



Taylor Review on Modern Employment Practices

1. The RMT transport union represents 80,000 members working across all transport sectors. We defend transport workers against exploitation and unsafe practices. A key goal for our members is the achievement and maintenance of secure permanent contracts.
2. The use of previous arms-length contracts, as a means of securing labour has ballooned. This has a number of significant consequences – not least, our ability to most effectively represent workers is hampered by such arrangements. Specifically, a transitory workforce is harder to identify and organise with individuals being less confident about their ability to assert their claim to be paid fairly for their labour.
3. We welcome this enquiry and the opportunity to contribute. Holding the review is timely and we hope that the evidence that we provide below helps inform your understanding of the issues. We wish to draw your attention to the following matters discussed in the report:

- Admission from Chief Executive of *City Link* as to why switched from employment to self-employment model;

- Analysis of who has been taking up self-employment opportunities;

- People labelled as self-employed, who work in safety critical roles, are working excessive hours for multiple employers; and

- Examination of the number of accidents occurring where a significant proportion of people providing labour under nominally self-employed arrangements.

4. Additionally, we have contributed to the preparation of the TUC's written submission and read that organisation's finished document. We endorse the contents of the TUC's written submission.

5. The meaning of the term "worker" is ambiguous. The legal definition is excessively vague, meaning that our legal system facilitates the exploitation of British labour by UK domiciled and foreign organisations. The polite term, used to describe this situation, is having a "flexible labour market". While there may be a role in some limited circumstances for people genuinely providing cover for an organisation during brief unexpected periods of high demand, this is not how the UK's lax employment law framework is being used.
6. We adopt the proposed recommendations on changes to the law/ how the term "worker" should be defined, as set out by the TUC and the trade union law firm Thompsons in their reply to this call for evidence.

7. The RMT believes in every worker, from their first day, receiving the same rights and benefits as comparable colleagues. Under this concept of equal treatment, workers would receive the same amount of leave, pay and other entitlements as colleagues in the organisation with the same role and responsibilities.
8. Currently, agency workers, casual workers and the self-employed all have significantly impaired rights at work:

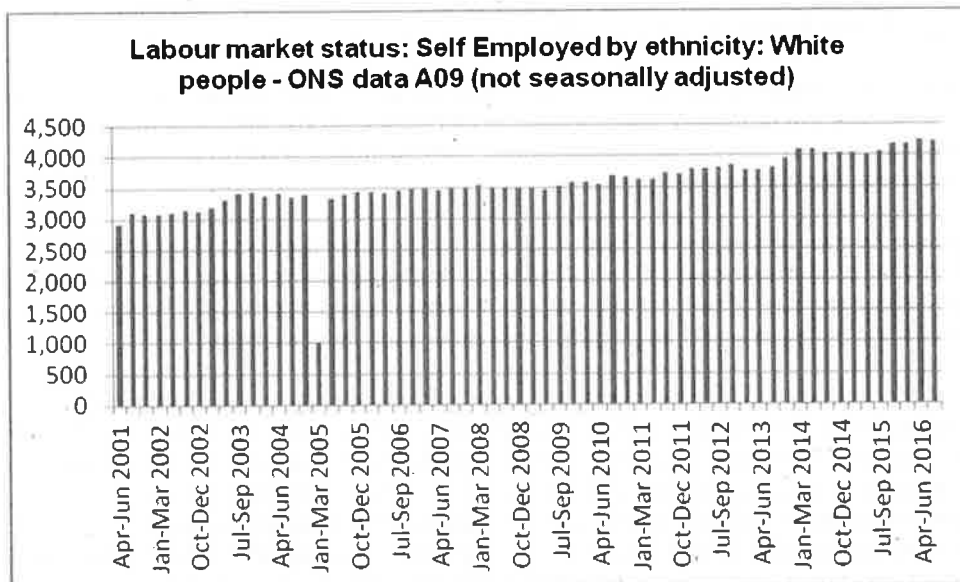
Employment right associated with each status	Employee (incl. full/part time & fixed term contracts)	Employee shareholder (incl. full/part time & fixed term contracts)	Worker (incl. agency workers, contractors, freelancers)	Self-employed (incl. freelancers, consultants, contractors)
National Minimum Wage	✓	✓	✓	
Protection from unlawful deductions from wages	✓	✓	✓	
Paid annual leave	✓	✓	✓	
Maternity, Paternity, Adoption leave and pay	✓	✓		
Part-time status (no less favourable treatment)	✓	✓	✓	
Fixed-term (no less favourable treatment)	✓	✓		
Rest breaks	✓	✓	✓	
Right to request flexible working	✓			
Right to request time to train (companies over 250 employees)	✓			
Protection from discrimination	✓	✓	✓	✓
Minimum notice periods	✓	✓		
Collective redundancy consultation	✓	✓		
Statutory redundancy pay	✓			
Protection from unfair dismissal (gained after 2 years in continuous employment)	✓			
Protection from unfair dismissal (automatically unfair)	✓	✓		
TUPE	✓	✓		

