

A response to the Taylor Review's employment practices questions

Keith Sisson

Emeritus Professor of Industrial Relations
Industrial Relations Research Unit
Warwick Business School
University of Warwick

keithsisson@hotmail.co.uk

My starting point is that the UK is bedevilled by a chronic problem of low pay, low skills and low productivity resulting in widespread anger and dissatisfaction with wages, living standards and their inequality. Rising to the challenges of further globalisation/robotisation/digitalisation/automatisation is going to be especially difficult because of this. Improving productivity has to be the priority - which means targeting the quality of employment¹. Let's welcome platform companies and the like, but not on the basis of many of their current employment practices: the last thing the UK needs is more low paid and low skill jobs offering little or no security. Business models assuming society will subsidise poor pay and working conditions shouldn't have any future. Mainstream employers should be required to take much greater responsibility for workers in their supply chains. There is also a need for active and joined-up government - it's the lack of this in recent decades that's allowed the low pay, low skills and low productivity problem to fester. Amending employment law to close off the 'low road' is a very necessary first step. The big challenge, though, is going to be to develop and fund the 'social safety net' needed to help people cope with the fundamental changes taking place.

¹ For further details, see Keith Sisson. 2016. Shaping the world of work - time for a UK jobs strategy, *Warwick Papers in Industrial Relations* No 105.

1 Security, pay and rights

- 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
- 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?

1.1 The answer to both questions must be very substantially. Most obviously, there is the evidence coming from the high profile cases being reported in the media or hearings of the House of Commons Select Committees. Also important, though, are the numerous personal stories that organisations like Citizens' Advice are able to tell. Many of those involved describe themselves as 'involuntary' self-employed, part-time or temporary workers. They complain of unlawful pay deductions and reductions in hours to meet increases in the National Living Wage, of a failure to pay statutory sick pay and of unequal treatment with permanent colleagues. Worries about the insecurity of income and managing day to day finances are widespread, along with concerns about their earnings and the relationship with any social benefits. Maintaining good relationships with family and friends figures prominently as does staying in good physical and mental health.

1.2 It isn't just individuals who are affected, however. Some practices threaten to disrupt the employment and social security systems that developed after World War 2 - with more to come with further globalisation/robotisation/ digitalisation/ automatisisation. The employment relationship, remember, has evolved to become the lynchpin of capitalist societies. As well as turning workers into consumers who generate growth, employment is a major source of tax revenues. Just to quote one example, the IFS estimates that by 2021/22 the costs of self-employment to the Treasury will be c3.5 billion and that's just because the disparity in treatment under the taxation system². Social security and pensions depend on employment too as does legal responsibility for public liability and health and safety. Employment is where people acquire social as well as technical skills, which are reflected in a country's stock of social capital as well human capital. The balance between work and family lives and identity and social recognition are also involved.

Some things new: some things old

² www.ifs.org.uk/publications/8872

1.3 Some practices are relatively new. Perhaps most obvious are those of platform companies like Uber and Deliveroo. There is little of the management hierarchy used to direct and control workers in traditional companies. Instead, app and algorithm-based systems are being used to organise large numbers of seemingly independent owner-operators. But these don't just put customers in touch with operators, as in a quasi franchise of one model, but also fulfil many of the functions of management - crucially, they determine the price for the job and arrange payment for it. Performance management (via app-based customer feedback) also features strongly. There is a great deal of mutual dependence as well: the companies rely on their supposedly owner-operators to fulfil customer expectations so that they can charge and profit; and the owner-operators depend on the company both to supply and pay for work.

1.4 Many of the practices are very far from new, however. Bogus self-employment has long been a feature of construction - so-called labour only contracting (the 'lump') was the subject of the major Phelps Brown review in the 1960s³. In the case of agency workers, the House of Commons Select Committee's references to Victorian workhouses in considering Amazon and Sports Direct's distribution depots are not just moral judgments, but factual statements. The use of gang masters to supply workers was widespread in the 19c - an early attempt to regulate it in agriculture was the 1867 Gangs Act. Casual (zero hours) working is also nothing new. Agriculture has a long history of seasonal working. The docks and the Fleet Street national newspapers similarly relied on sizable numbers of casual workers until recent times.

A common thread?

1.5 Much is made of flexibility in explaining developments. In the case of employees there clearly are cases where individuals value the flexibility of self-employment or zero hours arrangements. It's important not to be carried away, though. There are many, mostly relatively low paid, workers for whom these arrangements are far from being a life-style choice. Some have been encouraged by little or no pay growth to give self-employment a try or, maybe, as a way of supplementing their income with second and third jobs involving this status. Others have been given little or no option by their employers. For a second, larger and higher paid, group of the self-employed, autonomy and financial advantage would seem to be the main attraction. It's not just differences in NIC rates featuring in the March 2017 budget. Following a recent Court of Appeal case, the boss of Pimlico Plumbers (Charlie Mullins) seemed genuinely perplexed that one of his plumbers should be seeking employment as opposed to self-employment status. The tax benefits of being self-employed, he emphasised, included being VAT registered, paying low corporation tax rate on

³ See the 1968 *Report of the Committee of Inquiry under Professor E.H. Phelps Brown into certain matters concerning labour in building and civil engineering*. CMND 3714. HMSO.

earnings, and claiming tax relief on such things as office space and employing family members. They also didn't have to paying tax on a PAYE basis at 45p in the pound.

