

17th May 2017

CWU Response to the Independent Review of Employment Practices in the Modern Economy, led by Matthew Taylor

Introduction

1. The Communication Workers Union (CWU) is the largest union in the communications sector in the UK, representing approximately 192,000 members in the postal, telecoms, financial services and related industries.
2. In calling for better quality work, Matthew Taylor has spoken publicly of the need to boost 'worker voice' in organisations.¹ It is remarkable therefore that the trade union movement - which exists precisely for this purpose - is entirely absent from the Review's preliminary proposals.
3. The Government has spent the last seven years dismantling workers' rights, attacking trade union rights, and excluding trade unions from key policy proposals². There is no realistic prospect of redressing the imbalance of power between workers and employers in such a fiercely anti-worker environment. Strengthening the voice of workers must begin at the very least with a repeal of Employment Tribunal fees so that workers can assert their statutory employment rights. It must also begin with a repeal of the Trade Union Act and the introduction of stronger trade union rights to support statutory recognition and collective representation.
4. Against the backdrop of extreme levels of job insecurity and in-work poverty in Britain today, the CWU is calling for a new deal for workers with employment rights and collective bargaining at its heart. We believe the law needs to change to ensure that all workers are treated fairly and entitled to a decent floor of rights at work, including a real living wage, holiday pay, sick pay, protection from unfair dismissal and a workplace pension.

Security, pay and rights

Q1: To what extent do emerging business practices put pressure on the trade-off between flexible labour and benefits such as higher pay or greater work availability, so that workers lose out on all dimensions?

¹ Matthew Taylor warns against 'cog in a machine' working culture, Financial Times online, 9th May 2017

² Such as the 2017 industrial strategy green paper, which did not include a single mention of trade unions.

5. The evidence suggests clearly that the use of flexible labour has led to workers losing out on all dimensions, because they are being denied both their statutory employment rights and the autonomy that should be associated with self-employment and other atypical forms of work.

False self-employment

6. There is evidence of a major problem of false self-employment in the UK, with estimates that nearly half a million workers could be in this situation.³ Self-employed contractors are increasingly being used by employers to keep costs low, when in reality they have all the characteristics of workers or employees.
7. Companies including Uber, CitySprint and Excel have built their business models on the services of self-employed drivers and couriers, but recent Employment Tribunals have found that they are in fact acting as employers. In each case, the court ruled that workers lacked the autonomy over their affairs to be treated as self-employed, and that they should be entitled to basic statutory employment rights.
8. Self-employed workers in the 'gig economy' are often on extremely low rates of pay, and they have to work dangerously long hours to make a basic living. A number of investigations in the parcel delivery sector have revealed that so-called 'lifestyle couriers' for companies such as Hermes, Yodel and Amazon are paid piece rates per successful delivery, and often earn below the statutory Living Wage. Despite working for highly profitable companies, many rely on tax credits to make ends meet.⁴ Others admit to speeding due to a tight delivery schedule⁵ and working illegal hours in order to complete their workload.⁶
9. It is shameful to find these potentially illegal working practices in 21st century Britain and we believe they have no place in any sector of the economy. Furthermore, the growth of unregulated, low cost competition in the parcels market poses a threat to jobs and labour standards in the regulated postal sector, which is accelerating a race to the bottom on pay and conditions. This downward pressure on pay and conditions is mirrored in other sectors where low cost employment models are prevalent.
10. Precarious jobs on poverty pay and potentially illegitimate terms are now becoming the benchmark for employers and regulators when measuring cost efficiency. Companies are presenting themselves as good employers if they offer slightly better terms and

³ Citizens Advice, *Neither one thing nor the other: how reducing bogus self-employment could benefit workers, business and the Exchequer*, 2015. Accessed at:

<https://www.citizensadvice.org.uk/Global/CitizensAdvice/Work%20Publications/Neither%20one%20thing%20nor%20the%20other.pdf>

⁴ Revealed, delivery giant Hermes pays some couriers less than the living wage, Guardian online, 18 July 2016, accessed at: <https://www.theguardian.com/society/2016/jul/18/hermes-couriers-paying-staff-less-than-living-wage>