9. Significant numbers of people provide their labour via agencies or on a casual basis. However, the biggest growth in such precarious work contracts is with self-employment.
10. Who is consenting to be self-employed? Many of the companies which offer self-employed contracts suggest that their offer is taken up by people to fit their lifestyle or by people motivated to work harder to secure extra income.
11. This was the initial explanation given by the chief executive of the now defunct parcel delivery firm *City Link* about why the company transformed its workplace model from one of offering contracts of employment, to offering self-employment. (At the time of the firm's collapse, 78% of the workforce were labelled as self-employed¹).
12. Under examination by the previous joint Business, Innovation and Skills and Scottish Affairs committees, *City Link*'s chief executive David Smith did finally admit that in fact the motivation for the company doing so, was to encourage people to work unpaid additional hours and to cut its own costs – including to avoid paying National Insurance contributions².
13. The evidence of the managing director suggested that there was often little scope for an individual to increase their income through additional effort. Self-employment had the effect of transferring the financial risk of low customer demand, or the cost of adjusting to fluctuating customer demand, on to individuals. Many of the routes on which self-employment was offered, had previously been covered by employees. Many of the people who were encouraged to take up the offer of self-employment had been employees. These people often lived in more deprived areas, and had fewer alternative work opportunities and small or no savings on which to rely – ie they had little option but to accept the terms offered.
14. If *City Link* were an outlier and the contention of other companies about the benefits to individuals of self-employment were true, we might expect to see a fairly even take-up of self-employment opportunities across groups (ie self-employment would be appealing, irrespective of ethnicity and gender). In fact, ethnic minorities and especially ethnic minority women are the people proportionally most likely to have to resort to accepting self-employment opportunities in order to secure work.

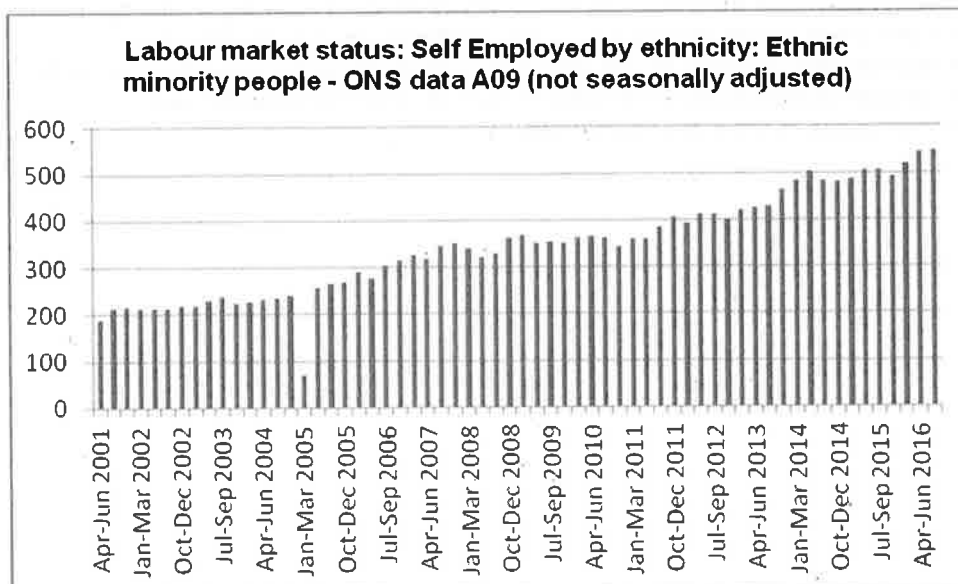
¹ Q672 <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/scottish-affairs-committee/impact-of-the-closure-of-city-link-on-employment/oral/18140.html>