1.6 Arguably, flexibility is even less of a consideration in the case of employers. In key respects, as will be argued in more detail below, it's the permanent employment relationship that brings greater flexibility, helping to explain why it became the dominant model in the 20c. More important in explaining recent developments are two considerations. One is cost minimisation. Three types of costs are involved. There are the direct costs such as wages. There are the indirect costs such as NICs, holidays, sick pay and pensions. There are also the transaction costs associated with the time and effort involved in organisation - helping to explain the growth in agency working and use of umbrella companies to handle payroll matters.

1.7 The second consideration is risk. The hallmark of the permanent employment relationship is the trade-off between employees' need for security and employers' rights of residual control. Effectively, the employer bears the risk of providing security. Many emerging practices - most notably bogus self-employment, agency working and zero hours - involve shifting this risk from the employer to the individual or an intermediary agency.

Internalisation v externalisation

1.8 At the risk of repetition, it's often forgotten in the current debate that many of the so-called emerging practices literally represent a step backwards rather than forwards. The 20th century saw a seemingly relentless rise in the 'internalisation' of the employment relationship. The growth of trade unions and collective bargaining was a factor. Also important, though, was employers' experience. Basically, the permanent employment relationship came to be seen as superior to the labour services agreement because of the residual control rights it brings - in one well-celebrated phrase, the employee in effect signs a 'blank cheque'. In the case of the employment relationship, unlike the labour services agreement, managers don't have to specify everything in advance of the act of hiring - which means, in turn, that it's possible to vary detailed assignments in the light of changing circumstances and so achieve **greater flexibility**. The permanent employment relationship cuts down on the information, bargaining and enforcement costs that managers would otherwise incur. It means managers are able both to develop specific skills that cannot be secured on the 'external' labour market and ensure an adequate return on that investment. It also means they're able to exercise greater control over enforcement of

the agreement along with issues such as cost and quality, subject only to law or collective agreements or societal norms⁴.

1.9 So what's changed? Looking back, two main factors can be highlighted. One, already touched on, is the growing importance of risk management. In the past couple of decades risk management has loomed ever larger in management thinking largely as a result of the greater financial uncertainty: it now embraces a wider range of issues than it used to. The other is the application of efficient markets thinking to the employment relationship. Here compulsory competitive tendering and outsourcing in the 1980s were especially important. Employers were not only encouraged to see market testing as right and proper, but also to think of their workforce in terms of a 'core' and a 'periphery' - the 'core' was to be cherished for the reasons outlined above, but the 'periphery' could be off-loaded on the grounds that the relationship was essentially a 'market' or 'transactional' one. Reinforcing a downwards spiral in recent straightened times have been the cost pressures to award contracts on the basis of the lowest price - which has encouraged subcontractors to submit unrealistic bids in order to win the contract, putting them under pressure to take every possible opportunity to protect their margins.

Because they can ...

1.10 Important though the changing world of work is, it's difficult to escape the conclusion that many employers in the UK are behaving in the way they are simply because they can. Significant here is the UK has long had one of the weakest employment protection regimes of OECD member countries. This is above all true of the temporary forms of employment. Indeed, in the OECD's most recent round-up (for 2013) it emerged that the UK had the second weakest regime, only the USA being worse. Important to remember is that many EU countries simply ban zero hours arrangements⁵.

1.11 A major consideration is that, in contrast to most EU member countries such as France, Germany, Italy, the Scandinavian countries and Spain, few workers outside the public sector in the UK enjoy the additional protections that collective bargaining brings. In the UK, like the USA, the statutory right of trade union recognition is essentially workplace-based rather than sector or nationally based, which is the case in most EU member countries. Effectively, like their counterparts in the USA, UK trade unions are faced with a catch 22 situation - they can't secure recognition without members, but they can't demonstrate the benefits of membership without recognition. Compounding the challenge is that they also don't have the right to require employers to negotiate legally-enforceable collective agreements that are

⁴ For further details, see Keith Sisson. 2010. *Employment Relations Matters* available at www2.warwick.ac.uk/fac/soc/wbs/research/irru/erm/

⁵ See <http://www.oecd.org/els/emp/oecdindicatorsofemploymentprotection.htm>

sector wide in their coverage. This is fundamentally important because it means they can't negotiate collective agreements that are inclusive in coverage, i.e. benefit unorganised as well as organised workers. In the many other countries, by contrast, the sector collective agreement is inclusive and has the force of law - its terms and conditions can be extended even to employers who are not members of the employers' organisation involved in the agreement.

1.12 Compounding its relative weakness is that the UK's current regime is characterised by obscurity, inconsistencies and loopholes - many of which are the result of thirty years of little or no joined up government reflecting a legacy of 'voluntarism'/'non-interventionism'. As the next section considers in more detail, definitions of 'employee', 'worker' and 'self employed' leave most of us scratching our heads in bewilderment. Hardly surprisingly, employers' defence when challenged has often been that they have interpreted the law as best they can; if what they're doing is unacceptable, it's up to the courts and/or Parliament to sort things out.

1.13 To answer one of the specific questions the Review team poses on its website, the current regulatory framework is riddled with distortions in how business and individuals interact with work. Just to quote one example, the different treatment of employed and self employed for tax and National Insurance Contributions (NICs) purposes is an open invitation to employers to pressurise workers into self-employed status - something the Chancellor of the Exchequer recognised in the most recent budget.

1.14 Similarly, there is the toleration of 'personal service companies' enabling the self-employed to invoice their services to be taxed as a limited company rather than as individuals - and this includes considerable numbers working in the public sector. Arguably, this makes no sense if the concern is with bogus self-employment. Such companies should either be banned or restricted to companies employing at least two people in addition to the owner.

1.15 Many of the cut off points for eligibility are a major incentive to minimise rights. To take two example, denying sick pay and auto enrolment to people working less than sixteen hours a week isn't just grossly unfair, it's an open invitation to employers to adjust their shift patterns accordingly.

