Submission To The Review of Employment Practices in the Modern Economy

Personal Submission By:

Date: 15th May 2017

Background

As someone working in a particular form of the "gig" economy that hasn't received the same attention as Uber, Sprint, etc but is a significant and growing part of the UK economy - the fitness sector (budget gyms), I wanted to ensure that this model is not left out of any recommendations or findings by the review. I have worked in this sector in a "gig" arrangement for the last 7 years and have seen how over that timeframe the disequilibrium between the self-employed "worker" and the company has increased significantly. My comments below whilst specific to one company are relevant to both other companies in the gym/fitness & leisure sector and across many companies in the "gig" economy in general.

In the rapidly growing budget gym sector the (plus some, but not all, of the smaller players) operate a business model where the "workers" work fixed shifts for them (typically between 10-15 hours per week) but are not paid at all. Instead, outside of these shift hours they are allowed to use gym facilities to train personal training clients (who are also members of the gym) and keep any revenue for themselves (hours in lieu of rent model) . Like many "Gig" type jobs the the theory seems a fair trade off but the reality is very different. **Workers are effectively held to ransom under this system as their reliance on a client base makes it very difficult to move elsewhere and it is made very clear to them that in practice they have no rights at all in the arrangement.**

I am more than happy to provide a full copy of an "Agreement" to the Committee on request but highlight below some of the key issues under the terms of reference of the Commission.

The commonality being that a "worker" is treated as self-employed when it devoids the company concerned of obligations, and as an employee in all but name with no rights whatsoever, when that benefits the company concerned.

Security, Pay & Rights/ Balance of Rights & Responsibilities

- **"Agreements" are presented to the self-employed shift worker as a *fait accompli***, no negotiation allowed, and are often updated with more onerous conditions each time, with the worker told to sign or leave

- **Clauses that protect the company from being subject to employment obligations.**

"The trainer acknowledges and agrees that the [Company] shall not be liable to the Trainer for any salary, sick pay, holiday pay or pension contributions or any other payments"
"This Arrangement does not constitute a contract of employment….nor is…. deemed to be a worker undertaking a contract for services to the [Company]. The Trainer….is entirely responsible for his/her own tax and National insurance arrangements"
"Not to warrant that he/she is an employee of [the Company] or associated with [the Company]"
"Nothing in this agreement shall render the Trainer an employee, worker, agent or partner of the [Company] and the Trainer shall not hold himself out as such"
"In the mutual interest of the parties…" is used to justify work practices that in reality are clearly not in the interest of the "worker"

- **Self-employment status as a form of tax avoidance by hiring companies**

"The Trainer shall be fully responsible for and shall indemnify the [Company] for and in respect of: any income tax, national Insurance and social security contributions…"
"The Trainer shall...indemnify the [Company] against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the [Company] in connection with or in consequence of any such liability, deduction, contribution, assessment or claim.'

- **Termination Without Notice Clauses leave "worker" in a constantly precarious position afraid to speak out when their rights or safety are put at risk**

"[Company] may terminate this agreement immediately at any time without notice….if notice given, the Trainer shall at once...provide [Company] with a list of all clients …. Or transfer to another Personal Trainer of the [Company]
Therefore giving the Company managers the authority to deprive any trainer of his livelihood at a moments' notice and instill a culture of fear and intimidation. There are no recourse or alternative channels to approach in the event of termination as Trainers are not considered part of the Human Resources activity of the Company.

- **Legally dubious gagging clauses put in the "Agreement"to prevent "workers" addressing grievances over rights externally**

"To ensure that all information obtained...about the [Company]...is treated in the strictest confidence and that such information shall not....be divulged to any outside party"

- **Changes or policies which put the company at risk of being perceived as an employer or as a breach of basic rights are not written into the agreement or are left to the discretion of branch level manager so that company can absolve itself of any responsibility**
- I am currently allowed the pro rata equivalent of 13 days unpaid leave per year (4 actual shift days per annum), no bank holidays, and 30 days notice of taking any leave is required. If sick or unable to work (quite likely in a sector where work injury risk is very high), cover must be found and provided from only other Trainers at that particular branch, not easy at short notice. Bereavement and other emergency leave entirely at the discretion of manager with pressure to return to shift work quickly.
- Shift work roles defined hour by hour with little room for flexibility, daily and monthly sales targets are given, Trainers ordered what to do and fixed shift hours set by the company. A large number of Trainers are hired (as there is zero cost to the company) so that in practice it is hard for many trainers to earn the equivalent of the National Living Wage (and the Company turns a blind eye to those claiming benefits - effectively their employment being subsidised by the state and taxpayer)
- Workers are effectively made to compete with themselves by offering the services that they charge for out of shift hours for free during the shift (and increasingly being pressured to do so outside of their shift hours as part of company membership promotions etc). **The companies therefore take more and more from the "worker" with less and less in return**
- Threats to "workers" that they will be blacklisted in the industry if they cause trouble on leaving or being terminated

Proposals:

- **DWP and HMRC rules in terms of what constitutes employment or self-employment** are enforced more rigorously or that a third category of "self-employed worker subject to employee working conditions (worker)" is more effectively and clearly enshrined in legislation rather than left entirely to the interpretation of the courts or tribunals

- All shift workers regardless of employment status, unless truly working for themselves, are afforded the **same basic protections as afforded to employees** - minimum wage, the right to sick leave (not necessarily paid sick leave), maternity and paternity leave and pro-rata holiday entitlement and these are distinguished from genuine self-employed consultants etc who are in a genuine equal parties contractual arrangement with larger

companies rather than an arrangement where they have no bargaining position or contractual protection

- **A right to and a process for challenging intimidating employment practices**

- **Afforded the same Health & Safety protections as employees**

- **That "gig" worker "employers" pay the equivalent National Insurance contributions and other employment related taxes as for an equivalent employee (or at least equivalent to the National Living Wage)** and ensure that their "gig" workers are not claiming benefits to which they are not entitled as a means of subsidising inadequate income

- **Four weeks notice given before working patterns are withdrawn or changed**

- Self-employed shift workers earning more than say £10,000 in a particular employment situation are afforded the same **auto-enrolment pension rights** as equivalent employees

- That employment sectors such as budget gyms and certain sectors of entertainment and hospitality industry are included in any future legislation as they pay no remuneration to their shift workers but rather have **"a use of their facilities in return for labour arrangement" (sometimes referred to as the "Modern Serf economy")** under increasingly onerous terms that fall far short of the Prime Minister's vision of fair treatment and in particular exploit young newly qualified entrants to the sector for "free" labour with no rights and no tax accountability by the company in relation to its workers

As I am currently working in this sector I am happy for my submission to be published in any form but would prefer to have my name witheld from publication at this stage (I do give permission for it to be included in any final report) and am happy to give further evidence both written or verbal at any stage.

Yours' faithfully