⁵ Amazon drivers admit to speeding due to a tight delivery schedule, Guardian online, 11 November 2016, accessed at: <https://www.theguardian.com/business/2016/nov/11/amazon-logistics-drivers-speeding-minimum-wage>

⁶ Amazon drivers 'work illegal hours', BBC News website, 11 November 2016, accessed at: <http://www.bbc.co.uk/news/uk-england-37708996>

conditions than the disrupter businesses, thereby undermining secure jobs with a living wage and pension security. This has brought the CWU into dispute with Royal Mail, which is justifying its proposals to reduce terms and conditions on the basis that it will still be a better employer than its low cost parcel competitors. The effect is a new norm with a start point of minimum standards rather than decent jobs on fair terms.

11. There is no doubt that low pay is a serious and widespread problem amongst the self-employed, with recent data from the Resolution Foundation suggesting that 45% of self-employed workers currently earn less than the National Living Wage.⁷ A CIPD survey found that of those for whom gig work was their main job, only 31% said they were "living comfortably" or "doing alright".⁸ Furthermore, fewer than four in ten "gig economy" workers say they feel like they are their own boss.⁹

Agency workers

12. The Resolution Foundation recently reported that agency worker numbers are significant and rising fast, with a 30% increase since 2011 to 865,000.¹⁰ It also found that agency working offers a raw deal for many, and that agency workers tend to be paid less than their permanent counterparts, with an average 'pay penalty' of 22p an hour.¹¹
13. There is clear evidence from the CWU's experience that agency workers are treated unfairly compared with their permanent colleagues. The CWU represents over 1,400 agency workers in Manpower, most of whom work on a contract for BT and are paid up to £500 less per month than direct employees doing the same job. In large part this is the result of abuse of the 'Swedish derogation', which exempts agencies from offering the same rate of pay to an agency worker, provided that they have a permanent contract of employment and are paid at 50% of pay between assignments or the National Minimum Wage (NMW) for the hours worked on the last job, whichever is greater. The vast majority of our Manpower members in BT are on such a contract, commonly known as a pay between assignment (PBA) contract. Due to the low pay rates that our Manpower members are on, most would only be paid the NMW between assignments.
14. The CWU has campaigned over more than a decade for equal treatment for agency workers, and our 'Closing the Loopholes' campaign aims to tackle the weaknesses in legislation that continue to allow agency workers to be paid a lower rate for the job.¹² Such legal protections are essential if we are to secure fairness and equality for agency workers.

⁷ Self-employed earn less than they did 20 years ago, Financial Times online, 18 October 2016, accessed at: <https://www.ft.com/content/863b0c90-9466-11e6-a80e-bcd69f323a8b>

⁸ CIPD, March 2017, *Ibid*: p.10.

⁹ CIPD, March 2017. *To gig or not to gig? Stories from the modern economy*: p.48.

¹⁰ Resolution Foundation, *Secret Agents*, Dec 2016

¹¹ Resolution Foundation, *Secret Agents*, Dec 2016

¹² Closing the loopholes for agency workers, CWU, accessible at:

<http://www.cwu.org/media/campaigns/closing-the-loopholes-for-agency-workers/>

Q2: To what extent does the growth in non-standard forms of employment undermine the reach of policies like the National Living Wage, maternity and paternity rights, pensions auto-enrolment, sick pay, and holiday pay?

15. Numerous non-standard forms of employment have emerged in recent years by companies seeking to avoid their statutory employment obligations. These include employment intermediaries such as payroll companies, umbrella companies, and personal service companies, which all serve as mechanisms to shift responsibility for tax, national insurance and employment rights from the business on to the worker.
16. The use of umbrella companies has reportedly escalated in response to changes to the law in 2014, which were designed to force employment agencies and payroll companies to deduct tax and national insurance at source when paying workers.¹³
17. There appears to be no reliable or official data on the number of people affected by these particular false self-employment devices. However, the indications are that the victims are largely low paid workers. TaxAid, a charity that helps people on low incomes with their tax affairs, told the Lords Select Committee on Personal Service companies in 2014 that they dealt with significant numbers of lower paid individuals who were engaged through umbrella companies. Example occupations included security guards, couriers, drivers, cleaners and chefs.¹⁴ Victims also include qualified professionals such as teachers. In a written submission to the Lords Select Committee, The National Association of Schoolmasters Union of Women Teachers (NASUWT) suggested that the overwhelming majority of supply teachers deliver their work through agencies and umbrella companies¹⁵.