1.16 To cap everything else, the UK's enforcement regime is weak and poorly funded. As the Citizens Advice emphasises, for many groups, the pursuit of grievances through the employment tribunal system is an especially daunting prospect - it's become 'increasingly complex, legalistic and adversarial'⁶. For many Agency workers

⁶ The Citizens Advice Bureau has produced no fewer than three reports recommending a single enforcement agency. The first, *Rooting out the rogues. Why vulnerable workers and good employers need a 'fair employment commission'*, came out in 2007, the second, *Give us a break! The CAB*

it isn't immediately clear who is responsible - the agency or the employer who they're working for. Going to an employment tribunal is also very expensive - since 2013, it can cost an individual as much as £1,200 to bring a complaint to employment tribunals leading, hardly surprisingly, to a considerable decline in the number of claims. Employment tribunal awards are also not strongly enforced and many go unpaid. Last, but by no means least, there are no fewer than five separate enforcement bodies: HMRC, which enforces the National Living Wage; the Gangmasters Licensing and Labour Abuse Authority (GLLAA), which has responsibility for the conduct of licensed gangmasters in just three sectors: agriculture (including horticulture), shellfish gathering, and food and drink processing and packaging; the Employment Agency Standards Inspectorate, which deals with the conduct of employment agencies; the Agricultural Wages Team in the Rural Payments Agency, if it's about wages in that sector; and the Health & Safety Executive, which enforces the right not to have to work more than 48-hours.

1.17 The trouble is that, even though a single telephone gateway was set up in 2009 to help deal with multiple grievances, the enforcement bodies continue to be funded by different government departments. The collective remit is far from comprehensive and each body has its own overheads, with funding and operational priorities decided in isolation⁷. The agencies are also poorly funded and their budgets cut in the 2010 spending review⁸.

What might be done?

General recommendations

1.18 **A written statement of terms and conditions.** One simple way of helping to deal with the confusion over employment status and the transparency of rights is to require employers to provide all workers (and not just employees) with a written

service's case for a Fair Employment Agency, in 2011 and the third, Fair Employment. Why Scotland's workers need a Fair Employment Commission, in 2012.

⁷ There is now a 'Director of Labour Market Enforcement' who has the job of overseeing the GLLAA, the Employment Agency Standards Inspectorate, and the National Minimum Wage Team, and developing a coherent enforcement strategy for approval by the Home Secretary and Business Secretary.

⁸ According to the charity Labour Exploration, in 2015, the UK had just 0.9 labour inspectors per 100,000 members of the workforce compared with 4.6 in Ireland, 5.1 in the Netherlands, 12.5 in Belgium and 18.9 in France. The Employment Agency Standards Inspectorate had 9 frontline staff, 1 administrative officer. In 2013-14 the EAS budget was £532,032. The Gangmasters Licensing Authority had 69 staff and in 2014-15 its budget was £4,447,000. The HMRC had 232 National Minimum Wage staff and its enforcement budget was £9,200,000. For further details, see Ronson, C 2015. Policy Blueprint *Combatting Labour exploitation through Labour Inspection*. Available at www.labourexploitation.org.

Just for the record, the budget of the GLLAA has been recently been increased.

statement of their terms and conditions. These statements, which might be based on standard templates drawn up by Acas, should also include information about who to contact for help and advice and what to do if the individual wants to make a complaint - more which below.

1.19 A compliance obligation. An equally simple way to help ensure workers enjoy the rights they're entitled to is to require employers to exercise due diligence for the workers they outsource. Here the 2015 Modern Slavery Act might be the guide. Any 'commercial organisation that supplies goods or services, carries on a business or part of a business in the UK, and has a total annual turnover of £36 million or more', is required to provide a statement setting out their policies in relation to slavery and human trafficking along with the due diligence steps they're taking to ensure that the same are not taking place throughout their supply chains. This requirement should be extended to employment rights in general much as the the Accounting for People Task Force recommended should be done in the case of HR policies and practices in 2003 - they suggested using Operating and Financial Reviews for the purpose. It should also be required of all businesses with supply chains with turnovers of £1 million. Having to spell out how they ensure that their subcontractors are responsible employers would help to correct what appears to the prevailing practice that, once activities are outsourced, managing the employment relationship becomes a matter of out of sight out of mind. In as much the statements would have to be approved by the board, it might be expected that obligations would begin to appear in supply and service contracts. Failure to do so would open the organisation to naming and shaming.

1.20 Making it easier to complain about rights abuse. The procedure for complaints should be brought into line with that for seeking help and information. Rather than being directed to one of five organisations, in other words, there should be a single point of reference (as there is in the case of Acas and help and advice) to which individuals make their complaint in the first instance. It would help as well to publicise the procedure if the organisation was simply known as the Fair Work Agency or Fair Work Authority rather than having such obscure titles as the Gangmasters Licensing Authority and Labour Abuse Authority. Also there shouldn't be any restriction on the type of complaint made - there should simply be a reference to the same list of items about which they can seek advice from Acas.

1.21 It should also be made easier to take a complaint to an Employment Tribunal. In particular, the current charges should be abolished or considerably reduced. It's not surprising there's been a 70 per cent reduction in claims since 2013: basic charges for individuals can add up to £1,200.

Tackling bogus self-employment

1.22 Freedom to choose. It should be unlawful for employers to require workers to adopt self-employed status. Similarly it should be unlawful for employers to require self-employed workers to set up a 'personal service company' or to sign up to an 'umbrella company' performing similar functions. Also such arrangements should either be banned or restricted to 'companies' employing at least two workers in addition to the self-employed person.

