagues or publicly on Twitter, Facebook, WhatsApp or Glassdoor. Where these regulations have led to improved employee voice it has tended to be where mechanisms were introduced by employers who understood the potential benefits rather than them responding to a request from employees.

The CBI believes that some changes to these regulations may be justified (**Exhibit 1**), but cautions against thinking that reforming the ICE regulations is a silver bullet. Employers are committed to working with employees collectively – often via trade unions – where this is what the workforce wants. But the growing

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<sup>26</sup> *Employment Trends Survey 2016: People and partnership*, CBI/Pertemps Network Group, December 2016

<sup>27</sup> *The 2011 Workplace Employment Relations Study*, BIS/ACAS/ESRC/UKCES/NISER, 4<sup>th</sup> ed, July 2014.



demand for an individual employment relationship rather than collective representation is making collective voice a less powerful tool for employee engagement. A lack of awareness about the potential benefits for both parties of this approach to employee engagement, both among business and the UK workforce, is also a contributing factor. It is an example of an issue on which collaboration within sectors could help to spread good practices and on which the government would make a greater difference in its role as a steward of good employee relations than as its legislator. The CBI believes that giving ACAS a statutory duty to promote employee voice in UK workplaces might be a good first step.

#### **Exhibit 1**

Business would support limited changes to the ICE regulations to improve collective employee voice in UK workplaces where there is demand from the workforce for it. Specifically:

- All employees should be counted equally for the purposes of triggering the regulations rather than counting part-time or variable hours employees on a full-time equivalent basis;
- The default provisions that apply if the business and employees are unable to agree on the terms for the consultation body should also be the minimum terms it is possible to conclude where the business and its workforce are able to reach an agreement;
- While businesses must retain control to choose the appropriate level for collective representation, it should be possible for a more localised demand to trigger the regulations – for example by bringing the ICE trigger and the collective redundancy trigger into line by operating on a business unit or entity basis rather than requiring undertaking-wide support.

#### **Recommendations**

- ACAS should be given a statutory duty to promote employee voice in UK workplaces as part of a partnership between business and government to improve the levels of employee engagement across the UK
- The ICE regulations should be updated in line with Exhibit 1 to bring them into line with modern employment practices

### **The enforcement of employment rights needs to be improved**

Employment tribunals play an essential role in the UK labour market. Their effectiveness is essential given they are the vehicle for individuals enforcing most of their rights. Businesses believe that effective enforcement is essential to ensuring a level playing field for business competition. Business also strongly supports the creation of the Director of Labour Market Enforcement to improve co-ordination between intelligence-led enforcement bodies as an alternative to more widespread licensing. The CBI believes that employee relations in the UK would be improved most in compliant companies by focussing finite resources on improving employee relations rather than demonstrating compliance to a heavy-handed licensing regime.

Businesses have for a long time been concerned by the transition of the employment tribunal to become more like other courts and increasingly distant from their initial vision. They were supposed to be “easily accessible, informal, speedy and inexpensive”<sup>28</sup> but none of those requirements are met today. Sharing facilities with other courts is a sensible efficiency saving, but they have become indistinguishable in too many ways. The CBI has come to believe that the only way to reverse this shift is to return primary responsibility for employment tribunals policy to the BEIS department.

The greatest example of the wrong policy objective leading to a system that is failing employers and workers is the policy of employment tribunal fees. While the CBI strongly believes that fees in some form are

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<sup>28</sup> *Royal commission on trade unions and employers' associations 1965-1968*, Report of the Donovan Commission, (reprinted 1975), Cmnd 3623

essential to encouraging alternative dispute resolution, we have consistently criticised the existing fees & remissions regime. Three changes would make a big difference to enforcement of UK employment law via employment tribunals:

1. To tackle the misperception that lower earners could be asked to pay extremely high fees, £1,200 should be presented as a cap on the fee possibly due, rather than as the fee subject to remissions.
2. The contribution rate under the help with fees scheme should be reduced and the threshold above which the contribution rate comes into effect should be raised to the level of the National Living Wage.
3. A minimum £5 fee should be paid by all claimants to ensure that there is always an incentive to resolve disputes by agreement and without recourse to tribunal.

