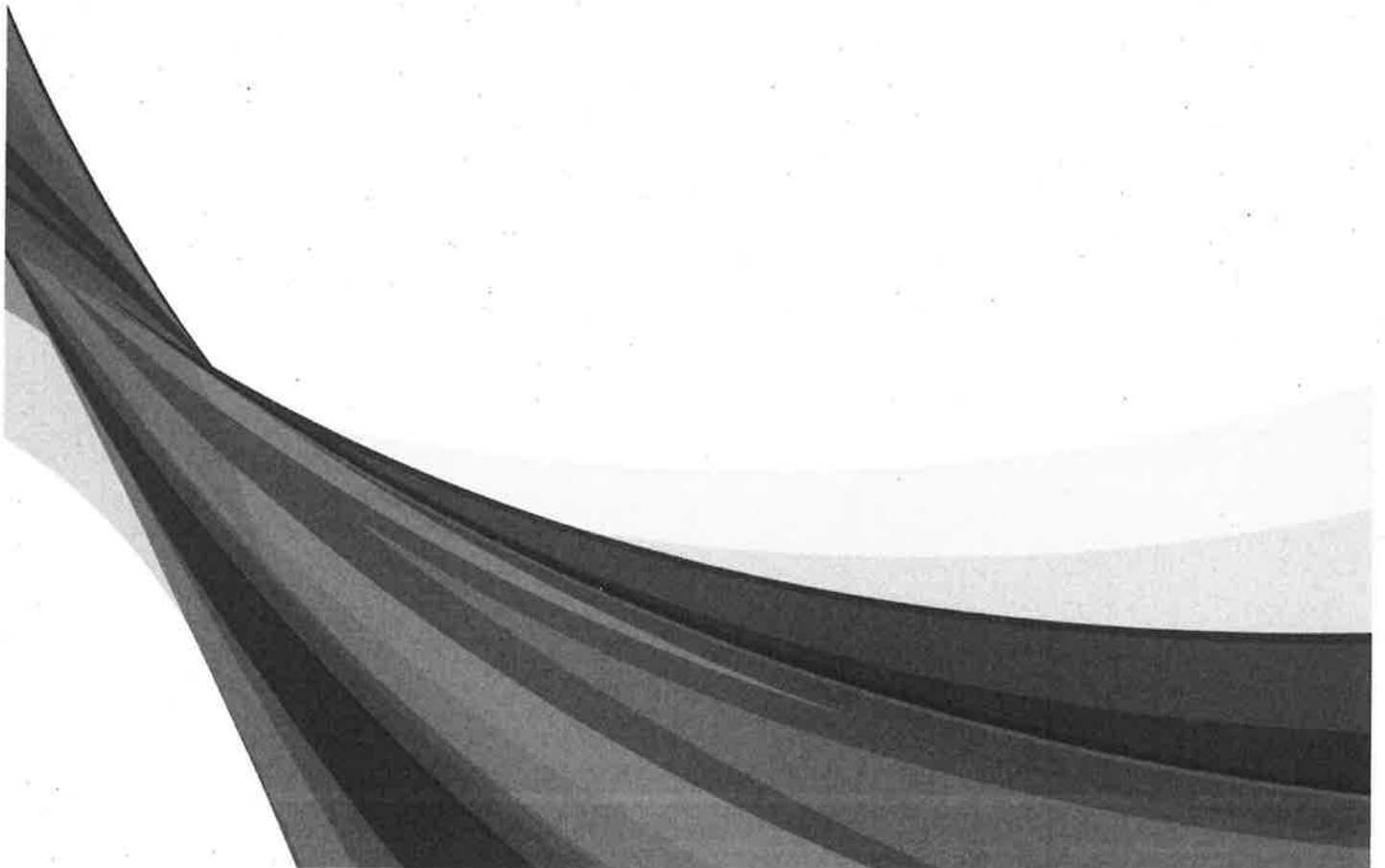




Living on the Edge

**TUC submission to the Taylor Review of Employment
Practices in the Modern Economy**



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Section one

Executive Summary

The TUC welcomes the opportunity to submit evidence to the Taylor Review on Modern Employment Practices. We would ask the review team to consider the findings and policy recommendations outlined in this publication when preparing its report to the government.

Summary of policy recommendations

Voice at work

- Trade unions should have a right to access workplaces and the opportunity to tell individuals about the benefits of joining a union.
- All workers should have a right to be represented by unions in the workplace.
- Employers should be required to agree collective and independent consultation arrangements when requested by a recognised union or by 5 workers in non-union workplaces.
- Companies should be required to include elected worker representatives on boards.
- The government should also strengthen economy wide mechanisms for worker voice. This should include:
 - Introducing new sectoral bodies which bring together unions and business, to negotiate pay, progression, training and conditions. These should be piloted in the low paid sectors where the need to improve conditions is greatest.
 - Restoring Acas' duty to promote collective bargaining.

The gig economy and the future of employment rights

Equipping employment law for the 21st century world of work

The rules on employment status should be simplified and updated, including the following changes:-

- The TUC believes all workers should benefit from the same decent floor of rights currently enjoyed by employees.
- A new 'worker' definition should be devised which covers all existing employees and workers, including zero hours contract workers, agency workers, and dependent contractors. The single definition should extend to individuals who are employed via an agency or a personal service company. Those covered by new worker status should benefit from the full range of statutory rights. The

Executive Summary

government should draw on legal expertise and consult extensively with unions and employers before drafting new definitions.

- In the interim, the government should take steps to extend existing 'employee' rights to all workers. These should include:
 - The right to statutory redundancy pay
 - Rights for working parents to return to their substantive job following maternity, paternity or adoption leave
 - Rights to paid time off for union reps
- The government should also take early steps to prevent employers from seeking to avoid or contract out their employment responsibilities. Self-employment should be a choice for individuals not something which is imposed. To this end:
 - A new default employee status should be created. There should be a presumption that individuals have 'employee' status unless the employer can demonstrate otherwise.
 - New financial penalties should be introduced for employers who use contract terms designed to prevent or deter individuals from asserting their rights.
- The rules on continuity of employment should reflect the realities of the world of work. One way to achieve this would be to amend the law to state that if an individual does not work during any given week that week should not count towards their length of service. However, continuity of employment would also not be broken.

Ensuring that flexibility cuts both ways

- All workers should have the right to receive a written statement of terms and conditions of employment, before their employment starts or on the first day of work at the latest. Employers should also be required to set out expected hours of work.
- Companies and public bodies should also be required to report on the use of zero hours contracts, short-hours contracts and agency work in annual reports, including in their supply chains, and explain why they are using these types of contract.
- Banning zero hours contracts: Individuals who work regular hours should have a right to a written contract guaranteeing their normal working hours.
- Workers employed on zero- or short-hours should have a right to be paid a premium, in the form of overtime payments, for any non-contractual hours worked.
- These rights should apply not only to individuals employed on zero-hours but also to the increasing numbers of short-hours contract workers.

- Workers should have the right to be reimbursed by employers for travel costs where a shift is cancelled at short notice. Employers should also be required to pay the workers for their scheduled shift

Ending the pay penalty for those in insecure work

- The government should close loopholes in the Agency Worker Regulations which permit employers to pay agency workers less than the going rate for the job. The Swedish derogation should be repealed.

Effective and innovative enforcement

- Employment tribunal fees should be abolished so that all workers can afford to enforce their rights through an employment tribunal.
- The law should be revised to ensure that the companies and organisations who are in practice responsible for undercutting employment standards or mistreating individuals are held to account. The best way to achieve this is to move towards a system of joint and several liability for employment law standards throughout supply chains.
- The government should pilot a joint and several liability approach to enforcement, whereby companies are held responsible for compliance throughout their supply chain. This could be piloted with one area of employment – for example, payment of the minimum wage, before being expanded to a wider scope of employment rights.
- The government should develop a public procurement strategy to improve compliance with employment standards. Public sector bodies should lead the way in this respect, ensuring that employers throughout their supply chain are paying the national minimum wage, offering all workers (who want them) contracts with guaranteed hours, and ensuring that they have access to sick pay and holiday pay.
- There is a strong case for extending the GLA's remit so that new sectors such as social care, construction and hospitality come within the licensing scheme.
- In sectors where non-compliance is less rife, one approach may be to offer them the chance to work with unions and government to set and monitor compliance with minimum standards. If standards have not improved within, say, a year, the sector should be licensed, with those who wish to operate in this sector required to register with the GLAA, and be subject to regular inspection.
- It is important that enforcement agencies have adequate resources to fulfil their statutory obligations. The TUC is calling for a review of the resources at the enforcement agencies disposal and whether these are adequate to fulfil their obligations, particularly in light of the newly expanded remit of the GLAA.
- Measures should be taken to ensure that undocumented migrant workers are not deterred from contacting enforcement agencies through fear of being referred on to immigration officers.

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Tax, social security and pensions

- The Taylor review should recommend a dedicated review of how employers and contractors are taxed and the impact of this on security at work, with the aim of ensuring that the tax system is supporting the creation of more secure jobs. The review should include representation from unions, business and government.
- The current situation leaves some workers considered too low paid to fall ill. The Taylor review should recommend that low-paid workers should have equal rights to SSP, paid at the normal rate, or at a rate equivalent to their normal weekly earnings if that is lower.
- New fathers and adoptive parents in low paid work or self-employment should be able to take paid time off for a new baby. The TUC believes that government should introduce an allowance similar to Maternity Allowance for new fathers, adoptive parents or new parents who opt to take shared parental leave in the first year after birth or adoption.
- Government could also significantly improve provision for mothers in insecure work by paying Maternity Allowance at an equivalent rate to earnings-related Statutory Maternity Pay, for the first six weeks.
- Cuts to Universal Credit will have a significant impact on the low paid, particularly those in insecure work. The next government should cancel cuts in the work-allowance, which will leave insecure workers on low incomes significantly worse off, and abolish the six week waiting period for payment of benefit. The Minimum
- Income Floor in Universal Credit is set to take £1.5bn off the incomes of the self-employed by 2021/22. The incoming government should commission an independent review of the MIF with a view to improving its sensitivity to the realities of self-employment. Until this is complete, the MIF should not apply to self-employed UC claimants.
- Auto-enrolment into a workplace pension has been a success, but has left out too many of those facing low pay and insecurity at work. To address this, the government should
 - Abolish the Earnings Trigger for employer contributions. Its current level is due to its historical link to a rapidly inflating Income Tax threshold. Removing it would give those in low-paid or part-time jobs the same rights to pension payments as colleagues who earn more.
 - Radically simplify the system of band earnings. The current system adds complexity for both employer and worker. It disadvantages lower earners who may not realise that in effect a lower contribution rate is applied to their pension compared to higher-paid colleagues.
 - The successful principle of auto-enrolment should also be used to increase pension provision for the self-employed. The tax return should be used to

automatically enrol self-employed workers into pension provision via NEST, unless they choose to opt out. The tax return should also give an additional nudge towards pension enrolment by spelling out the tax advantages of enrolling in a pension (in terms of pensions tax relief).