1.23 As level playing field as possible. NICs and tax should be as equal as possible for employed and self-employed workers so that the decision doesn't turn on financial incentives. The same goes for employment rights, e.g. maternity pay and paternity leave and pay for self-employed fathers. Similarly, employers should not be able to benefit financially from employing self-employed workers. Employers using self-employed workers should pay a premium equivalent to the standard NIC rate (currently 13.8 per cent) to help fund social security etc.

1.24 Measures to support the genuinely self-employed. As the Federation of Small Businesses has emphasised, there's a lot government could and should be doing to support genuine self-employment in preference to the distorting instrument of NICs⁹. In addition to reducing employment status uncertainty, more or which in the next section, they suggest considering the following:

- open up flexible saving and income protection insurance to the self-employed.
- incentivise self-employed pensions saving and develop a bespoke default pension solution for savers.
- simplify the self-employed tax regime and Universal Credit arrangements
- improve self-employed access to mortgages and other financial products
- improve business support for the self-employed and take further steps to tackle late payment.
- support the growth of home-based businesses with high speed broadband and provision of shared work spaces and serviced offices,

1.25 Platform companies to register as employment agencies. It remains to be seen if the Ubers and Deliveroos are able to come up with an acceptable self-employment model for their operations. Either way, it would make sense to treat them as employment agencies - their raison d'être, after all, is to bring together those needing and supplying labour services. Even just applying existing agency legislation

⁹ The FSB [Going it alone, moving on up: Supporting self-employment in the UK](#)

would enable a close eye to be kept on their development. It would also mean being able to influence this development and intervene should it be seen to be going in an unacceptable direction.

Agency workers

1.26 Closing the gap with permanent workers. As in the case of the employed and self-employed, the aim should be to close the gap in the treatment of the different categories of the employed. For example, there seems no good reason why many people doing temporary work do not qualify for statutory sick pay simply because they earn less than £112 a week. Or that there is also no right for these workers to be automatically enrolled into a workplace pension, with their employers making a minimum contribution. These workers should also have a right to maternity and paternity pay.

1.27 Stop abuse of the Swedish derogation. As Acas reminds us, the point of the Agency Worker Regulations is to improve pay and conditions of agency workers. The so-called 'Swedish derogation', however, which deals with pay received by a worker between assignments, is being used to pay agency workers less than their permanent colleagues for the same job and to deprive them of annual leave. It's a loophole that should be closed as soon as possible.

1.28 Opportunity for permanent employment. It might be expected that it was in the employer's interest to see agency work offering an extended probationary period. One of the things that organisations ought to report on in the operating and financial reviews is the number of agency workers they have given permanent status to each year.

1.29 All agencies to be registered. The current registration arrangements are a mish-mash. Agencies need to be licensed by the Gangmasters' Licensing and Labour Abuse Authority if they provide workers for sectors such as agriculture, horticulture and food processing and packaging. Likewise some nursing and domiciliary care agencies have to be registered. Elsewhere, the only guardian comes in the form of the inspectorate located in the Department for Business, Energy and Industrial Strategy's Employment Agency Standards. Its mission is to work with recruitment agencies, hirers and work-seekers to ensure compliance with employment rights, particularly for vulnerable agency workers, and to ensure that everyone who uses the services of a private recruitment agency to find work is treated fairly. But, as already indicated, it has wholly inadequate resources.

1.30 Registration, coupled with a properly funded Fair Work Agency, would mean much more extensive information and, much clearer. As in the case of the recommendation about financial and operating report, it would that agencies would have to spell out out how they were meeting the requirement society expects.

Casual (zero hours) workers

1.31 **Extended protection.** There are several things that might be done to reduce the insecurity associated with zero hours working in particular. One is a right to compensation if a shift is cancelled at short notice. Another is an entitlement to a minimum hours contract after periods of employment.

1.32 **A casual worker's premium.** The UK should follow the example of Australia. There casual workers are entitled to a higher hourly pay rate than equivalent full-time or part-time employees because they don't get benefits such as sick or annual leave. The so-called 'casual loading' varies between 15-25 per cent of the hourly rate depending on the award or agreement that covers the job.

1.33 It may be objected that such requirements would make some of the emerging business models unviable. In which case my answer would be the same I would give to employers who say they cannot afford to pay the National Living Wage. If you cannot come up with a business model that enables you to afford decent employment standards, you shouldn't be in business. You cannot expect society cannot to subsidize you - because, as well as being a threat to employers who are trying to operate by the rules, that's what low pay and poor working conditions effectively entail¹⁰.

2 The balance of rights and responsibilities¹¹

- 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?

2.1 Most certainly the current definitions need to be updated - not just to accommodate the new forms of working, though, but to shape their developments in the interests of society as a whole. As the Law Society puts it in its evidence to the House of Commons Business, Energy and Industrial Strategy Select Committee,

¹⁰ In more theoretical terms, it was Sidney and Beatrice Webb who developed the 'social cost' justification for minimum wage legislation more than a century ago. The starting point is that human capital, like physical capital requires some 'minimum on going expenditure for upkeep, repair and depreciation if the input is to be maintained for current production and replaced for future production'. Unlike physical capital, however, human capital is not something that employers 'own' and so there is little incentive for them to take on this responsibility. If pay falls below its social costs, therefore, it's society that has to pick up the bill, resulting in 'misallocation of resources and economic inefficiency'. See Kaufman, B. 2009. 'Promoting labour market efficiency and fairness through a legal minimum wage: the Webbs and the social cost of labour'. *British Journal of Industrial Relations*, Vol 47, No 2, 306—26.

¹¹ I've switched the order of questions 2 and 3 in the interests of continuity of argument.