Denial of statutory employment rights in the unregulated postal sector

18. The express parcel delivery sector is growing rapidly as a result of the boom in online shopping, and parcel courier companies like Hermes and Yodel are expanding their operations. However, unlike Royal Mail, these unregulated parcel operators are not accountable to minimum quality of service standards. As indicated earlier in this submission, they typically rely on workers employed as independent contractors to maintain low costs and flexibility, and circumvent workplace rights. Consequently, lifestyle couriers in these companies do not receive statutory employment benefits such as sick pay, holiday pay, maternity and paternity rights, or pensions auto-enrolment.
19. At the same time, however, these workers have all the characteristics of direct employees, working long and regular hours for the same company with little or no control over their affairs at work. Therefore, whilst enjoying none of the benefits of self-employment, lifestyle couriers are being asked to take on all the risk including responsibility for National Insurance, tax, van hire, fuel, travel time, vehicle maintenance and insurance.

¹³ Labour Research Department, *Casualisation at work, A guide for trade union reps*, August, 2014.

¹⁴ House of Lords Select Committee on Personal service companies (April, 2014), 39

¹⁵ House of Lords Select Committee on Personal service companies (April, 2014), 40

20. It is difficult to establish the number of bogusly self-employed workers in the postal sector due to the limited data available, but reports suggest that there are nearly 20,000 in Hermes and Yodel alone. There are thousands more in other companies, including Amazon, DPD and UK Mail.

Trade union rights

21. The Taylor Review has made some valuable observations ahead of its final recommendations, including the need to give workers a 'voice',¹⁶ the importance of good work and its link to productivity, and the need for workers to be 'engaged' by employers.¹⁷

22. The CWU is therefore extremely disappointed that trade unions, which exist precisely to progress these objectives, have been entirely excluded from the discussion and the Review's preliminary proposals.

23. Trade unions and collective bargaining help to build a positive industrial relations climate, and there is evidence that this brings numerous benefits to organisations and their employees. For example, good industrial relations promote better quality workforce skills and training¹⁸, family friendly policies¹⁹, and higher pay and reward²⁰, all of which support a more committed, motivated and productive workforce²¹.

24. However, trade union rights in the UK are among the most restrictive in the world and have come under attack most recently through the Trade Union Act. It is no coincidence that there has been an explosion of insecure employment in this country against this backdrop.

25. We are calling for the repeal of the Trade Union Act and want to see a set of positive rights to advance collective bargaining and redress the imbalance of power between

¹⁶ Workers need a voice but Taylor can't provide it, Institute of Employment Rights, 21 March 2017, accessed at: <http://www.ier.org.uk/blog/workers-need-voice-taylor-can%E2%80%99t-provide-it>

¹⁷ Is work fair and decent? That's not how voters see it, BBC news online, 9th May 2017, accessed at <http://www.bbc.co.uk/news/business-39849571>

¹⁸ Skills and training, the union advantage, Centre for Employment Relations Innovation and Change, Leeds University Business School, Research paper 21, May 2015, https://www.tuc.org.uk/sites/default/files/Skills_and_training.pdf. The report looks at the effect of trade unions on training between 2001 and 2013, and finds among other things that: 'a union voice and ULR's were associated with higher levels of training than in non unionised workplaces'.

¹⁹ The Fourth Worklife Balance Employer Survey, BIS Research Paper No.184, December 2014 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/398557/bis-14-1027-fourth-work-life-balance-employer-survey-2013.pdf. The report finds that when there was a union presence at the workplace, availability of all forms of flexible working practice was higher.