Section two

The Context

The TUC welcomes the Taylor Review into Modern Employment Practices. We have long argued that the framework of rights and protections for UK workers has not kept pace with the changing realities of the workplace, leaving too many working people with an experience of work that is anything but 'modern'.

As we set out below, over three million people, one in ten of the UK workforce, now face insecurity at work. Not only do they often face uncertainty about their working hours, they also miss out on rights and protections that many of us take for granted, including being able to return to the same job after having a baby, or the right to sick pay when you cannot work.

This insecurity is sometimes described as an inevitable feature of a modern economy, fuelled by new technology and a desire for more flexible ways of working. But the jobs in which insecurity has grown most swiftly are those which have been around for centuries, whether teaching, caring, or providing hospitality. As our research comparing the experience of insecure work across Europe shows, policy choices can make a huge difference to shaping the experience of working people; Germany for example, has grown its employment rate while reducing the number of people in self-employment or agency work.

In this section of our submission we set out details of research conducted over the past few months which shows:

- The extent of insecurity at work,
- Details of who is most likely to experience this insecurity,
- The sectors in which insecurity is growing fastest; and
- The UK's experience in international context.

The rest of the submission concentrates on how policy reform could help to ensure that everyone has the chance of a decent job, through the promotion of voice at work, and changes in employment law, enforcement, tax, social security and pensions policy.

The extent of insecurity at work

There are 3.2 million people who face insecurity in work in the UK, either because they are working on a contract that does not guarantee decent employment rights (including zero hours contracts, agency and casual work), or because they are in low paid self-employment (earning less than the government's National Living Wage). In total this is one in ten in of those in work.

These people are missing out on key rights and protections at work. 1.5 million of this group are employed, but risk missing out on family friendly rights including maternity, paternity and adoption leave, the right to an itemised pay slip, and protection from unfair dismissal. In addition, there are 1.7 million self-employed people who both lack access to these rights, and whose low pay means they cannot afford to protect themselves against the risk this creates.

TUC definition of insecure work

Insecure temporary work- (agency, casual, seasonal, other) this excludes fixed term contracts	730,000 (2016 Q2 ONS data)
Zero- hours contract workers – excludes those who are self-employed, and those who would be included in the category above	810,000 (2016 Q2 ONS data)
Low paid self –employment We use the Social Market Foundation estimate of low-paid self-employed workers ¹	1.7 million
TUC estimate of insecure work	3.2 million

The fastest growth in insecure work in recent years has been in the number of people on zero hours contracts (ZHCs), and those who are self-employed.

- The number of those on **ZHCs** (excluding those who say they are self-employed or work for an agency) has increased from 70,000 in 2006 to 810,000 in 2016. Some of this rise may be due to increased awareness of this form of insecure work. However, if this were the case, we might have expected to see a corresponding decline in other forms of insecure work.
- The number of those working on **agency, casual or seasonal contracts** has fallen very slightly over the last decade from 730,000 to 770,000 in 2016. While this is a fall, it clearly suggests that ZHCs have added to the total of insecure work, rather than displaced other forms of contract. We have excluded those on fixed term contracts from our definition of insecure work, as they have the same rights and protections as regular employees.

¹ <http://www.smf.co.uk/wp-content/uploads/2016/10/Social-Market-Foundation-SMF-Tough-Gig-Tackling-low-paid-self-employment-in-London-and-the-UK-October-2016.pdf>

The Context

- The number of people in **self-employment** has risen sharply since the financial crisis. In 2016, nearly 4.8m people were self-employed, up from 3.8m in 2006. Research by the Social Market Foundation² showed that 1.7m people earn below the level of the government's national living wage. While we have not produced an equivalent estimate for 2006, we know that earnings between the employed and self-employed have been diverging. Median earnings for the self-employed in 2014/15 were worth 60 per cent of average median earnings for employees, down from 70 per cent in 2004/5.³
- These types of work come not only with a loss of rights, but also with a significant pay penalty. Just looking at headline rates of pay, compared to the pay of an average employee:
- Workers on a ZHC experienced a 34 per cent hourly pay penalty:
 - Workers in agency work had a 20 per cent hourly pay penalty;
 - Those in casual work had a 39 per cent hourly pay penalty, and those in seasonal work a 37 per cent lower hourly rate.
 - As already outlined, median annual earnings for the self-employed were worth just 60 per cent of those of an employee.
- Research by Howard Reed for the TUC looked at the earnings of the self-employed and those on a zero hours contract controlling for a range of characteristics, including age, gender, qualifications, occupation and industry. This work looked at weekly earnings, where the pay penalties are larger:
 - The average weekly pay penalty for self-employment, controlling for characteristics both of the worker and of their occupation, was 44 per cent;
 - The average weekly pay penalty for working on a ZHC, controlling for characteristics both of the worker and of their occupation, was 37 per cent.⁴

Who is experiencing insecurity?

Analysis of who is undertaking these types of jobs suggests that the increase in insecurity work is compounding existing labour market disadvantage, with women, minority ethnic groups, and those in poorer regions of the UK more likely to be working this way.

- Around the same number of men and women (1.6m) are in insecure jobs. However, because there are more men than women in the labour market, **women are more likely to be in insecure work**, with almost 11 per cent of women in insecure employment, compared to just over 9 per cent of men. The majority of

² <http://www.smf.co.uk/wp-content/uploads/2016/10/Social-Market-Foundation-SMF-Tough-Gig-Tackling-low-paid-self-employment-in-London-and-the-UK-October-2016.pdf>

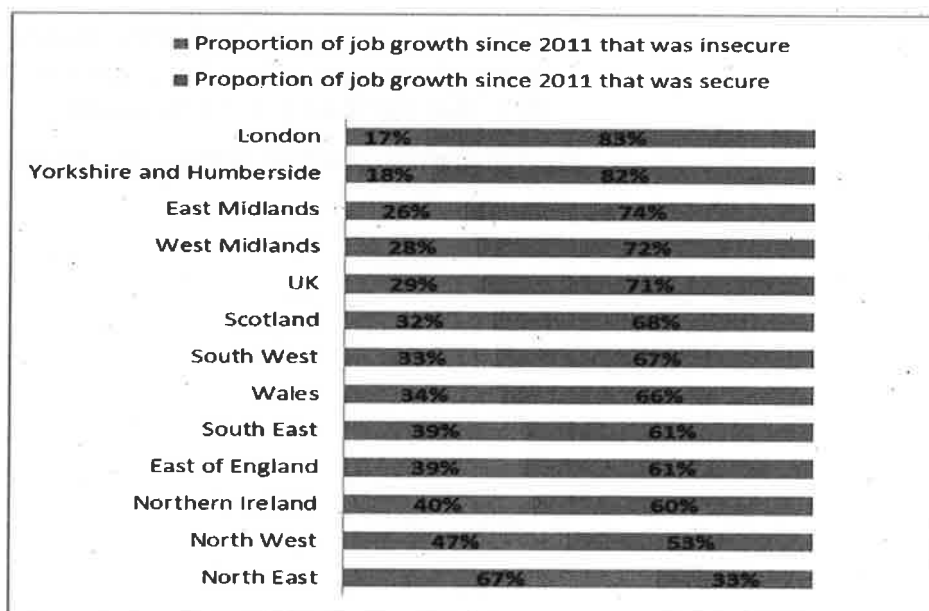
³ Data from the Family Resources Survey.

⁴ Howard Reed (2017) The impact of increased self-employment and insecure work on the public finances (TUC).

the increase in insecure work since 2011 has come from women, who account for 58 per cent of the increase in insecure jobs.⁵

- Looking only at those in employment (again for reasons of data consistency) shows that **Black, African and Caribbean workers are significantly more likely to face insecurity**. One in eight Black/African/Caribbean employees are in insecure work, compared to 1 in 17 workers across the UK.⁶
- **Workers in the North East, the region with the lowest GVA per head in 2015, are most likely to have seen employment in their area dominated by insecure work. Since 2011, two out of three jobs created in the North East have been in insecure forms of work.**

Jobs growth since 2011 by region and whether job was secure or insecure



Source: ONS (2011 Q4 -2016 Q4)

Which industries are driving the rise in insecure work?

Discussion of the modern world of work often focuses on the role of technology and the 'gig economy' in driving down employment rights and standards. App enabled employment may require new forms of policy response – although as we set out further (in the section on employment rights), many employment platforms are simply replicating the work of a traditional employment agency.

⁵ Analysis of the LFS Q4 2011 to Q4 2016) by the Learning and Work institute, commissioned by the TUC.

⁶ Analysis of the LFS, 2016, average of four quarters by the TUC.

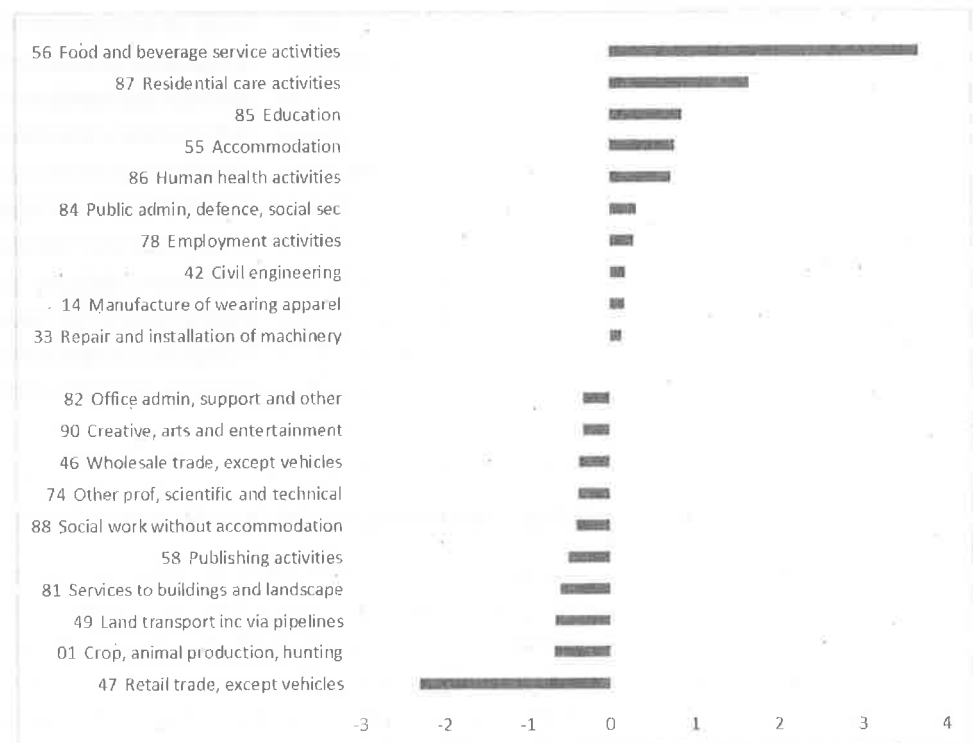
The Context

But analysis of the industrial sectors in which insecure work is growing the fastest shows that it is in traditional professions – often those in which cost pressures are intense – that the rise of insecure jobs has been concentrated.