The evolutionary nature of how to define in law who is an employee, worker or self-employed person has resulted in uncertainty for many as to what rights and status they enjoy. Currently, the only way to resolve this uncertainty is to take disputes to the employment tribunal. It is possible for two tribunals to come to contradictory views on the status of an employee or a worker, without either committing an appealable error of law. This possibility undermines the utility of case law ... The very existence of a separate category of 'worker' creates uncertainty. As a result many people have no clear idea of their true legal status. This can encourage a business to try to impose a particular status, which is more closely related to what they wish the relationship to be rather than what the relationship is in reality¹².

To illustrate their point, they go on to remind us that 'Casual worker is not a legally recognised term ... [and] ... In law there is no such thing as a zero hours contract.' From a different perspective, the Federation of Small Business (FSB) comes to a not dissimilar conclusion:

the uncertainty of status is a constant concern facing the self-employed, in particular freelancers and those contracting with clients ... A legal definition [of self-employment] would help to end uncertainty for self-employed and contracting businesses alike, prevent bogus self-employment and should also reduce enforcement activity and the high volume of case law in this area, cutting costs for the taxpayer¹³.

2.2 There is also massive complexity in the case of agency workers. The Supreme Court gives us a flavour in its February 2011 judgment in *Clyde & Co LLP and another v Bates van Winkelhof*:

There are two definitions of worker for the purpose of that Act [Agency Workers Regulation 2010 SI 2010/93]. Limb (a), not relevant to this case, covers an individual who has entered into, works under, or has worked under "a contract of employment" and Limb (b) of section 230(3) covers an individual who has entered into or works under or worked under "any other contract...whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer....'

2.3 In summary, I suggest the following changes:

- 'Worker' should become the generic term to cover anyone who performs work under contractual arrangements for material rewards.

¹² Employment - Consultation responses - The Law Society

¹³ The FSB Going it alone, moving on up: Supporting self-employment in the UK

- Bring employment law into line with HMRC arrangements with statutory binary divide between 'employed' and 'self-employed'.
- Everyone who is employed should be regarded as an employee and be entitled to an employment contract.
- There should be five types of employment contract based on standard Acas templates: permanent, fixed term, agency, casual (zero hours) and home working.
- the starting point for these contracts would be existing rights revised as soon as possible to achieve as level playing field as possible.

2.4 I think the binary divide between employed and self-employed should reflect the three sets of factors that have been emerging from case law; the nature and extent of control; the nature and extent of dependence/integration, and the degree of mutual expectation. There should also be a catch-all reality test - whether what's said to be happening is actually happening. Here's a stab at what the definitions of employment and self-employment might look like:

- A person is employed if he/she works under the direction and/or control of an organisation and receives payment in return decided by the organisation. There is a mutual expectation that the organisation will make work available and the individual will do it.
- A person is self-employed if he/she runs their own independent business, is able to negotiate a fee for the work they do, and has control over the way they do it. There is no mutual expectation that any organisation will make work available and the individual will do it.

2.5 I think this would relatively straightforward to implement - it would largely be a matter in the first instance of formally transferring the relevant rights and responsibilities of 'workers' to Agency workers, Casual workers and Home workers respectively - hopefully in a Fair Work Act.

2.6 As well as bringing employment law into line with HMRC arrangements, I think a binary divide would bring three main benefits:

1. Having the two 'employee' and 'worker' categories is the main source of the massive uncertainty and confusion in the area. Personally, I find it impossible to explain the difference between 'employee' and 'worker' other than in terms of one has to have a contract and enjoys more rights than the other - which just begs the unanswerable why?

2. A binary divide would mean being able to make 'employed' the default option - something the Law Society makes a cogent case for in its evidence to the House of Commons Select Committee. Crucially, it would mean that the burden of proof rested with employers. Employers, in other words, would have to explain why workers were being treated as self employed, rather than individual workers having to take their case through the legal system - especially important in view of the many grey areas inevitably likely to remain.
3. Agency workers, casual (zero hours) workers and home workers are important categories in their own right - and fast growing. Currently, though, the rights they enjoy stem from being regarded as 'workers' rather than specific categories with their own particular needs. Giving statutory recognition with their rights spelt out would not only do a lot to reduce uncertainty. It also would having the platform to develop these rights to meet their changing circumstances.

3 Progression and training

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

3.1 Vocational education and training (VET) are issues policy makers have grappled with for more than half a century. Their concern is most recently evidenced in the proposal for a revamping of VET training courses following the Sainsbury review and the introduction of an apprenticeship levy. The revamping is much needed and a levy will help employers who already train. In themselves, though, these initiatives are likely to have only a marginal impact - above all in the service sector employing the bulk of the UK workforce.

3.2. To begin with the most basic things that might be done to promote professional development, employees currently have a right to time off for training and development in businesses with 250 or more employees - which makes the right virtually non-existent for many workers. The threshold might be reduced to 25.

3.3 Another way of promoting training and development is to introduce a system of training credits. This suggestion is likely to be received with less than enthusiasm because of the bad press associated with some training agencies in the 1990s. But the experience of countries such as the Republic of Singapore¹⁴ suggests the idea is worth re-visiting.

¹⁴ Go to <http://www.mom.gov.sg/~media/mom/documents/budget2015/faqs-skillsfuture-credit.pdf>

3.4 More fundamentally, there's a need to recognise that the UK's low skills problem is not so much a matter of supply, but of demand. While demand for higher-level skills has expanded since the 1980s, nearly half of all jobs don't require post secondary education and one-third of firms offer no training. Also, by far the most common explanation for not offering training – given by almost two-thirds of non-training employers – was that employees were already fully proficient in their role¹⁵.