² Q683-697 <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/scottish-affairs-committee/impact-of-the-closure-of-city-link-on-employment/oral/18140.html>

15. All ethnic groups have experienced an increase in taking up self-employed roles. However, in the case of ethnic minorities, the proportion of people working under such contracts has increased at a much more rapid rate³. Compare the steady increase in the number of white people taking up self-employed opportunities



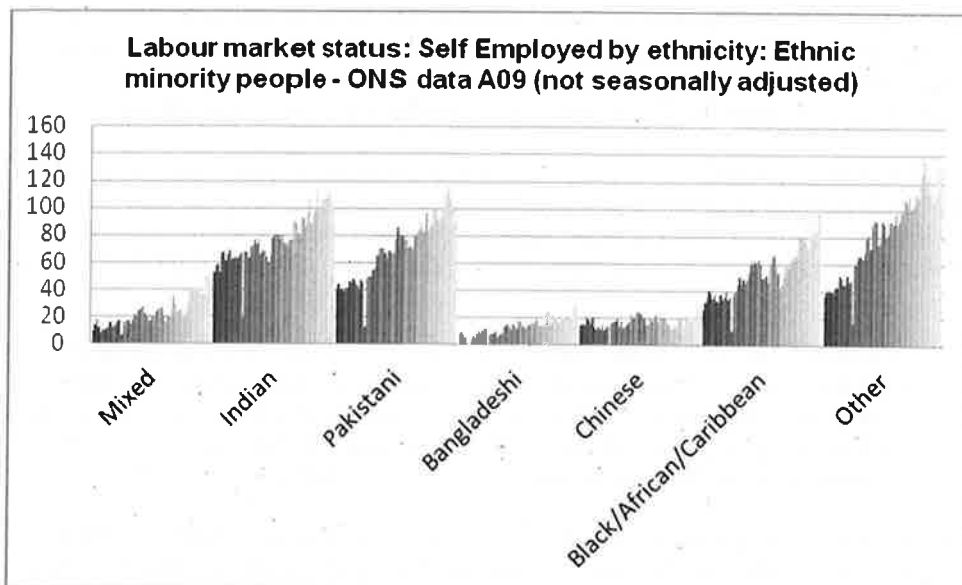
16. with the dramatic rise in self-employment amongst ethnic minorities:



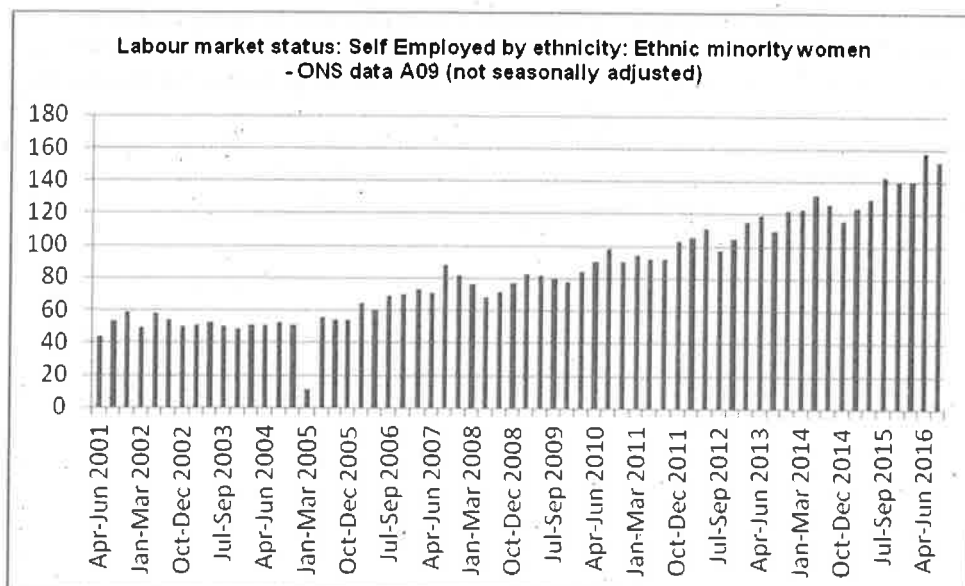
³ Office for National Statistics data published 16 November 2016 – tab 16

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/labourmarketstatusbyethnicgroupa09>

17. Breaking down the ethnic minority combined category into its constituent groups, but presenting the same data over the same time period, the increase is again pronounced (less so for ethnic Chinese people):