### **Recommendations**

- A package of reforms should be brought forward to return employment tribunals to being an easily accessible, informal, speedy and inexpensive means of dispute resolution – this should start with returning departmental responsibility for the system to BEIS
- Employment tribunal fees should be reformed to ensure that there is always an incentive to resolve disputes without recourse to tribunal where this is possible, and to reduce excessively high fees so that they are not a barrier to accessing justice

### **Good jobs should offer meaningful scope for development**

Improving the skills and capabilities of a workforce is a win-win situation. The business gets a workforce with up-to-date skills, and workers become more highly-skilled, more valuable to their employer, and see their pay rise over time. This strong business case is why businesses already invest £45 billion each year on training.<sup>29</sup> But the UK's historic approach to skills is increasingly ineffective as longer working lives make adult retraining more important, and as new technologies automate many of the intermediate-skilled jobs that previously acted as a bridge from lower-skilled jobs into highly-skilled ones.

This April businesses started paying the Apprenticeship Levy, and to make this policy a success the emphasis must be on the quality of training and the impact that it has on individual's careers rather than only the number of apprenticeships. Evolving it into a more flexible skills levy – like in France and Quebec – would increase the amount of training in UK companies compared to a less flexible 'apprenticeships only' system, and would mean that more workers would benefit. This is particularly important for the adult retraining that is necessary to ensure that currently lower-skilled employees benefit from the up-skilling of jobs as new technologies are introduced that improve productivity.

It is also important that individual's understand the career opportunities that are open to them. All companies should make a board level commitment to helping staff develop their careers and incentivise line managers to make this a priority. But a 'job for life' stopped being the norm many years ago, so there is a need for external careers advice at all stages of working life. Increasing the capacity of the National Careers Service to support adults who want to change occupations to progress their careers will have a greater positive impact than trying to develop a generic skills framework. Business has welcomed the shift in the skills system away from attempts to develop generic frameworks and the move towards a more employer-led system – as seen in the creation of the Institute for Apprenticeships, for example, and its focus on occupational apprenticeship standards rather than job specific standards or generic ones. The CBI is concerned that a generic skills framework against which all jobs would be assessed would add red tape without helping workers to understand what they really need to do to progress or change occupations.

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<sup>29</sup> UK employer skills survey, UKCES, 2015

### **Recommendation**

- The Apprenticeship Levy should evolve into a flexible skills levy that would benefit more workers, focusing on the quality of training and the impact it has on employment and pay growth

### **A holistic review is needed to consider the tax and benefits in self-employed arrangements rather than piecemeal changes that add to complexity and undermine enforcement**

The number of self-employed has been steadily rising in recent years and now stands at 4.78 million, 15% of all people in work.<sup>30</sup> This is almost a million more people working for themselves than a decade ago. The diversity of types of self-employment and the reasons for choosing to work in this way have been detailed in work like the RSA's Entrepreneurial Audit.<sup>31</sup> It is clear that a rise in the number of self-employed workers is not uniformly positive or uniformly negative. The rise has however raised questions about the effectiveness of social policies like maternity, paternity and parental leave, sick pay and pensions. Policy solutions developed for employees are not effective or appropriate for the self-employed, so alternative mechanisms for delivering these objectives must be developed. Options to be considered range from private provision through insurance, to co-operative solutions and the government administering statutory paid leave directly in the absence of a stable employer to act as an intermediary.

The extension of the new Single Tier State Pension and the ongoing consideration of how to extend other social protections to the self-employed has started a wider discussion about balance of tax they pay and benefits they receive. Businesses are clear that an individual's employment status should be determined by the nature of the relationship between the business and the individual rather than tax considerations, so it is right that the lower rate of Class 4 NIC for the self-employed is reviewed. But the current tax system is complex, not easily understood and hasn't kept pace with modern ways of working. The CBI believes that a holistic review of the tax system is needed rather than further piecemeal changes. Implementation should be phased in over time to give businesses opportunity to reflect on changes in future commercial arrangements. This must be addressed as part of a holistic review of tax to ensure that the tax incentive for entrepreneurial activity is enhanced rather than lost. This review should be informed by six principles:

- Simplicity to bring greater clarity to employment status for tax purposes;
- Entrepreneurial in spirit to spur growth among start-ups;
- Supportive of the flexibility of the labour market;
- Innovative in the use of technology to ease the compliance burden;
- Sustainable to fund the entitlements on offer; and
- Efficient use of HMRC's and businesses' limited resources for enforcement activities.

### **Recommendation**

- A holistic review of the tax of self-employment and the benefits these individuals receive is needed to avoid piecemeal changes that add complexity and damage enforcement

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<sup>30</sup> *Labour market statistical bulletin*, ONS, May 2017

<sup>31</sup> *The Entrepreneurial Audit: Twenty policy ideas to strengthen self-employment and micro businesses in the UK*, Delloit, B. and Wallace-Stephens, F., RSA, February 2017