3.5 As Shaping the world of work argues, it's time to take things to their logical conclusion - to recognise that the government must assume an active role and seek to influence the demand for VET. As the OECD observes, policies can and should shape demand rather than merely respond to it:

Government programmes can influence both employer competitiveness strategies (how a company organises its work to gain competitive advantage in the markets in which it is operating) and product market strategies, which determine in what markets the company competes. As companies move into higher value added product and service markets, the levels of skill that they require, and the extent to which they use these skills, tend to increase¹⁶.

3.6 One way in which this can be done is through procurement. Like large companies, the wide ranging procurement activities in which public sector organisations are involved means they have considerable capacity to influence the businesses they contract with throughout their supply chains¹⁷. Some local authorities, for instance, insist that contractors pay the voluntary 'Living Wage', which is higher than the statutory National Living Wage. Similarly, they could require contractors to meet particular training standards in key areas. Or they could require contractors to have achieved *Investors in People* status in terms of their people management policies more generally,

3.7 The government could go further. It could directly target the big core of the service sector employing some 40 per cent of the workforce. Given that it's household spending and tax revenue that sustain these largely sheltered activities, it's not unfair to ask for a quid pro quo in the form of mandatory VET requirements giving a strong incentive for people to train and re-train. Prime candidates would be social care,

¹⁵ See UK Commission on Employment and Skills. Catch 16-24. www.gov.uk/government/uploads/.../file/.../15.02.18_Youth_report_V17.pdf

¹⁶ Quoted in Ken Mayhew and Ewart Keep. 2014. 'Industrial Strategy. The high road to sustainable growth'. *CIPD Research Insight*. Available at www.cipd.co.uk.

¹⁷ In 2013/14, the public sector spent a total of £242 billion on procurement of goods and services, accounting for around a third of total managed expenditure. It's already the case that, under the 2012 Public Services (Social Value) Act, those who commission public services are required to think about how they can also secure wider social, economic and environmental benefits. In the Act's words: 25 Before they start the procurement process, commissioners should think about whether the services they are going to buy, or the way they are going to buy them, could secure these benefits for their area or stakeholders

retail and hospitality, with workers required to have basic City & Guilds qualifications with opportunities to proceed further - which would have the added benefit of improving service quality.

4 Representation

- Could we learn lessons from alternative forms of representation around the world?

4.1 As the European Commission's industrial relations in Europe 2008 report reminds us in discussing the issues involved in international comparisons in the area: 'Data are missing for comparing systematically, and quantitatively, the contribution of industrial relations ... This is above all true of data that would make possible a multivariate approach'. Even so, they go on, 'if used with wisdom, the comparison of achievements and successes, or failures, across countries ... remains a useful learning device ...'¹⁸

4.2 In this spirit, I'd like to make two observations. The first is that participation (employee voice) really does matter. Both the quality and legitimacy of decisions are involved. Managers who have to justify what they're proposing to do are less likely to get it wrong. More to the point, the quality of decisions is likely to be better if workers have an input. It's employees who have the intimate knowledge and experience of operations on the ground, the problems and the pitfalls, and how they might be dealt with to reduce costs and improve productivity, quality and customer care. If nothing else, the ever tightening management control of the 'traditional' and (so-called) 'lean' models of many UK businesses is very costly¹⁹.

¹⁸ European Commission. 2009 *Industrial Relations in Europe in 2008*. DG Employment and Social Affairs, Brussels.

¹⁹ The immediate source for this comment is an analysis of the regular surveys of the European Foundation for the Improvement of Living and Working Conditions. The authors distinguish between four main models of work organisation. Especially relevant is the distinction between the 'learning' and 'lean' models. Both draw on employees' capacity for continuous learning and problem-solving, but the one emphasises worker autonomy, while the other prioritises managerial control and tight quantitative norms to fix the pace of work. It emerges that, even allowing for different degrees to which national producers are positioned on the high-technology or high quality end of product markets, there are significant differences between countries. It is the 'lean' rather than the 'learning' model that predominates in the UK. Indeed, the proportion of 'learning' workplaces in the UK is even less than the 27-country average, while that for the 'lean' model is higher: the UK's proportion of 'learning' workplaces is less than half that of Sweden, while its figure for 'lean' ones is twice as many. At the other end of the spectrum, the UK also stands out on account of the high proportion of 'traditional' workplaces – almost twice that of Sweden and, again, above the 27-country average. The same survey also makes it possible to get an impression of the extent of managerial hierarchies in the different countries. This mirrors the dominant model of work organisation. Consistent with the top down control of the 'lean' and 'traditional' models, the UK employs more 'senior managers' proportionately than other EU countries. Indeed, of the 27 EU member countries only Ireland and Italy reported higher proportions. In the UK, something of the order of 14 per cent to 15 per cent were

4.3 The legitimacy of decision making is also fundamentally important. Workers cannot practically be involved in every decision. Their representatives can be involved in the key ones, though²⁰. It makes a lot of difference to know that their views have been heard even if the final outcome is not to their liking.

4.4 It's also important to look at the other side of the coin. Being denied employee voice fuels the alienation and lack of involvement at the heart of much of the dissatisfaction with work. Society also suffers. In the words of David Coats (2004: 11)

Democracy is about more than periodic elections on a one-person-one-vote universal franchise ... Citizenship has to be learned. It depends on discussion, debate, the assessment of alternative points of view, a democratic decision by majority vote and a willingness by the losers to live with the outcome" ... If worker voice institutions are weak then the public domain is weakened. If the public domain is weakened then the quality of our democracy is diminished²¹.