The chart below shows the top ten and bottom ten sectors for the change in their proportion of insecure workers. Looking at the growth in insecure work since 2011, shows that it has risen by more than 660,000 (27%) over the past five years.

- **Those working in hospitality – that is restaurant and pub waiters - make up one fifth of the increase:** The number in insecure work more than doubled, rising by 146,000 (+128%) since 2011. 1 in 4 waiting staff are now in insecure work.
- **Education workers account for over one tenth of the increase:** The number in insecure work has risen by 82,000 since 2011 (+42%). 1 in 10 working in education now face insecurity.
- **Social care accounts for a tenth of the increase in precarious working:** The number of care home workers facing insecurity has risen by 66,000 (+133%) since 2011. Over 1 in 10 are now in insecure jobs

Change in the proportion of insecure workers, 2011-16



We asked the Learning and Work Institute to examine the changes at a sectoral level to try to discern whether there was any pattern in the types of sectors in which insecure work was increasing.

In general, correlation was difficult to find – and there was no relationship identified between, for example either the overall level of employment in a sector and the

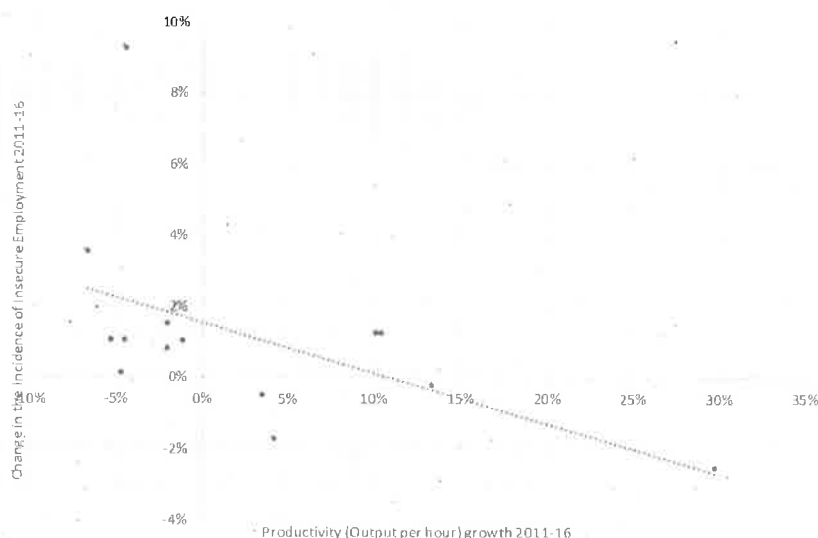
growth of insecure work, or the level of either total investment, or investment in technology

However, one interesting finding did emerge. As the Learning and Work Institute state:

The figure below shows the relationship between productivity growth and the change in insecure employment between 2011 and 2016. We were only able to look at this relationship for 14 1-digit SIC 2007 industries, as productivity data was not available for mining and quarrying; electricity, gas, steam and air conditioning; water supply, sewerage and waste management; and data was available only for government services which covers the three 1-digit sectors of: health and social work; education; and public administration and defence, and not these sectors separately. The pattern that emerges is a negative association between productivity growth and changes in the incidence of insecure employment. Thus, sectors which saw higher increases in productivity tended to experience falls, or smaller increases in insecure employment than other sectors. There is a reasonably strong correlation between lower productivity growth and higher increases in the incidence of insecure employment. The correlation coefficient between these two variables is -0.52. A correlation coefficient of -1 would indicate a perfect negative linear correlation while a coefficient of 0 indicates no linear correlation.

We cannot say from this correlation analysis whether lower productivity causes higher levels of insecure employment or vice versa, or whether causation runs in both directions or indeed whether there is any causal relationship between the two variables, as correlation does not necessarily imply causation. The result, however, is interesting suggesting that there could be some negative causal relationship between increasing insecure employment and declining productivity but establishing such a relationship exists would require further research.

Productivity Growth and Change in the Incidence of Insecure Employment 2011-16



The Context

It seems highly plausible to the TUC that workers who are paid less, given fewer rights and who often face uncertainty about when they will be working, would be likely to be less productive in their role, potentially creating a vicious circle in which lower productivity in turn causes employers seek cost savings by downgrading terms and conditions

Insecure work in the UK in context

In a further effort to understand the drivers of the increase in insecure work in the UK, the TUC commissioned research from the National Institute for Economic and Social Research (NIESR).

The research showed that, in contrast to claims sometimes made that new forms of work are an inevitable part of modern ways of working, the UK experience since the financial crisis has been exceptional:

- The UK had the third largest increase in the number of temporary workers for EU countries from 2008 to 2015 (albeit from a lower base of temporary work); and
- As the graph below shows, the UK had the largest increase in the number of self-employed workers for EU countries from 2008 to 2015.

Growth in total self-employment between 2008 and 2015 (EU28)



Source: European Labour Force Survey (2008 and 2015) <http://ec.europa.eu/eurostat/web/lfs/data/database>.
(Age Class: From 20-64 years)

The UK's high placement for growth in these categories of work cannot be explained simply as a result of strong employment growth overall. Germany had the fastest

overall employment growth of any EU country during the period, but its number (and proportion) of temporary and self-employed workers has fallen.

The report finds that the absence of effective legislation in the UK to regulate insecure work has allowed the growth of atypical employment, like zero-hours contracts. But even where workers in other European countries do experience more insecure forms of work, their levels of employment protection are greater. For example:

- In France, workers can only be on a fixed-term contract for 18 months, and Germany has introduced a maximum hiring period of 18 months for temporary agency workers.
- Zero-hours contracts do not exist in many EU countries, and are strongly regulated in others (e.g. Netherlands, Italy, Germany), in contrast to the UK's low levels of regulation. In the Netherlands, for example, employers are required to pay for at least three hours per shift, and to provide regular hours when the worker reaches a certain number of weekly hours over a given period.⁷

Conclusion

Insecure work has grown in the UK, further exacerbating poor pay and a lack of rights for those who already face labour market disadvantage. The sectors in which insecure work has grown fastest are those where people do traditional jobs, waiting, caring, and teaching.

International evidence suggests that there is nothing inevitable about insecurity in the modern world of work. The next sections of this submission set out how we can tackle insecurity by:

- Increasing workers' ability to negotiate better terms and conditions in their workplace
- Updating the framework of employment rights to protect everyone
- Improving the enforcement of those rights; and
- Ensuring that our tax and social security systems both incentivise secure jobs, and protect those currently facing insecurity.

⁷ Nathan Hudson-Sharpe and Johnny Runge (2017) International trends in insecure work: a report for the Trades Union Congress NIESR.

Section three

Voice at work

Introduction

In recent years unions, have played a vital role in placing a spotlight on exploitative working practices in companies such as Sports Direct, Amazon, Uber and Hermes⁸ - working practices which would be better suited to the Victorian era rather than 21st Century Britain.

Unions have worked to ensure that the issue of job insecurity remains high on the political and policy agenda. Union campaigns have acted as a catalyst for change, with companies such as Sports Direct, Wetherspoons, and MacDonalds all reporting plans to move away from the zero-hours business model. Unions have also supported strategic cases in tribunals to assist members in accessing and in benefiting from their employment rights.

Unions have highlighted the human costs of increased casualisation at work, including low pay, heightened job insecurity and the lack of decent rights in the workplace.⁹ Those in insecure work run the risk of being sacked without good reason or having their working hours reduced at short notice. Uncertainty over working hours and take home pay can create anxiety. The use of new technology, which has accompanied much insecure work, has also led to work intensification and to increasingly intrusive surveillance of working people. It is also often associated with a culture of bullying and increasingly demeaning working practices. This can have significant health implications for individuals.

The costs associated with the growth in zero-hours and short-hours contracts, agency working and false self-employment arise from the inherent imbalance of power which exists in such employment relationships.

Unions recognise that the most effective way of redressing the imbalance of power is by ensuring that working people have access to representation at work, have the ability to organise collectively and can negotiate for improvements in their pay and working conditions. By sitting around the bargaining table, employers and unions can find sensible solutions which meet the needs of businesses to respond to

⁸ <http://www.independent.co.uk/news/business/news/sports-directs-dickensian-working-practices-will-spread-exploitation-in-the-uk-unite-says-a7068766.html>;;
<https://www.theguardian.com/uk-news/2016/oct/20/delivery-giant-hermes-faces-hmrc-inquiry-into-low-pay-allegations>;

⁹ <https://www.theguardian.com/uk-news/2014/dec/14/why-cant-britain-create-decent-jobs>;;
<http://www.mirror.co.uk/news/uk-news/argos-homebase-tesco-exploit-workers-3630972>;;
<http://www.dailymail.co.uk/news/article-3997864/Amazombies-Seven-seconds-item-filmed-blistering-12-hours-shifts-timed-toilet-breaks-Christmas-order-does-worker-elves.html>

changing market conditions at the same time as respecting the rights of working people and improving the quality of work. The final section of this submission lists some recent examples where unions have succeeded in reaching agreements with employers to reduce their reliance on insecure forms of work and in negotiating improvements in pay and conditions for those in insecure work.

We would call on the Taylor review to ensure that the issue of voice at work and the important role which trade unions can play in minimising insecurity and improving working are placed at the centre of its future recommendations to government.

Unions' positive impact

Joint working between unions and employers plays an important role in supporting productive and innovative businesses, in promoting and training and staff development, improving working conditions and in reducing inequality, including for those in insecure work.

In summary:

Union workplaces are safer, with union safety reps reducing serious workplace injuries by 50 per cent.¹⁰ Research commissioned by the BERR (now BIS) in 2007 concluded that union safety reps save taxpayers between £181m and £578m (2004 prices) every year as a result of lost time reduction of occupational injuries and work-related illnesses of between 286,000 and 616,000 days.

Unions negotiate high quality training and skills, helping the workforce gain transferable skills and employers to meet their future skills needs. Every £1 of government investment into the Union Learning Fund, generates a total economic return of £12.30.¹¹

Union improve business performance. This was confirmed by the then Department of Business, Enterprise and Regulatory Reform in 2007 as part of the review of union reps facilities and facility time.¹² The report found that the work of union reps resulted in:

- Savings to employers and the exchequer of between £22m - £43m as a result of reducing the number of Employment Tribunal cases
- Benefits to society worth between £45m - £207m as a result of reducing work related illness.
- Overall productivity gains worth between £4bn to £12bn to the UK economy
- Savings of at least £19 million as a result of reducing dismissals

¹⁰ <https://www.tuc.org.uk/workplace-issues/health-and-safety/organisation/worker-involvement/union-effect>

¹¹ <https://www.tuc.org.uk/workplace-issues/health-and-safety/organisation/worker-involvement/union-effect>

¹² <https://www.tuc.org.uk/sites/default/files/tucfiles/thefactsaboutfacilitytime.pdf>

The gig economy and the future of employment rights

- Savings to employers of between £82m - £143m in recruitment costs as a result of reducing early exits.