18. The excessive reliance of ethnic minority women on self employment as a means of accessing work is especially troubling:

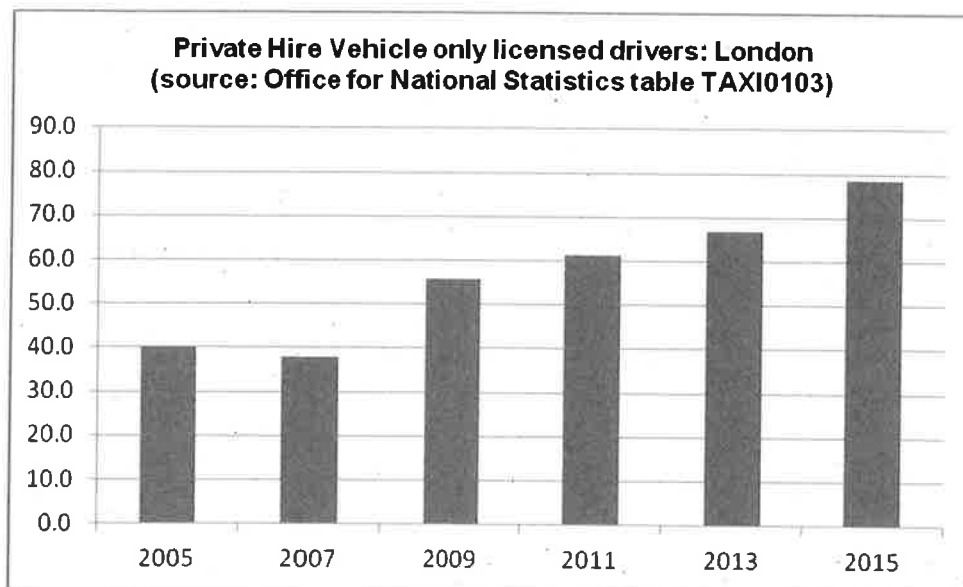


19. It is not a question of this volume of workers not wanting to take up permanent roles and preferring self-employment⁴. Rather the volume of people who want to be employees, but cannot secure such contracts, has increased significantly⁵.
20. The data suggests that self-employment is taken up by people for a variety of less positive reasons than those presented by the work providers. Factors include the absence of other opportunities (eg withdrawal of employment contracts as the prevalent means of securing labour) and discrimination in recruitment (as now acknowledged by the Prime Minister).
21. Application of the current legal tests for assessing many of the opportunities labelled as self-employed, may result in many such roles being recognised as creating employment relationships. Whether they do or not is a legal matter, however given the obvious adverse impact on ethnic minorities and ethnic minority women in particular, it is also a policy matter.
22. Specifically, people who are self-employed, hardly enjoy any of the benefits that we have come to view as essential aspects of a civilised society – paid sick leave, assistance with pension provision, paid maternity leave. The loss to the Exchequer of sums due in tax as well as the loss to the individuals giving their labour in lost entitlements, is not peripheral – it is having a significant adverse impact on vulnerable groups in our country.
23. The current system is laughably incoherent with companies able to pick and choose between employment categories. Sometimes, for example, companies offer to treat an individual as a worker for the purposes of holiday entitlement, in return for that same person accepting to be self-employed for tax purposes.
24. An official assessment of whether someone is self-employed, generally only occurs after the event, ie after the arrangement has been in place for some time. We believe that in order for a company to offer self-employed contracts, it should be pre-authorised. In other words, it should have to wait for an assessment by HMRC to be completed before being entitled to secure labour in this way. In the interim, it should be obliged to engage people as employees.
25. Further, no exemptions should be provided for Government training or vocational schemes. Such exemptions contradict the Government's stated desire to ensure that its own training schemes offer good quality training and career options for individuals.