4.5 My second observation is that there is no magic bullet - no one particular form of participation that's superior to others. Rather the more forms of participation involved - social dialogue, collective bargaining, board level representation, joint consultation, team working, problem-solving groups - the greater is likely to be the impact. Similarly, the more levels involved - national, sector, company and workplace - the greater is likely to be the impact.

4.6 As for what might be done, I would repeat the priorities outlined in Shaping the world of work. I would reverse the decision to close the Employment & Skills Commission. The UK needs an authoritative and respected social partner organisation to advise, encourage and cajole ministers on policy development covering work organisation, workforce development and the future of work.

4.7 I also support putting employee representatives on company boards as the Prime Minister seemed inclined to do. I think this would be massively important symbolically: it would help to reinforce the notion of companies being there for the benefit of society and not just a select group of shareholders. It might also help to

categorised as 'senior managers' as against an EU average of just under 10 per cent. In Sweden and Germany, only just over four per cent were in the 'senior manager' category.

²⁰ The UK compares relatively favourably when it comes to occupational safety according to the most recent data from Eurostat published by the HSE. Arguably, this is because it's in this area that the UK not only has extensive legislation guaranteeing employee 'voice' at the workplace level, but also long established social dialogue institutions in the form of the HSE. It means that health and safety policies and practices in the UK enjoy a very particular legitimacy.
www.hse.gov.uk/Statistics/european/european-comparisons.pdf

²¹ Coats, D. 2004. *Speaking Up! Voice, Industrial Democracy and Organisational Performance*. London: The Work Foundation.

improve communications from top to bottom of the organisation and vice versa as well as putting a break on executive pay and deterring senseless takeovers.

4.8 I would also implement the 2005 Information and Consultation of Employees (ICE) legislation as they were intended to be. In other words, instead of expecting 10 per cent of employees to 'trigger' a request, employers should have to introduce collective information and consultation processes automatically. I would also give recognised trade unions rights to representation as they currently have in consultation over collective redundancies and business transfers. I'd also incorporate the provisions of the 'recast' European Works Council arrangements giving employee representatives rights to obtain the financial and material resources needed to carry out their duties, call special meetings, hold pre-meetings, seek external advice and undertake training.

4.9 A further suggestion touched on in Shaping the world of work is designed to help fill the void at the very important sector level. It is that the government 'midwives' and 'pump-primes' one or more sector forums in the industries with especially large numbers of low paid workers, i.e. retail and wholesale, hotels and restaurants, and health and social work. These would bring together representatives of major companies, employers' organisations/trade associations and relevant trade unions, together with 'independents' and government agencies. The remit would be to raise standards above all of productivity. The means would include the sharing and dissemination of good practice, the drawing up of codes of conduct and the organisation of common services (e.g. training programmes and holiday and sick pay funds)²².

5 Opportunities for under-represented groups

- How can we harness modern employment to create opportunities for groups currently underrepresented in the labour market (the elderly, those with disabilities or care responsibilities)?

5.1 The staff of the European Commission make a powerful case for collaborative platform models.²³ As well as 'increased efficiency, transparency and competition in the marketplace', they suggest the benefits might include:

²² More details of what might be involved will be found in the attached paper. I wrote this in 2005 for a meeting with the No 10 Policy Unit. It might be remembered that sector forums were a key plank of the 2004 Labour Party-TUC Warwick Agreement designed to help deal with the situation of disadvantaged workers. Very sadly in my view, sector forms came to be seen as the Trojan Horse for restoring national bargaining in sectors such as engineering and so nothing came of the idea.

²³ See Agenda for the collaborative economy - supporting analysis. Staff working document accompanying the Communication on the collaborative economy

For individuals wishing to supply services, the collaborative economy provides opportunities for new employment, flexible working and a source of income from under-used domestic assets. It also allows people to start marketing and selling their own services, thereby taking the first steps towards becoming an entrepreneur, without many of the risks associated with setting up a business. For society, the collaborative economy offers environmental benefits by encouraging more asset sharing and social benefits. This is done by creating an opportunity for individuals to interact, integrating communities. The collaborative economy can thus also contribute to the EU's environmental goals while also offering wider benefits.

5.2. They warn, though, that there are major challenges:

Some collaborative business models do not fit clearly within the existing national, local and sector rules ... There is uncertainty about mutual and respective rights and obligations ... and several aspects of service provision including regulatory obligations, consumer rights, liability insurance and the status of workers. The collaborative economy offers many employment opportunities but the work generated is often temporary, short-term and task-based. Many of the national rules on taxation and social protection have not been drafted for such situations, even though in principle modern technology provides multiple options to ensure that appropriate contributions are made and that minimum levels of remuneration are upheld.

5.3 I don't have answers myself to these challenges. I do think, though, that it would help if three of the proposals in Anthony Atkinson's 2015 *Inequality - what can be done?* were included in any policy framework²⁴.

Proposal 1: The direction of technological change should be an explicit concern of policy-makers, encouraging innovation in a form that increases the employability of workers and emphasises the human dimension of service provision

Proposal 3: The government should adopt an explicit target for preventing and reducing unemployment and underpin this ambition by offering guaranteed public employment to those who seek it.

Proposal 13: A participation income should be introduced at a national level, complementing existing social protection.

5.4 Implementing Proposal 3 would be especially helpful in promoting opportunities for currently underrepresented groups To achieve its full potential would mean calling a halt to the privatisation of public services, which would be a good thing in

²⁴ <http://www.tony-atkinson.com/the-15-proposals-from-tony-atkinsons-inequality-what-can-be-done/>

itself. Privatisation makes absolutely no sense when employment and social security systems are under such pressure. Privatisation reduces job opportunities and turns good jobs into bad jobs. Not only that. It almost invariably means a decline in the amount and quality of local services. Instead of having to grapple with the frustrations of managing Service Level Agreements, the efforts of public service managers could be far better spent in improving service productivity and quality. For example, something as simple as answering more enquiries quicker and better would save local businesses and residents a lot of time and money.