Where organisations face difficult economic conditions, **unions and employers negotiate employers' fair processes for managing redundancies and restructuring.** Analysis of the 2011 WERS found that a large majority of lead union representatives reported working closely with management where changes were being introduced in the workplace. This included 66 per cent of union representatives in the public sector and 71 per cent in the private sector.¹³

Research undertaken by ACAS found that union representatives play an important role in improving workforce engagement and morale, by helping to ensure employees' concerns regarding their working conditions are listened to and addressed. This in turn can improve workplace productivity, the quality of services provided, and ultimately the financial performance of organisations.¹⁴

Unions negotiate with employers to improve policies and procedures, resulting in important benefits for the workforce

- Workplaces with recognised unions are more likely to provide additional workplace benefits, including sick pay policies which exceed the statutory minimum, employer-provided pensions and enhanced holiday entitlements.¹⁵
- Union workplaces have better work life balance policies. According to the Fourth Work Life Balance Employer Survey, published by BIS in December 2014:¹⁶
 - 77 per cent of unionised workplaces had a written policy on flexible working arrangements compared with 43 per cent of non-unionised workplaces.
 - Union workplaces were more likely to offer a full range of flexible working practices including job shares, term-time working, compressed working weeks and annualised hours.
 - 52 per cent of unionised workplaces provided enhanced maternity pay compared with 35 per cent of non-unionised workplaces. Union workplaces were also more likely to provide support for women returning to work from maternity leave.
 - 77 per cent of unionised workplaces offered retraining for women returning to work after maternity leave, compared with 58 per cent of non-unionised workplaces.

¹³ <https://www.tuc.org.uk/sites/default/files/tucfiles/thefactsaboutfacilitytime.pdf>

¹⁴ http://www.acas.org.uk/media/pdf/7/j/icoc03_1.pdf

¹⁵ Budd J (2004): Non-wage forms of compensation, *Journal of Labor Research* 25 Vol. 4 pp. 597-622; Budd J and Mumford K (2004): Trade unions and family-friendly policies in Britain, *Industrial and Labour Relations Review* 57 pp. 204-22

¹⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/398557/bis-14-1027-fourth-work-life-balance-employer-survey-2013.pdf

Promoting voice in the workplace

Despite the clear benefits of worker participation, the UK falls significantly behind our major competitors in the extent to which it involves employees in workplace decision making.

The WERS Survey 2011 found that less than half (47%) of employees thought that managers were good at responding to suggestions from employees and just over one in three (35%) said that managers were good at allowing employees to influence decisions. This is a relative, as well as absolute, weakness. The European Trade Union Institute compiles a European Participation Index (EPI) which measures three sources of workers' influence on companies: firstly, board-level employee representation; secondly, workplace representation; and finally, collective bargaining strength, as measured through the percentage of the workforce covered by collective bargaining and trade union membership. The most recent version of the EPI puts the UK sixth from bottom of the EU28 Member States in terms of workforce participation; only Cyprus, Lithuania, Latvia, Bulgaria and Spain perform worse.

The TUC believes that the government should take active steps to promote worker participation, representation and collective bargaining. Providing working people with improved rights to voice in the workplace assist in minimising insecurity and in enhancing the quality of work. Above all, it would help to ensure that working people have the ability to organise for better pay, conditions and rights at work.

With this in mind, the Taylor review should make the following recommendations to government.

Access to the workplace

Despite the successes of unions in organising against insecure work, there are still significant challenges when organising those employed in insecure work. Whilst good employers recognise the benefits of working closely with unions, they can face competition from unscrupulous employers who bar unions from the workplace and refuse them a seat at the bargaining table.

Trade unions should have a right to access workplaces and the opportunity to tell individuals about the benefits of joining a union. These includes access to expert legal advice, effective representation at work and wider union services.

Many good employers already involve union reps in induction meetings, ensure that their staff hear at an early stage about the benefits of union representation. The TUC believes that such practices should not be limited to reputable businesses but should become the norm.

Representation at work

All workers should a right to be represented by unions in the workplace.

Currently all workers have the right to be accompanied by a union rep or a colleague. But this right is limited to formal disciplinary hearings or where an individual wants to complain that the employer has failed to meet their contractual or statutory

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employment rights. But the right does not apply to informal or investigation meetings. Workers also do not currently have a right to be represented by a union when they want to ask for better pay and conditions.

Democracy at work: promoting the role of information and consultation. The TUC believes that more could be done to promote the role for information and consultation at work.

Successful organisations of all kinds require effective mechanisms for consulting with and engaging their workforce. The case for information and consultation can be made in the name of both economic efficiency and social justice. Information and consultation is one of a range of measures which, taken together, are known as High Performance Work Practices. Evidence shows that such work practices contribute to higher productivity at the company level. However, information and consultation also introduces basic democracy in the workplace. Whilst responsibility for major decisions still rests with management, providing a voice for workers not only improves decision-making, it also fosters greater trust between management and employees.

The right of workers to be consulted about changes to their work is recognised in the Information and Consultation of Employees Regulations 2004 (ICE). However, as currently drafted these regulations have proved ineffective in delivering these rights and have failed to ensure that workers in non-unionised workplaces are consulted properly about developments at work. This is because the consultation rights have to be triggered by a request from 10 per cent of the workforce, which, in an employer of any size that is not unionised, is a very high bar in terms of workforce organisation. In addition, many workers, in all probability the vast majority, are totally unaware of these rights. Reform of the ICE regulations is an essential part delivering minimum standards across the UK in terms of workplace consultation, and would make an important contribution to an effective industrial strategy.

The TUC believes the regulations should be amended to **require employers to agree collective and independent consultation arrangements when requested by a recognised union or by 5 workers in non-union workplaces.**

Worker representatives on company boards

The TUC believes that **companies should be required to include elected worker representatives on boards.**

Workers' interests are affected by the priorities and decisions of boards. As a matter of justice they should be represented in those discussions. But there are also many reasons why worker representatives would enhance the quality of board decision-making:

- Workers have an interest in the long-term success of their company, and their participation would encourage boards to take a long-term approach to decision-making.

- Worker board representation would bring people with a very different range of backgrounds and skills into the boardroom, which would help challenge 'groupthink'.
- Workers would bring the perspective of an ordinary worker to bear on boardroom discussions; evidence from countries with worker board representation shows that this is particularly valued by other board members.
- Workforce relationships are central to company success, and worker board representation would help boards to manage these key stakeholder relationships more effectively.

Promoting standards by sectors

The government should also strengthen economy wide mechanisms for worker voice. This should include:

- **Introducing new sectoral bodies which bring together unions and business, to negotiate pay, progression, training and conditions. These should be piloted in the low paid sectors where the need to improve conditions is greatest.**
- **Restoring Acas' duty to promote collective bargaining.**

Sectoral bodies could play a key role in raising standards but also in ensuring that reputable businesses who adopt good employment practices do not face unfair competition from firms which use insecure work as a means of reducing costs and avoid their employment and tax obligations

Summary of recommendations

- Trade unions should have a right to access workplaces and the opportunity to tell individuals about the benefits of joining a union.
- All workers should a right to be represented by unions in the workplace.
- Employers should be required to agree collective and independent consultation arrangements when requested by a recognised union or by 5 workers in non-union workplaces.
- Companies should be required to include elected worker representatives on boards.
- The government should also strengthen economy wide mechanisms for worker voice. This should include:
 - Introducing new sectoral bodies which bring together unions and business, to negotiate pay, progression, training and conditions. These should be piloted in the low paid sectors where the need to improve conditions is greatest.
 - Restoring Acas' duty to promote collective bargaining.

Section four

The gig economy and the future of employment rights

Introduction

As set out above, since the recession the UK has witnessed a rapid increase in insecure forms of work, including agency working, zero-hours contracts and other forms of casual work.

Some employers argue that the increased diversity of employment enables business to respond to peaks and troughs in demand, whilst providing welcome flexibility and choice for those at work.

However, there is substantial evidence which confirms that the new flexible working practices are increasingly characterised by low pay, heightened job insecurity and the loss of basic rights at work, which most people take for granted.

Moreover, there is growing evidence from trade unions that the use of zero-hours and short-hours contracts, agency working and self-employment is acting a conduit for exploitation and abuse. The imbalance of power which exists in such employment relationships means that the employer reaps the benefits of flexibility, whilst all the risks and associated insecurity are transferred to the worker.

A framework for reform

The TUC believes that employment rights should be reformed with a view to minimising insecurity and to ensuring that the law keeps pace with changes in the world of work.

Future reforms should focus on three principal themes, namely the need to:

- Modernise rules on employment status and continuity of employment to ensure all working people benefit from the same floor of decent employment rights and employers cannot contract out of their employment responsibilities or misclassify staff as self-employed.
- Add to the existing framework of rights to ensure that flexibility in the workplace cuts both ways.
- Put an end to the pay penalty experienced by those in insecure work. Individuals who are expected to work variable hours should be financially rewarded for the flexibility they provide to employers.

A question of status

The issue of employment status is vital for working people, as it regulates which employment rights individuals benefit from in the workplace.

However, there is a growing consensus that employment rules are overly complex, create uncertainty for managers and workers and mean that groups of workers – often those who are most vulnerable – lose out on the rights they need.

Gateways to rights – not hurdles

Whilst the rules on employment status were originally designed as the gateways to employment rights, increasingly they have become hurdles which workers must overcome.

In order to qualify for rights, individuals must first establish:

*They have **the right type of contract** with an employer.* This involves navigating complex and regularly shifting common law tests, such as control, mutuality of obligation, or the requirement to provide work or services personally. Employers are able to deprive individuals of rights by refusing to guarantee any future hours or permitting the individual to provide a substitute if they cannot complete the work.

*They have **a contract with the right employer**.* This creates difficulties for those employed through agencies, umbrella companies or a personal service company. The individual is deemed not to have contract with the end user, even though it is they who benefit from any work performed. They also cannot claim rights against the intermediary who lacks the necessary control over when or how work is performed.¹⁷ Individuals are effectively trapped in a Bermuda triangle in which their rights all but vanish or at least prove unenforceable.

*Their **contract has to exist for long enough** to qualify for rights.* This creates difficulties for zero-hours contract workers, agency workers and other casual staff who due to gaps in employment fail to meet statutory qualifying periods and therefore miss out on protection from unfair dismissal, statutory redundancy pay and family friendly rights to request flexible work or to return to work after maternity or paternity leave.