²⁰ Trade union membership 2014, Department for Business Innovation and Skills, June 2015 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/431564/Trade_Union_Membership_Statistics_2014.pdf The report finds that average earnings are 16.7% higher for union members than for non union members

²¹ The link between employment relations, pay, skills and productivity is widely recognised. See for example: Sisson, K. (2014) The UK Productivity Puzzle – is employment relations the missing piece? Acas policy discussion papers <http://www.acas.org.uk/media/pdf/o/8/The-UK-Productivity-Puzzle-is-employment-relations-the-missing-piece.pdf>

workers and employers. As Matthew Taylor has rightly said, this imbalance leads some employers to exploit the desperation of a powerless workforce.

26. In particular, we believe there should be a lowering of the bar for statutory union recognition and stronger protections to maintain recognition agreements. At present, trade unions have to meet numerous difficult criteria to be recognised by an employer, including complex assessments of the number of members, a determination about who should be part of the potential bargaining unit, a secret ballot and majority support. Consequently, acquiring a statutory recognition agreement can be an adversarial process which is bureaucratic for both the business and the trade union, and as a result voluntary agreements are common.
27. At the same time, it is too easy for employers to derecognise trade unions. Where an employer voluntarily recognises a trade union, it can derecognise it at any time. If an employer wants to 'prove' insufficient support for a trade union recognition agreement, there is no independent scrutiny of how that evidence is gathered and also no protection against undue influence from the employer.
28. By way of illustration, the CWU was derecognised by Virgin Media in 2012 ahead of the company's merger with US cable TV operator Liberty Global, despite a previously constructive relationship between the two parties. Virgin Media ran a 'referendum' for just eight working days which was not subject to independent scrutiny. Virgin Media was able to decide who the electorate was and as a result the majority of those included in the ballot were not covered by the CWU recognition agreement and a large percentage were not covered by any recognition agreement at all. This skewed the results by building in a majority who were outside of the recognition agreement. The only opportunity the CWU had to communicate with all staff was the publication of one short statement on the company intranet.
29. We also believe there should be a right of access by trade unions to the workplace and a clear duty on the employer to facilitate this, including access in advance of voluntary or statutory recognition applications. Access should not be restricted to representation but also include access to recruit potential members.

Progression and training

Q3: How can we facilitate and encourage professional development within the modern economy to the benefit of both employers and employees?

30. The UK has a serious problem of under investment in skills, which poses a major threat to the quality of jobs, productivity and economic growth. A recent report from the IPPR has found that employer spending on training is half – or over £6 billion less – per employee per year than the EU average for continued vocational education.²²

²² Skills gap threat to post Brexit economy, IPPR, 18 Feb 2017, accessed at: <http://www.ippr.org/news-and-media/press-releases/skills-gap-threat-to-post-brexiteconomy-uk-employers-spend-6bn-less-on-skills-than->

Consequently, we have a relatively high proportion of low-skilled adults compared with our international competitors, which is seen as a particular weakness for the UK economy.²³

31. It is widely accepted that apprenticeships are a crucial part of training and skills development, particularly for young people. However, there is insufficient investment in apprenticeship schemes, and the £2.6 billion raised by the government's apprenticeship levy this year will fail to restore employer investment to levels seen a decade ago.²⁴
32. The CWU is concerned that too few apprentices are receiving the kind of high-quality in work training that is needed by individuals and the economy at large. Indeed, there is evidence to suggest that ineffective schemes have been used by employers as a means of circumventing their obligations, such as paying the statutory minimum wage.
33. Where sub-contracting is used to deliver services on behalf of larger companies, the contracts are short-term, the contractors are often SMEs, sole traders or falsely self-employed and do not have the capacity to invest in the long-term training of an apprentice. Companies that rely on models of false self-employment do not offer apprenticeships, as apprentices have to be directly employed. They offer no commitment to their workforce and therefore do not invest. As well as reducing training opportunities, this also puts pressure on employers who do support training and apprenticeships. It is difficult for employers of direct labour, operating within the law, paying their due taxes and complying with employment legislation, to compete on price with companies using low-taxed illegitimate labour.
34. We believe there should be greater government action to ensure sufficient support for apprenticeships, and that increased investment from the public and private sectors is vital in improving vocational skills and training. We also believe that training and skilling should be designed in cooperation with employees and trade unions, ensuring that it is as relevant and accessible as possible.