⁴ <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/timeseries/yccn/lms>

⁵ <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/timeseries/yccx/lms>

26. The UK government prides itself on having a flexible labour market. There may be a role in some limited circumstances for people genuinely providing cover for an organisation during brief unexpected periods of high demand. However, this is not how the UK's excessively lax employment law framework is being used.
27. For some time there have been hundreds of thousands of people working in the UK via agencies (often multi-national, tax-efficient operations headquartered abroad) or on an otherwise casual basis.
28. However, the explosion in the use of bogus self-employment has swelled the volume of people providing work under precarious conditions. This partly reflects accumulated uncontrolled migration to the UK – something which may not be corrected until some years hence.
29. Throughout the world, data on people driving minicabs (work often done after normal hours) is a measure of the volume of unskilled/ undocumented labour. It is also a measure of how inadequate, income derived from low paid work is at enabling an individual to meet their living costs (ie people often drive minicabs after hours in order to supplement their main income).
30. Consider the increase in the size of the minicab fleet in London:

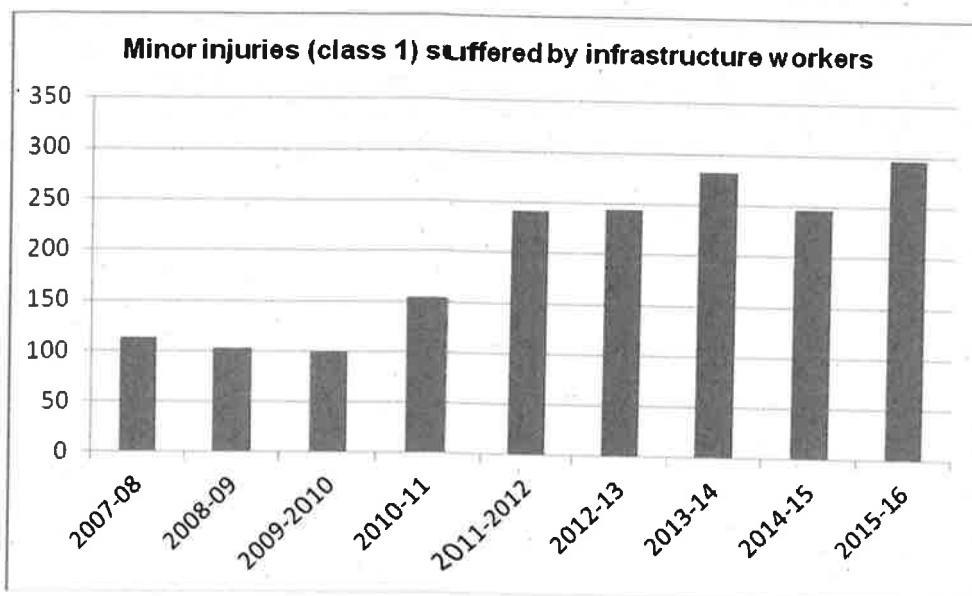


31. The bulk of those new drivers signed up to drive for *Uber* and equivalent mobile phone app operators, on the basis that they are self-employed. (The exact status of these drivers is currently being challenged in the courts).
32. The vast majority of *Uber* drivers appear to be driving full-time. Consider the number of hours worked by drivers for *Uber*⁶. *Uber* drivers are permitted to work long hours, precisely because they are self-employed. In other words, as drivers are arguably not employees, there is no restriction on the length of their working day. This has a negative impact on drivers' health and exacerbates the chance of them suffering fatigue. Having exhausted motorists plying our streets presents an obvious hazard to pedestrians and other road users.
33. Further, the emergence of *Uber* is undermining legitimate, professional and well-regulated drivers. The only winners from this arrangement are the venture capitalists funding *Uber*. That *Uber* is thriving in the UK is, as Transport for London admits, a reflection of how weak our regulatory framework is and how under-funded our enforcement teams are.

⁶ <http://nypost.com/2016/02/07/uber-drivers-working-up-to-19-hours-a-day-just-to-get-by/>

34. Passing significantly clearer and more robust labour laws is desirable, but will not in itself suffice to protect workers, if there is no meaningful enforcement. Specifically, the government departments and agencies tasked with enforcing workers' rights are under-funded. This must be reversed. Further, the ability of individuals to enforce their rights has been significantly improved by the introduction of fees to lodge an employment tribunal claim.
35. Even if there was some justification for a fee of some level to deter the handful of vexatious litigants, fees at the level currently set are excessive. We believe that the government should review both the necessity for and level of employment tribunal fees. Alternatively the courts may, humiliatingly for a government seeking to present itself as the champion of workers, have to intervene. (A legal challenge by trade union *Unison* continues).