UK employment law not keeping pace with labour market trends

Despite the rapid expansion in temporary, insecure employment and the emergence of complex supply chains, UK employment law remains wedded to the notion that permanent, stable employment is the norm. Those that do not meet this norm are simply not protected.

The TUC estimates that due to their uncertain status and the intermittent nature of their work, 1.5 million individuals, including agency workers, zero hours contract

¹⁷ James v London Borough of Greenwich [2008] EWCA Civ 35 CA

The gig economy and the future of employment rights

workers and casual and seasonal staff, are at risk of losing out on key employment rights,¹⁸ including job security rights and family friendly protections.

New technology and insecurity

In recent months, there has been growing media and policy focus on the impact of technology on the nature of the employment relationship and the role of employment law. Of particular interest has been the emergence of online platforms – often referred to as ‘the gig economy’.

Online platforms are increasingly used by employers to recruit labour and outsource tasks and services. Workers also use the platforms to look for work and to undertake job match services. As such, online platforms are effectively operating as employment businesses and agencies and in the TUC’s view should be regulated accordingly.

The growth in platform work has also been identified as one of the key drivers behind the shift from traditional employment to self-employment – with some commentators claiming that the gig economy is changing the nature of work, creating a new labour market of entrepreneurs where employment law is no longer relevant.

However, as the recent *Uber*¹⁹ and *CitySprint*²⁰ cases have confirmed, many of the traditional features of the employment remain intact even in the gig economy, with platform companies determining the substantive terms of the employment relationship. This includes retaining the ability to vet workers, to determine pay rates, to decide when and how work is performed, and even the ability to take disciplinary action. It is perhaps unsurprising that employment tribunals decided that there was an employment relationship existed and that that individuals were entitled to rights.

This does not mean that the status of gig economy workers is a settled matter. There is also evidence that platform companies and other employers continue to misclassify workers as self-employed as a means reducing costs and avoiding their tax and employment responsibilities. Individuals are deprived of rights and protections associated with employment, whilst at the same time missing out on the benefits of self-employment including the ability to control their own work.

Estimates of bogus self-employment vary – Citizens Advice, based on survey work, suggest that around 500,000 people could be classified as falsely self-employed.²¹

¹⁸ <https://www.tuc.org.uk/sites/default/files/Living%20on%20the%20Edge%202016.pdf>

¹⁹ *Aslam & Ors v Uber & Ors* 2202550/2015 available at: <https://www.judiciary.gov.uk/wp-content/uploads/2016/10/aslam-and-farrar-v-uber-reasons-20161028.pdf>

²⁰ *Dewhurst v CitySprint UK Ltd* 2202512/2016 available at:

²¹ <https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/media/press-releases/bogus-self-employment-costing-millions-to-workers-and-government/>

The three-tier workforce

The range of different rights to which individuals are entitled, varies substantially depending on whether they qualify as an ‘employee’, a ‘worker’ or as ‘self-employed’.

The self-employed have few rights at work, notably health and safety protections and protection from discrimination in some limited circumstances. Even these limited rights have been eroded in recent years. Two years ago, the government introduced new laws which removed millions of self-employed from health and safety protections.²² In a series of recent cases, the courts and tribunals have decided that self-employed workers no longer fall within the scope of anti-discrimination law.²³

Those classified as ‘workers’ fare slightly better with rights including the right to be paid the national minimum wage, holiday pay, working time protections, protection from discrimination and some union rights.

However, core protections including job security rights, family-friendly rights and protection from arbitrary treatment are reserved for ‘employees’ who also tend to be entitled to benefits associated with stable employment, such as enhanced sick pay and pensions. In contrast, individuals engaged in more ‘flexible’ forms of work bear all the risk. Their employment can be terminated at a moment’s notice, they have no guaranteed hours and are not entitled to redundancy pay if work dries up – leaving them with no money for household bills until they find another job.

Confusion and lack of clarity

The existence of multiple status tests generates confusion and uncertainty for businesses and working people. In research on zero hours contracts published in 2013,²⁴ the CIPD acknowledged there was widespread confusion over employment status.

In their evidence to BEIS Select Committee inquiry into the future of work, the Law Society argued *“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...”*²⁵

The Law Society also expressed concern that *“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.”*

²² Deregulation Act 2015: <http://www.legislation.gov.uk/ukpga/2015/20/contents/enacted>

²³ Halawi v WDFG UK (t/a World Duty Free) [2014] EWCA Civ 1387

²⁴ http://www2.cipd.co.uk/binaries/zero-hours-contracts_2013-myth-reality.pdf

²⁵ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/business-energy-and-industrial-strategy-committee/future-world-of-work/written/44652.html>

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Without the support of a union, workers simply cannot afford to take claim to a tribunals²⁶ or are wary of doing so for fear of future victimisation. The tribunal process is also often protracted. Many individuals cannot face the prospect of waiting 6 to 12 months to discover if they have rights at work.

Avoiding employment rights

Employers can take advantage of the current uncertainty and complexity of employment status rules to avoid their employment law obligations.

In the recent Uber decision the tribunal commented on *“the remarkable lengths to which Uber has gone to compel agreement with its (perhaps we should say it lawyers’) description of itself and with its analysis of the legal relationships between the two companies, the drivers and the passengers. [I]t seems to us that the Respondent’s case and the written terms on which they rely do not correspond with the practical reality. The notion that Uber in London is a mosaic of 30,000 small businesses linked by a common ‘platform’ is to our mind faintly ridiculous.”*²⁷

Evidence gathered by the Work and Pensions Committee also reveals that unscrupulous companies use contractual terms to intimidate or prevent individuals from going to tribunal to challenge their self-employment status and to assert their employment rights.²⁸

Bringing employment law into the 20th century

The TUC believes that existing rules on employment status should be reformed to provide employers and working people with increased clarity, to prevent exploitation and to minimise insecurity at work.

Ending the three tier workforce

The TUC believes all workers should benefit from the same decent floor of rights currently enjoyed by employees. This means that a far wider range of people would benefit from rights including the right to request flexible working, to return to their job after maternity and paternity leave, the right to statutory redundancy pay and the right for union reps to have paid time off for trade union duties.

- **A new ‘worker’ definition should be devised which covers all existing employees and workers, including zero hours contact workers, agency workers, and dependent contractors. The single definition should extend to individuals who are employed via an agency or a personal service company.**²⁹

²⁶ Since the introduction of fees in 2013, the number of claims taken to a tribunal has fallen by 67 per cent.

²⁷ <https://www.judiciary.gov.uk/wp-content/uploads/2016/10/aslam-and-farrar-v-uber-reasons-20161028.pdf> para 87 and 90

²⁸ <http://www.independent.co.uk/news/uk/politics/deliveroo-uber-amazon-gig-economy-workers-exploitation-contracts-mps-accuse-exploitative-a7668971.html>

²⁹ The worker definition used in section 43(1) on whistle-blowing rights provides a useful precedent.

Those covered by new worker status should benefit from the full range of statutory rights. The TUC would not support any exemptions for groups of workers or sectors from specific rights, including the NMW. Such exemptions would undermine the effectiveness of rights and provide scope for employers to avoid their obligations.

The TUC recognises that employment status raises complex issues. Care needs to be taken when devising new statutory definitions, to ensure that:

- working people are not disadvantaged
- those in need of protection are covered
- new tests are resilient and will accommodate future developments in the labour market

The government will need to draw on legal expertise and consult extensively with unions and employers when drafting new definitions.

- **In the interim, whilst work on a new work definition is carried out, the government should take steps to extend existing ‘employee’ rights to all workers. This should include:**
 - **Rights to statutory redundancy pay**, which would assist to those in insecure work to access training and new skills needs to find new employment.
 - **Rights for working parents to return to their substantive job following maternity, paternity or adoption leave.** This would ensure that women in more insecure work retain access to the labour market and are not forced to accept a pay cut when returning to work.
 - **Rights to paid time off for union reps.** This would ensure that individuals employed in high risk sectors where insecure forms of work are prevalent such as construction, forestry and agriculture, benefit from union representation and from the expertise of union safety reps. Union learning reps can also play a vital role in ensuring that those in insecure work have improved access to employed funded training and learning opportunities.

Avoiding exploitation

The government should also take early steps to prevent employers from seeking to avoid or contract out their employment responsibilities. Self-employment should be a choice for individuals not something which is imposed. To this end:

- A new default employee status should be created. There should be a presumption that individuals have ‘employee’ status unless the employer can demonstrate otherwise. This would go some way to giving working people greater security about their rights.
- New financial penalties should be introduced for employers who use contract terms designed to prevent or deter individuals from asserting their rights.

The gig economy and the future of employment rights

Minding the gap: rules on continuity of employment

The rules on continuity of employment should be reformed to ensure that those in insecure and intermittent forms of work do not lose out on key employment rights, because they lack the necessary continuity of employment:

ZHC workers, agency workers and other casual staff who do not work in any week can find that their continuity of employment has been broken and they will fail to meet the relevant qualify period for key rights.

- Unfair dismissal (2 years)
- Statutory redundancy (2 years)
- Right to request flexible working (6 months)
- Right to return to their job after maternity, paternity or adoption leave (26 weeks qualifying period)

The courts have tried to deal with this problem by finding that an umbrella contract spans any gaps between works. This has assisted ZHC workers who work relatively regularly and have a genuine expectation of future hours.³⁰ But those with more varied or random working patterns continue to lose out.

The TUC believes the rules on continuity of employment should reflect the realities of the world of work. One way to achieve this would be to amend the law to state that if an individual does not work during any given week that week should not count towards their length of service. However, continuity of employment would also not be broken. The same rule applies where individuals take strike action. Weeks where an individual is absent from work due to holidays, sickness, family related leave or a temporary cessation in work would continue to count towards continuity of service.

Ensuring that flexibility cuts both ways

Employers argue that the growth in flexible work benefits both employers and workers.

The advantages for employers in using temporary workers are clear. Many employers use casual work practices to maximise the flexibility of their workforce in order to manage peaks and troughs in demand. They can achieve significant cost efficiencies by retaining a pool of flexible workers, who are familiar with their business practices and who can be called on at short notice. The use of contingent workers can be part of a broader strategy to keep wage costs down. Employers are only required to pay ZHC and agency workers for the time they actually work. They are under no obligation to pay an individual who turns up for the start of a shift but is not offered any work.

³⁰ Pulse Healthcare Ltd v Carewatch Care Services Ltd & 6 Others UKEAT/0123/12/BA

Employers also use agencies to ‘outsource’ any employment law obligations; whilst others see ZHCs as a means of evading such rights altogether. Employers are therefore able to reduce costs for example by laying off staff at short notice whilst avoiding redundancy payments.

The TUC recognises that some workers value the flexibility that comes with variable hours contracts. However there is also evidence that the issues of flexibility and choice in the workplace primarily tend to cut one way, with individuals tending to bear the risks of increased flexibility whilst employers reap the financial benefits.