The balance of rights and responsibilities

Q4: Do current definitions of employment status need to be updated to reflect new forms of working created by emerging business models, such as on-demand platforms?

35. We support the view presented by the Institute of Employment Rights (IER), that the current definitions of both an 'employee' and a 'worker' give rise to serious problems of scope, with many increasingly common but non-standard forms of employment being

euro-average <http://www.ippr.org/news-and-media/press-releases/skills-gap-threat-to-post-brexiteconomy-uk-employers-spend-6bn-less-on-skills-than-euro-average>

²³ UKCES bulletin: UK skills and international competitiveness, UK Commission for Employment and Skills, 30 October 2015, accessed at: <https://www.gov.uk/government/news/ukces-bulletin-uk-skills-and-international-competitiveness>

²⁴ IPPR, *ibid*, Feb 2017

excluded from receiving full employment rights.²⁵ We believe these definitions need amending to ensure a decent floor of rights for all workers, including those in atypical employment such as online platform work and bogus self-employment, which have grown rapidly in recent years.²⁶

36. As we have discussed, these various forms of casual employment are generally associated with low pay and a lack of basic employment rights, such as paid holiday, protection from unfair dismissal, sick pay and a workplace pension. Self-employed status is also being used as a means to avoid employment related taxes, which presents a considerable problem of lost revenue for the Exchequer. Citizens Advice reported in 2015 that as many as 460,000 people could be in false self-employment²⁷ and in early 2015 the Office of Tax Simplification estimated lost tax from bogus self-employment would have been £314m if 10% of those classed as self-employed, were categorised wrongly.²⁸
37. We therefore believe that much more clarity is required as to what defines a self-employed worker, so that there are clear guidelines to differentiate the genuinely and falsely self-employed.
38. We also support the view of the IER that existing statutory standards should be universal in scope and effective in application.²⁹ We believe that all workers who are engaged to provide labour should qualify for the same statutory employment rights, the only exception being where they are genuinely self-employed i.e. actively running a business on their own terms.
39. Similarly, greater recognition needs to be made of the textures within the gig economy particularly in regards to the number of hours worked per week. Given these can fluctuate greatly outside of a worker's control, we believe that the laws governing continuity of employment should be reformed so that workers maintain their statutory rights for periods in which work is not provided by the employer.
40. Finally, we believe that there should be a statutory presumption that all workers qualify for these rights, that the onus for proving otherwise should fall on an employer and that they should be supported by strong collective bargaining agreements. The CWU is calling for a bold new deal for workers with an emphasis on fairness delivered through

²⁵ K. D. Ewing, John Hendy and Carolyn Jones eds., *A Manifesto for Labour Law: towards a comprehensive revision of workers' rights* (June, 2016), p.35

²⁶ The number of people employed on a zero hours contract in their main job has risen from 143,000 in 2008 to 903,000 today (ONS Labour Force Survey, Sept 2016) and there are now 865,000 agency workers, up by 30% since 2011 (Resolution Foundation, Secret Agents, Dec 2016). Nearly 5 million crowd workers in the UK are estimated to have found work through online platforms such as Uber and Upwork (UNI Europa, University of Hertfordshire, Feb 2016).

²⁷ Citizens Advice, *Neither one thing nor the other: how reducing bogus self-employment could benefit workers, business and the Exchequer*, 2015. Accessed at: <https://www.citizensadvice.org.uk/Global/CitizensAdvice/Work%20Publications/Neither%20one%20thing%20nor%20the%20other.pdf>

²⁸ Office of Tax Simplification, *Employment Status Report* (March 2015), p.29

²⁹ K. D. Ewing, John Hendy and Carolyn Jones eds., *A Manifesto for Labour Law: towards a comprehensive revision of workers' rights* (June, 2016), p.64

stronger employment rights, trade union rights and collective bargaining and new forms of ownership and governance.³⁰

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³⁰CWU setting the agenda for working people at TUC day three, 13th September 2016, accessed on 12th December 2016 at: <http://www.cwu.org/media/news/2016/september/13/cwu-setting-the-agenda-for-working-people-at-tuc-day-three/>