36. The vast majority of people maintaining rail track are not directly employed (ie they are self-employed or perform their work via irregular/ artificial company structures). The pressure that such people are put under, in terms of unrealistic output and missed breaks, can be immense. This inevitably has resulted in increased accidents and injuries being suffered by infrastructure workers:



37. As people forced to work for umbrella companies or to register as self-employed, the vast majority of people carrying out track maintenance work for Network Rail are not entitled to basic workplace rights. In addition to being dangerous and pressurised work, individuals do not receive sick pay, employer pension contributions or maternity/ paternity leave. We note that only around 14% of people performing work for Network Rail are women:
<https://www.networkrail.co.uk/news/2016/mar/international-womens-day/>
38. While self-employment may suit a small number of individuals, we don't believe that steps should be taken to further encourage this work model. RMT represents self-employed workers and is aware of how much harder, achieving fair working conditions for such individuals can be. Accordingly, we believe that the ability of trade unions to represent the self-employed (ie achieve recognition for bargaining purposes) should be recognised in law. We adopt the recommendations of the TUC and the trade union law firm Thompsons as to how this could be achieved.

39. The use of agency staff and people classified as self-employed has been attractive for companies because they are cheaper than workers who are directly employed. Employers' liabilities in terms of workplace training and health and safety obligations are also affected.
40. Use of agency workers is often not a reaction to short-term business contingencies or emergency cover. For example, East Midland Trains (EMT) increased agency work to the extent that at some home stations, it has comprised up to 50% of onboard train staff (eg over Summer 2008). One agency worker had carried out work for EMT for two years. Examining the rates of pay, the attraction for the Company is obvious; agency workers at EMT in this grade earned £5.70 per hour compared to the £8.40 per hour earned by directly employed staff and they were only paid for hours worked, rather than receiving a fixed salary.

41. Plenty of other countries take steps to constrain the use of labour on a temporary basis.
42. In Germany and Austria the type of irregular and phony work relationships endemic in the UK, are not tolerated. Both countries recognise in law the concept of an employee-like person (*arbeitnehmerähnliche Person*). By statute, legal protections normally afforded solely to employees, (eg annual leave, protection against discrimination, access to labour courts and collective bargaining) are extended to this category of people.
43. Similar provisions exist in Southern European states. For example, the Portuguese labour code extends employment rights "to situations [known as *contratos equiparados*] in which professional activity is performed by a person for another in the absence of legal subordination, but in circumstances where the provider should be considered economically dependent on the activity's beneficiary".
44. Such measures are not the preserve of Europeans. In Chile, the Labour Code stipulates that if a contractor merely hires out labour, the relevant workers will be considered employees of the principal. In Bolivia, the law explicitly prohibits and sanctions subcontracting practices that are aimed at circumventing employment regulation.

45. A significant proportion of the people maintaining rail track on behalf of companies fulfilling contracts with the public entity Network Rail, are classified as self-employed.
46. That people performing such safety critical work are self-employed is problematic. Specifically people can work excessive hours by signing up to be engaged by a number of different sub-contracting companies. Additionally, that people can switch between work providers, means that continuing training and supervision of their welfare is impaired.
47. This problem has been recognised by the Office of Road and Rail. When questioned by RMT, the ORR acknowledged that zero hours contracts "appear to be a common form of securing staff for the engineering contract business" and stated that they are "mindful of the considerable risks that can arise from safety critical staff working for more than one employer". Furthermore, Ian Prosser, the Director of Railway Safety at the ORR stated that though "The widespread use of notionally 'self-employed' staff on zero hour contracts has some immediate and short term benefits with regard to staff flexibility and costs, it has a generally negative effect on the attitudes and behaviour of those involved, which is not conducive to the development of a safe railway"
48. Zero hours contracts are also in the maritime sector. Effective from 1 January 2016, Stena Line Irish Sea introduced a new salary and pay structure for Onboard Services (OBS) grades which significantly reduced the hourly rate of those seafarers employed on temporary/zero-hour contracts. Although the company refutes that these temporary contracts are "zero-hour" the Seafarers Employment Agreement (SEA) states that "...there is no guaranteed minimum number of hours of work".

49. People who agree to provide their labour, but are not directly employed, are in a vulnerable position. They rarely feel able to complain about receiving poor or even unlawful treatment. Even if they had the courage to challenge the organisation to which they are contracted, they are unlikely to have the knowledge, staying power or finances to fund expensive legal action required. This is why trade unions have an important role to play and why trade unions already represent and should be supported in continuing to represent the self-employed and precarious workers.