Far from enjoying increased choice, individuals are often forced into accepting ZHCs, agency working and even self-employment by the reality that it is the only form of employment open to them. Similarly, 59 per cent of those working as temporary agency workers are only doing so because they cannot find a permanent job.³¹

As for increased flexibility, while some people use a ZHC to fit their employment around studying or caring, there is clear evidence that zero-hours contracts do not offer workers either sufficient hours or income security; workers on a zero-hours contract are three times more likely than other workers to say that they would like to work more hours (30 per cent compared to 10 per cent).³²

Those working on zero or variable hours contracts often having little or no choice or control over when or how often they will be offered work. In 2013, the UKCES published survey findings which suggested that 52 per cent of temporary workers said they have a little, not much or no control over how many hours they work. Fifty-two per cent of temporary workers and 60 per cent of ZHC staff feel they have to accept work if their employer asks.

The uncertainty over working hours and take home pay means it is difficult for individuals and families to budget for household bills. Some even face difficulties securing mortgages or tenancy agreements.³³ The need to remain available for work at short notice makes it difficult to organise childcare and to plan family and social life.

A new framework of rights

The TUC believes there is a compelling case to improve the rights of those currently employed in insecure and variable hours work. We would ask the Taylor Review to recommend the following changes to employment law.

Written statement of terms and conditions

³¹ <http://www.resolutionfoundation.org/app/uploads/2016/12/Secret-Agents.pdf>

³² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/302989/flexible-contracts-final.pdf

³³ https://www.buzzfeed.com/sarasparry/mcdonalds-will-now-guarantee-staff-up-to-30-hours-work-per?utm_term=.bhOLo3w64#.kID0e5gvZ

The gig economy and the future of employment rights

The TUC believes that the government should encourage increased transparency in the employment relationship. Many workers do not have a written contract of employment and are not aware of their basic terms and conditions. Some agency workers and those working in sectors involving long supply chains often do not know who their legal employer is. As a result, they face difficulties enforcing their rights.

Currently, the right to receive a written statement of employment particulars is limited to employees whose contract lasts one month or more. Employers are required to provide the statement within 2 months of the start of employment.

The TUC believes that all workers should have the right to receive a written statement of terms and conditions of employment, before their employment starts or on the first day of work at the latest. Employers should also be required to set out expected hours of work. This would encourage employers to map out their workforce needs in advance and to ensure that working hours are fairly distributed.

The government should encourage public bodies and companies to take a more transparent and strategic approach to workplace planning. **Companies and public bodies should also be required to report on the use of zero hours contracts, short-hours contracts and agency work in annual reports, including in their supply chains, and explain why they are using these types of contract.** These reports would help inform consumer choices and shareholders' investment plans.

Ending the use of zero hours contracts

The lack of guaranteed regular working hours is another of the major problems experienced by zero-hours workers. The ability of employers to reduce an individual's working hours without any notice or without their agreement creates significant anxiety for workers and makes it difficult to plan financially.

The government should move towards **banning the use of zero-hours contracts.**

Individuals who work regular hours should have a right to a written contract guaranteeing their normal working hours. This would ensure that individuals who have worked regularly for an employer over a period of time cannot suddenly find that their hours have been zeroed down and they face financial difficulties.

The law should also create incentives for employers to plan in advance for their workforce needs, rather than expecting employees to remain at their beck and call. **Workers employed on zero or short-hours should have a right to be paid a premium, in the form of overtime payments, for any non-contractual hours worked.** The TUC believes the enhanced hourly pay rate should be linked to the individual's normal pay rather than an enhanced NMW rate. The former approach would ensure individuals are properly remunerated for the flexibility that they provide employers but the latter could lead to downward pressure on pay rates, especially for professionals, such as lecturers, who are employed on zero hours contracts.

Short-hour contracts

The measures in this section should apply not only to individuals employed on a ZHC but also to the increasing numbers of short-hours contract workers who guaranteed limited hours of work per week but are often expected by employers to work additional variable hours. Employers increasingly use short-hours contracts in order to avoid the reputational risks associated with ZHC workers, but nevertheless to reduce costs by ensuring that workers' hours and earning do not meet thresholds for National Insurance Contributions and income protections, such as statutory sick pay and statutory maternity pay.

But workers on such contracts benefit little in terms of increased job or income security but are nevertheless expected remain available for work and at the beck and call of employers.

Short notice of shift and cancellations

Findings from a survey carried out by the CIPD in 2013³⁴ revealed that ZHC workers often receive very limited notice when work is available or when it is cancelled. Forty-two per cent of zero-hours workers received up to 12 hours' notice when work is available, whilst 46 per cent of zero hour staff receive little or no notice (40 per cent) or they find out at the start of the shift if work (6 per cent) has been cancelled. The lack of adequate notice places pressure on households, and makes it difficult to organise family life.

Workers should have the right to reimbursed by employers for travel costs where a shift is cancelled at short notice. Employer should also be required to pay the workers for their scheduled shift. These changes would ensure that workers are not left out of pocket. They would also encourage employers to plan their staffing needs well in advance.

Ending the pay penalty for those in insecure work

Those working in insecure work are more likely to be low paid compared with those on standard contracts, and the evidence is that for several forms of insecure work, this pay penalty has increased over the last decade.

The TUC is concerned that too many employers are using insecure work as means of reducing costs. As we set out above, both the self-employed and those on ZHCs face significant pay penalties.

The proposals outlined above are designed to encourage employers to move away from insecure work to more stable forms of employment which provide workers with increased financial security. But additional measures should also be adopted to ensure that those in insecure work are paid the going rate for the job.

In particular, the TUC remains concerned that agency workers do not receive equal treatment. **The government should close loopholes in the Agency Worker**

³⁴ CIPD Ibid, pp20-21

Regulations which permit employers to pay agency workers less than the going rate for the job.

Of particular concern is the use of the so-called 'Swedish derogation' or pay between assignments contracts. Individuals employed on such contracts are not entitled to equal pay even where they have been on an assignment for more than 12 weeks. The TUC discovered that in some workplaces agency workers were paid up to £135 less a week than permanent staff doing the same job.³⁵ **The TUC believes that the Swedish derogation should be repealed.**

Summary of recommendations

Equipping employment law for the 21st century world of work

The Taylor review should recommend that rules on employment status should be simplified and updated, as follows:-

- The TUC believes all workers should benefit from the same decent floor of rights currently enjoyed by employees.
- A new 'worker' definition should be devised which covers all existing employees and workers, including zero hours contact workers, agency workers, and dependent contractors. The single definition should be extended to individuals who are employed via an agency or a personal service company.³⁶ Those covered by new worker status should benefit from the full range of statutory rights. The government should draw on legal expertise and consult extensively with unions and employers when drafting new definitions.
- In the interim, the government should take steps to extend existing 'employee' rights to all workers. This should include:
 - The right to statutory redundancy pay
 - Rights for working parents to return to their substantive job following maternity, paternity or adoption leave.
 - Rights to paid time off for union reps.
- The government should also take early steps to prevent employers from seeking to avoid or contract out their employment responsibilities. Self-employment should be a choice for individuals not something which is imposed. To this end:
 - A new default employee status should be created. There should be a presumption that individuals have 'employee' status unless the employer can demonstrate otherwise.

³⁵ <http://www.tuc.org.uk/workplace-issues/employment-rights/proposed-changes-law/basic-rights-work/tuc-lodges-complaint>.

³⁶ The worker definition used in section 43(1) on whistle-blowing rights provides a useful precedent.

- New financial penalties should be introduced for employers who use contract terms designed to prevent or deter individuals from asserting their rights.
- The rules on continuity of employment should reflect the realities of the world of work. One way to achieve this would be to amend the law to state that if an individual does not work during any given week that week should not count towards their length of service. However, continuity of employment would also not be broken.

Ensuring that flexibility cuts both ways

- All workers should have the right to receive a written statement of terms and conditions of employment, before their employment starts or on the first day of work at the latest. Employers should also be required to set out expected hours of work.
- Companies and public bodies should also be required to report on the use of zero hours contracts, short-hours contracts and agency work in annual reports, including in their supply chains, and explain why they are using these types of contract.
- Banning zero hours contracts: Individuals who work regular hours should have a right to a written contract guaranteeing their normal working hours.
- Workers employed on zero- or short-hours should have a right to be paid a premium, in the form of overtime payments, for any non-contractual hours worked.
- These rights should apply not only to individuals employed on zero hours but also to the increasing numbers of short-hours contract workers who guaranteed limited hours of work per week but are often expected by employers to work additional variable hours.
- Workers should have the right to be reimbursed by employers for travel costs where a shift is cancelled at short notice. Employer should also be required to pay the workers for their scheduled shift.

Ending the pay penalty for those in insecure work

- The government should close loopholes in the Agency Worker Regulations which permit employers to pay agency workers less than the going rate for the job. The Swedish derogation should be repealed.

Section five

Effective and innovative enforcement

Employment rights are only worthwhile if they can be enforced by workers. Having a range of individual employment rights does not ensure that employers will comply with law, so it is vital that workers can rely on an effective enforcement system to protect their rights.

There is widespread non-compliance with employment rights in the labour market.

- The TUC estimates that at least 250,000 are not being paid the National Minimum Wage (NMW).
- In 2014, the TUC estimated using ONS data that 1.6 million employees received less than 5.6 weeks annual leave. At the time, this amounted to about 6.2 per cent of employees. The worst employment sectors were hospitality and catering, (12.8 per cent), closely followed by arts, entertainment and recreation (11.8 per cent) and agriculture (10.4 per cent).
- According to Acas quarterly bulletins, the number of workplace disputes remains at a high level, with the level of early conciliation notifications regularly exceeding the number of employment tribunal claims recorded prior to the introduction of fees. Between April 2014 and September 2016 Acas received 221,800 notifications.³⁷ This suggests that many people are subject to potential breaches of employment law in the workplace.

Non-compliance with employment rights has far-reaching consequences. For instance, the endemic rates of non-payment of the NMW in the care sector pushes care workers into poverty and contributes to high staff turnover rates (30 per cent in homecare) but it also has a detrimental impact on care standards. Not paying for travel time in the homecare sector, even though it is working time, encourages the practice of ‘call clipping’ whereby homecare workers leave their visits early in order to cut down on the amount of time they have to spend working for free. Poorer levels of care in the social care system inevitably lead to more pressure and cost being placed upon the NHS.

An effective enforcement system should not just target violations and exploitation at the fringes of the labour market. We believe that in order to effectively tackle exploitation there must be concerted action to prevent and respond to all breaches of employment rights. Allowing “low level” or “accidental” breaches to routinely

³⁷ Para 3.2, HoC library, Briefing Paper, No.7081, 15 February 2016

happen undermines standards of decent work and encourages an environment in which exploitation can thrive. A recent report from the Home Office's Migration Advisory Committee³⁸ identified the general lack of enforcement action as a key factor leading to exploitation of low skilled migrant workers. It concluded: "The flexible labour market should be buttressed by thorough and sustained enforcement of minimum labour standards".