5.5 Local Authorities would also be able to experiment with a diversity of delivery models and so help to achieve what the Committee is concerned with in the next section. For example, cooperative mutuals might take on some of the responsibility for the delivery of some local services. Equally there could be a mix of joint working with local social enterprises and charities. Local Co-operative and Community Benefit Societies could also be encouraged²⁵.

6 New Business Models

- How can government – nationally or locally – support a diverse ecology of business models enhancing the choices available to investors, consumers and workers?

6.1 There are many levers. One is procurement policy already touched on. Another is Anthony Atkinson's Proposal 7: 'A public Investment Authority ... operating a sovereign wealth fund with the aim of building up the net worth of the state by holding investments in companies and in property'.

6.2 The proposals of the 2012 *Ownership Commission Report*²⁶ should also be followed up:

- new mechanisms and tax concessions to support the build up of equity capital in the medium sized family business sector, from corporate venturing to new tax reliefs on rates of corporate return as proposed by the 2011 Mirrlees Report (*Tax by design*)

²⁵ A personal example will help to illustrate the possibilities. I live in Blockley, which is a village of c 1200 people in the North Cotswolds. In 2008 the Parish Council encouraged formation of the Blockley Cooperative Association (BCA) as an Industrial & Provident Society to organise a replacement for the until-then privately owned village shop and post office. As well as providing a convenience store, the BCA also supports a cafe which has become the village social 'hub'. The BCA is run by a volunteer management committee, but provides paid employment for a full-time manager and a dozen or so part-time supervisors and assistants, all of whom are from the local community.

²⁶ http://www.kellogg.ox.ac.uk/wp-content/uploads/2015/05/ownership_commission_2012.pdf

- measures to allow co-operative mutuals to raise external capital, the major constraint on their growth
- greater support for employee owned companies, which constitute less than 2% of GDP via the tax system e.g. restoring the tax advantages Employee Benefit Trusts lost in 2003
- providing simple templates for employee ownership
- extending the provisions of the Enterprise Act beyond defence, financial stability and aspects of media and news provision to better define the strategic public interest powers of the Secretary of State
- protection for public sector mutuals from demutualisation by an 'asset lock'
- increasing retail banking competition and developing a strategy for a Business Bank to deal with capital market failures of low levels of private investment and innovation.

7 Concluding remarks: the big challenge

7.1 Globalisation/robotisation/digitalisation/automatisation are clearly already having a disruptive effect on the employment and social security systems that developed after World War 2. They are also a major factor in the inequality that international agencies such as the IMF, OECD and the World Bank - and some CEOs²⁷ - are increasingly concerned about.

7.2 Amending employment law to achieve a level playing field and close the 'low road' is a very necessary first step. But the big challenge is going to be to develop what *The Economist* calls a 'social safety net' to help people cope with the fundamental changes taking place²⁸. Some form of 'participation income' (or 'citizen's income' or 'universal basic income') might be a feature. But the fundamental requirements are two-fold:

- a joined up set of social security arrangements linking pay with in-work benefits, taxation, and much cheaper housing and childcare; and

²⁷ Ginni Romitty, CEO of IBM, is reported as saying at this year's Davos World Economic Forum, "there is not one more important [topic] for all of us" than technology creating inequality and and concentrating huge wealth in just a few people. Tim Bradshaw. *The Financial Times* 21/22 January 2017.

²⁸ *The Economist*, 30 July 2016. 'The Need to do more to help the losers of globalisation'.

- 'active' social policies involving not just vocational training and re-training, but also opportunities to become involved in caring, volunteering and community work more generally.

This is because it isn't the amount of work society needs to be done that's declining - rather it's the number of jobs businesses will pay people to do.

7.4 The key issue is funding. The costs of the 'social safety net' required will be substantial and beyond the capacity of already stretched public finances. Some form of wage insurance might be part of the package²⁹. But, simply put, if the employment relationship isn't going to do the job it has, governments will have to find other ways of redistributing the benefits of globalisation/ robotisation/ digitalisation/automatisation from the 'haves' to the 'have nots'. One possibility is a robot tax that Microsoft founder Bill Gates has backed - if a robot replaces a worker, it should be taxed at a similar rate so that some of the benefits are fed back into the general kitty rather than going exclusively to makers and users³⁰. Similarly, there might be arrangements - perhaps based on some ratio of employment to revenue/profit - enabling more of the vast sums being earned by the technology companies to go into the public purse. Some form of Tobin tax on transactions between financial institutions is a further possibility as is the taxing of wealth as well as income.

7.5 In the UK, redistribution should also include a shakeup of corporate governance arrangements as Shaping the world of work argues. An overriding emphasis on shareholder value and ease of takeover have spawned a set of incentive structures that put a premium on extraction from rather than investment in the business - soaring executive pay, rising dividends and takeover windfalls, on the one hand, but relatively low levels of expenditure on capital equipment and R&D, on the other.

7.6 It's a very tall order - especially with Brexit to worry about. A state of denial, though, isn't going to help. The challenge needs to be put on the table.

²⁹ Robert Shiller 2106. 'How Wage Insurance Could Ease Economic Inequality'. Available at www.nytimes.com. For more details, see his 2004 book *The New Financial Order. Risk in the 21st century*. Princeton: Princeton University Press.

³⁰ The robot tax idea appears in MEP Mady Delvaux's 2016 draft report to the European Parliament.