To develop a more effective enforcement system, the TUC believes the following actions should be taken.

Abolishing Employment Tribunal Fees

The introduction of employment tribunal fees has significantly reduced the likelihood of employers facing individual enforcement action. There is plenty of evidence which demonstrates that potential claimants are being denied access to justice because of the unaffordability of employment tribunal fees.

- The dramatic 67 per cent fall³⁹ in the number of cases going to tribunal shows that workers are being priced out of justice and fees are undermining the effectiveness of employment rights.
- Employment tribunal fees particularly disadvantage low paid workers, for example, those who are not being paid the national minimum wage, and those with protected characteristics who are deterred or prevented from challenging discrimination at work. This is clearly demonstrated in the Ministry of Justice statistics⁴⁰ which show that National Minimum Wage claims fell by 72% and claims relating to unauthorised deductions from wages fell by 78%.
- The ACAS early conciliation evaluation report estimated that there were 14,000 potential claimants deterred from bringing claims by the fees.
- The TUC is particularly concerned about the disproportionate impact that the introduction of employment tribunal fees has had on people with protected characteristics. Findings from the recent MoJ review of fees clearly show how discrimination claims, across-the-board, have significantly decreased in volume in the subsequent years following the introduction of employment fees. Comparing the year to June 2013 to September 2014 all sex discrimination complaints fell by 83 per cent, whereas the fall in all jurisdictional complaints was 68 per cent.

Furthermore the "Help with Fees" scheme, designed to help low paid prospective claimants is inadequate. The savings and the earnings thresholds mean that many low paid workers do not qualify for financial support with their employment tribunal claims. According to the 2014/15 Family Resources Survey, 47 per cent of all households in the UK have savings or investments of £3,000 meaning they exceed

³⁸ Migration Advisory Committee, Migrants in Low Skilled Work (July 2014)

³⁹ HoC Library, Briefing Paper, No.7081, 15 February 2016,
<http://researchbriefings.files.parliament.uk/documents/SN07081/SN07081.pdf>

⁴⁰https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/575422/tribunal-grc-main-tables-jul-sept-2016-2017.xlsx, Tab ET.3

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the disposable capital threshold. The proposed gross monthly income threshold for a couple with two children is £1900. However, a couple with two children, both working full time, being paid the NMW hourly rate would earn approximately £2500 per month if both partners work 40 hours per week. This clearly shows that low paid workers will not benefit from the remission scheme.

The TUC is calling for employment tribunal fees to be abolished so that all workers can afford to enforce their rights through an employment tribunal.

Adopting a joint and several liability approach to enforcement

In recent years, the structure of UK labour market has become increasingly fragmented with the emergence of long and complex supply chains for the provisions of labour. These changes are manifested in different ways including:

- The use of agencies (employment businesses) to supply workers. Recent research by the Resolution Foundation found that agency worker assignments are increasingly permanent in nature,⁴¹ leading to a displacement of stable, direct employment.
- The expanded role of umbrella companies. Whilst in the past such companies primarily performed pay roll functions or business and organisation, they are increasingly performing the role of intermediary employers with particular expertise in reducing tax liabilities.⁴²
- The growing use of personal service companies, not only among high skilled professional workers, such as IT specialists, freelancers and management consultants, but are increasingly prevalent in other sectors, including construction and the public sector.

The TUC is concerned that employers are increasingly using intermediaries in order to benefit from tax advantages and to avoid employment law obligations. Companies can take the view that if they outsource their labour supply they no longer have responsibility for ensuring that employment standards are met or that staff are treated fairly.

The increased outsourcing of work has significant ramifications for working people. Individuals employed via an agency or umbrella company will often not know who their employer is, whilst those who sign papers setting up a personal service company will often be aware they will effectively employ themselves. But perhaps the most significant implication for working people is that the organisation which employs them is often no longer responsible for:

- Setting the substantive terms on which they are employed. Often a company higher up the supply chain will decide the rate for the job and therefore how much workers are paid.

⁴¹ <http://www.resolutionfoundation.org/app/uploads/2016/12/Secret-Agents.pdf>

⁴² <http://touchstoneblog.org.uk/2017/05/tax-system-driving-people-insecure-work-unexpected-ways/>

- Deciding what, when or how work is done. Often the end user will oversee and direct their work.
- Ensuring that they are treated fairly in the workplace.

As a result, individuals face significant difficulties in accessing and enforcing any workplace rights.

The TUC believes that the law needs to change to ensure that the companies and organisations who are in practice responsible for undercutting employment standards or mistreating individuals are held to account for it. The best way to achieve this is to move towards a system of joint and several liability for employment law standards throughout supply chains.

If the UK were to take this approach, we would not be alone. Helpful precedents can be found in other countries. For example:

- The USA has adopted a 'joint employer' model. Under the Fair Labor Standards Act, which include rights to the minimum wage and overtime pay, and the National Labor Relations Act, which contains trade union and collective bargaining rights, the law states that individuals can be jointly employed by two or more employers where there is evidence the companies are economically dependent and/or both employers are involved in directing or supervise the individual's work.⁴³
- Some European countries, such as the Netherlands, have systems which apply joint and several liability for the payment of wages through supply chains.

There are also precedents for a joint and several liability approach in UK employment law.

- Under section 41 of the Equality Act 2010, principal employers are prohibited from discriminating against contract workers who are not in their direct employment.
- The Posted Workers (Enforcement of Employment Rights) Regulations 2016 include a right for a posted worker in the construction sector to bring a claim for non-payment of the NMW against his or her employer's contractor.

Lessons could also be drawn from the approach adopted in the Modern Slavery Act which seeks to improve transparency throughout supply chains with a view to preventing slavery and the trafficking of workers through supply chains.

The TUC is calling on the government to pilot a joint and several liability approach to enforcement, whereby employers are held responsible for compliance throughout their supply chain.

⁴³ David Weil (2014) *The Fissured Workplace: Why work became so bad for so many and what can be done to improve it*. Harvard University Press. See also the US Department of Labor fact sheet: <https://www.dol.gov/whd/regs/compliance/whdfs35.htm>

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This could be piloted with one area of employment – for example, payment of the minimum wage, before being expanded to a wider scope of employment rights.

Develop a public procurement strategy which improves compliance with employment rights

Public sector organisations have a great deal of leverage over the organisations that they contract with to deliver services. The TUC believes that the procurement process should be used more effectively, so where organisations are in receipt of public money they commit to monitoring and complying with key employment standards in their supply chains.

Public sector bodies should lead the way in this respect, ensuring that employers throughout their supply chain are paying the national minimum wage, offering all workers (who want them) contracts with guaranteed hours, and ensuring that they have access to sick pay and holiday pay.

Extend the licensing scheme across the labour market

The TUC would like to see the licensing model currently used by the Gangmasters Labour Abuse Authority (“GLAA”), in the shellfish gathering, agriculture and horticulture sectors, extended across the labour market. We believe this is the most effective system for ensuring organisations comply with core labour standards. Licensing is an effective system for weeding out unscrupulous employers from the labour market. This is because only licensed labour providers can operate in a particular sector. Before they do so they have to prove that they comply with core licensing standards.

We believe there is a strong case for extending the GLA’s remit so that new sectors such as social care, construction and hospitality come within the licensing scheme. There are high proportions of workers in these sectors who are vulnerable to exploitation because of their employment or migrant worker status and there is evidence of exploitative working practices being routinely used. The inspections and routine monitoring of standards that licensing entails would help prevent exploitation, improve intelligence-gathering and ensure that criminal prosecutions were targeted at the worst cases.

Licensing has raised labour standards and has been instrumental in preventing and uncovering cases of exploitation in the farming and food processing sectors where it currently operates. As well as improving conditions for vulnerable workers and protecting them from abuse, the licensing scheme has helped ensure a level playing field for responsible businesses. It is strongly supported by licence holders⁴⁴ and by retailers and food manufacturers. In the absence of licensing, companies would have to fall back on voluntary activities to ensure compliance in their supply chains.

⁴⁴ The Association of Labour Providers’ annual survey 2015 indicates that 93 per cent support licensing

However, activities like voluntary auditing and codes of conduct have been shown to be not very effective in identifying exploitation.⁴⁵

In sectors where non-compliance is less rife, one approach may be to offer them the chance to work with unions and government to set and monitor compliance with minimum standards. If standards have not improved within, say, a year, the sector should be licensed, with those who wish to operate in this sector required to register with the GLAA, and be subject to regular inspection.

Ensure that statutory enforcement agencies have adequate resources to fulfil their functions

It is important that enforcement agencies have adequate resources to fulfil their statutory obligations. The TUC has concerns that the financial resources and numbers of inspectors at the enforcement agencies are not sufficient to provide an effective enforcement route across the labour market. For example:

- Cuts imposed by the coalition government on the Employment Agencies Standards Inspectorate (“EASI”) have only been partially reversed. The number of inspectors at EASI doubled in 2014/15 and increased again for 2015/16, bringing the number of inspectors to 9. However, at the start of 2011/12 there were 15 inspectors in post. We know that on any given day there are over 1.2m people working on temporary, contract or interim assignments via a recruiter.⁴⁶ So the scale of the task for these 15 inspectors is unenviably enormous.
- The HMRC’s National Minimum Wage enforcement team has had a recent increase in resources and it currently has a budget of around £12m. But this still fails to match the scale of the task. The TUC estimates underpayment of the NMW affects in the region of at least 250,000 workers.⁴⁷ By 2020 an additional 2.75 million workers will come within the scope of the National Living Wage which the team will be responsible for enforcing. The enforcement task for this new rate will also be further complicated by the NLW’s creation of a new age-related minimum wage rate for 21-24 year olds.
- There has been a welcome increase in GLA resources, with an increase in budget and the number of inspectors rising from 75 to 128. However the GLAA’s new remit has also increased exponentially reflecting the broader role tackling labour exploitation across the entire labour market. The GLAA now covers 10m workers across the labour market, compared to the 500k it previously covered in licensed sectors. Whilst we do not anticipate the GLAA’s workload to increase twenty fold, we expect that the GLAA’s workload will increase significantly and that its new resources may not be sufficient.

⁴⁵ Allain et al, Forced labour’s business models and supply chains (JRF, 2013)

⁴⁶ <https://www.rec.uk.com/news-and-policy/press-releases/revenue-and-recruiter-numbers-up-as-industry-has-best-year-ever>

⁴⁷ <https://www.tuc.org.uk/sites/default/files/EC3-5-Attachment-Tackling%20Labour%20Market%20Exploitation.pdf>

The TUC is calling for a review of the resources at the enforcement agencies disposal and whether these are adequate to fulfil their obligations, particularly in light of the newly expanded remit of the GLAA.

Focus must be on tackling labour exploitation not immigration

Labour exploitation will not be effectively addressed if it is closely linked to immigration enforcement. Migrant workers are particularly vulnerable to exploitation. Employers can take advantage of migrant workers' limited English, their lack of awareness of employment rights, their immigration status, and the fact that visas and basic requirements like housing are often tied to their employment with them. For undocumented migrant workers the fear of speaking out is especially acute and this can present significant barriers to enforcement agencies' ability to gather intelligence and uncover exploitation.

This problem has been exacerbated by the recent provisions under the Immigration Act 2016 which encourage greater data sharing between immigration officers and enforcement agencies. The Act has also introduced a new criminal offence of illegal working which criminalises undocumented workers and classifies the wages they have earned as proceeds of crime. Introducing these measures alongside measures to tackle labour exploitation is counterproductive. It gives rogue employers even more power over undocumented workers by creating new threats of what may happen to them if they speak out. Giving employers a stronger hand increases the incentive to use undocumented workers to undercut the pay and conditions of other workers and makes all workers worse off as a result. In addition, Home Office involvement in overseeing the enforcement framework creates a risk that it will become focused on immigration issues rather than compliance with labour law.

Measures should be taken to ensure that undocumented migrant workers are not deterred from contacting enforcement agencies through fear of being referred on to immigration officers.

Summary of recommendations

- The TUC is calling for employment tribunal fees to be abolished so that all workers can afford to enforce their rights through an employment tribunal.
- The TUC believes that the law needs to change to ensure that the companies and organisations who are actually responsible for undercutting employment standards or mistreating individuals cannot be held accountable for it. The best way to achieve this is to move towards a system of joint and several liability for employment law standards throughout supply chains.
- The government should pilot a joint and several liability approach to enforcement, whereby companies are held responsible for compliance throughout their supply chain. This could be piloted with one area of employment – for example, payment of the minimum wage, before being expanded to a wider scope of employment rights.

- The government should develop a public procurement strategy to improve compliance with employment standards. Public sector bodies should lead the way in this respect, ensuring that employers throughout their supply chain are paying the national minimum wage, offering all workers (who want them) contracts with guaranteed hours, and ensuring that they have access to sick pay and holiday pay.
- There is a strong case for extending the GLA's remit so that new sectors such as social care, construction and hospitality come within the licensing scheme. There are high proportions of workers in these sectors who are vulnerable to exploitation because of their employment or migrant worker status and there is evidence of exploitative working practices being routinely used. The inspections and routine monitoring of standards that licensing entails would help prevent exploitation, improve intelligence-gathering and ensure that criminal prosecutions were targeted at the worst cases.
- In sectors where non-compliance is less rife, one approach may be to offer them the chance to work with unions and government to set and monitor compliance with minimum standards. If standards have not improved within, say, a year, the sector should be licensed, with those who wish to operate in this sector required to register with the GLAA, and be subject to regular inspection.
- It is important that enforcement agencies have adequate resources to fulfil their statutory obligations. The TUC is calling for a review of the resources at the enforcement agencies disposal and whether these are adequate to fulfil their obligations, particularly in light of the newly expanded remit of the GLAA.
- Measures should be taken to ensure that undocumented migrant workers are not deterred from contacting enforcement agencies through fear of being referred on to immigration officers.

Section six

Tax, social security and pensions

Introduction

Tax, social security and pensions policy have a critical impact on the choices that both employers and workers make about the type of work that they offer and accept, as well as the experience and rewards they gain from that work.

As we set out below, at present:

- the current tax system risks incentivising employers to offer jobs which reduce working people's security and rights;
- the social security system leaves too many of those working in non-traditional jobs unprotected when things go wrong; and
- the pensions system does not yet ensure that all working people have access to a decent retirement, with particular issues both for low paid workers in insecure work, and for the self-employed.

One option would be to accept the inevitability of the fragmentation of work, and design our tax, social security and pensions systems to reflect a world of increasingly insecure jobs. The TUC does not believe that this is the right approach. There are urgent upgrades to the social security system needed to adapt to positive modern ways of working, including, for example, the increased desire for fathers to take leave. But the overall aim of government should be to increase the incentives for employers to offer more secure jobs – as well as to protect those affected by insecurity.

In the rest of this section we set out evidence across the tax, social security and pensions system of where current arrangements are either incentivising insecure work, or letting down workers in insecure jobs, and the policy suggestions we believe could help meet our aim of a decent job for all, alongside decent protection for those who cannot work.

How the current tax system incentivises employers to offer insecure work

The debate around the Budget and the potential increase to National Insurance contributions for the self-employed suggested that the government recognises that the rise in insecure work has consequences for the exchequer as well as for working people.

Research conducted for the TUC by Landman Economics found that the rise in self-employment and zero hours contracts over the last decade sets out the scale of the loss to the exchequer through the rise in insecure work. The research found that:

- The overall impact of additional insecure working over the last decade on the public finances is estimated to be a net loss of revenue of between £5.3bn (assuming that all the additional self-employed people in the UK workforce are sole traders), and £5.9bn (assuming that all the additional self-employed people are owner-directors).
- In tax terms, this is roughly equivalent to the revenue yield from raising the basic and higher rate of income tax by 1p. In public expenditure terms, it is equivalent to just over a third of the social care budget for England.
- Around 3.4bn of this impact comes from the impact of increased self-employment, with £1.9bn from the impact of increased ZHCs.

Much of the fiscal impact of the increase in insecure work is due to the lower earnings of both the self-employed and those on ZHCs than those in regular employment. However, as highlighted at the time of the budget, self-employment is taxed significantly more lightly than employment. This is the case for self-employed individuals who currently pay a national insurance rate of 9 per cent, compared to 12 per cent for employees, and to a far larger extent for employers.⁴⁸

Taxation of dividends

Many self-employed people pay themselves partially (or in some cases wholly) in dividends rather than earnings, particularly in cases where a self-employed person has set up their own company and is a director of that company. Recent analysis of Labour Force Survey data by the Institute for Fiscal Studies (Adam et al, 2017) suggests that out of the total population of self-employed people, 12.5% (one in eight) report being sole directors of their own limited company, whereas the other 87.5% are "sole traders" who are not incorporated.

The tax treatment of dividends is more complicated than for earned income. Dividends are paid out of company profits which are also subject to Corporation Tax (currently charged at a rate of 20% for companies based in the UK). Income from dividends is taxed at a lower rate than income from earnings to reflect the fact that dividends are paid out of profits after Corporation Tax. In the 2016-17 the rates of tax on dividends are 7.5% for basic rate taxpayers, 32.5% for higher rate taxpayers and 38.1% for additional rate taxpayers. There is also an additional tax-free allowance on dividend income (separate from the tax-free allowance for earned income) of £5,000. In practice this means that the total average rate of tax on dividend income for self-employed people who are self-incorporated is likely to be lower than the rate of income tax for employees paid the equivalent amount, depending on how much Corporation Tax a self-employed person's company is liable

⁴⁸ Some self-employed traders may also chose to incorporate their business, and pay themselves in dividends rather than earnings

*to, and what the total amount of dividend payments is. Howard Reed (2017) *The impact of increased self-employment and insecure work on the public finances* TUC*

However, whereas there is a three percentage point difference in the tax rate between employees and the self-employed, the difference for employers is over four times that. Whereas those choosing to take on an employee pay employer national insurance at 13.8 per cent, those employing someone as a contractor pay no national insurance at all.

It is notable that the Office for Budget Responsibility predicted that the number of people in self-employment would continue to rise significantly, even after the Treasury had proposed a (now rejected) increase in the level of national insurance for the self-employed themselves. In March 2017 they estimated the impact of increased self-employment and found that:

*By 2021-22, the effect is to reduce overall income tax and NICs receipts by around £1 billion. This reflects the lower effective tax rate on the self-employed about employees, in particular, due to the fact that employer NICs is only paid in respect of employees.*⁴⁹

Moreover, as the Low Incomes Tax Reform Group has set out, National Insurance is only one of several tax advantages that employers can gain by taking on staff on either a self-employed, agency, or zero hours contracts basis.

Potential cost saving advantages for employers of taking several workers on a zero hours (or short-hours) basis, rather than employing people full time include:

- The lower earnings limit for the payment of employer national insurance is £157 a week, meaning that keeping staff below 20 hours a week (if on the National Living Wage) means that employers are exempt from can avoid this element of taxation.
- As we set out further below, the lower earnings limit for entitlement to certain social security benefits (currently £113 per week) means that employers who pay their staff below this level (currently £113) can avoid responsibility for paying sick pay (which can no longer be reclaimed from the state) or maternity or paternity pay (which can be reclaimed to some extent, although can be very complex to administer).
- Having to pay into a workplace pension scheme (also set out further below); and
- Having to register with HMRC or operate a PAYE scheme payroll, if pay for every worker on payrolls' pay is kept below £113 a week – saving a huge amount of time and effort for employers in terms of having to comply with the requirements of HMRC's Real Time Information (RTI) reporting system.

⁴⁹ OBR (2017) Economic and fiscal outlook, March 2017
<http://budgetresponsibility.org.uk/efo/economic-fiscal-outlook-march-2017/>

In addition to the national insurance benefit, employers who decide to contract people on a self-employed basis may also benefit if they can persuade workers to sign up for the from flat rate VAT schemes - which can enable self-employed traders to claim back VAT on 'input' costs, regardless of their actual spend. For those workers with limited input costs, entering the flat rate VAT scheme can offer considerable benefit, essentially offering another income stream (which the employer then takes a 'cut' of as their payment for helping with administration, etc).

The existence of tax and NIC advantages within travel and subsistence schemes available to agency workers employed under so called 'umbrella' arrangements has also pushed some employers away from offering direct employment to staffing up via agencies in order to reduce labour costs (for example as was seen in the case of Sports Direct).

It is worth noting that while new rules have been introduced recently to clamp down on flat rate VAT and travel and subsistence issues, we are yet to see whether these new rules are having the intended impact.

How could we use the tax system to encourage employers to offer more secure jobs?

Various proposals have been put forward for reforming the tax system to reduce the incentives for employers to offer work on an insecure basis. These include:

- Implemented changes to the IR35 scheme
- The Office for Tax Simplification has recommended that National Insurance should be assessed on an annual basis (rather than the current weekly or monthly system), and on combined earnings for those with multiple jobs, for both employed and self-employed workers.
- They have also recommended that National Insurance be levied on an employers' whole payroll, rather than on the earnings of individual employees, reducing the financial incentive to offer work on a short-hours basis.⁵⁰

The enforcement measures we set out below, including additional enforcement resources for HMRC could also do more to tackle false self-employment.

However, we believe that without a thorough look at the structure of the tax system for employers, and how it can incentivise more secure forms of work and a more sustainable tax base, piecemeal efforts at reform are likely to simply result in employers finding new ways to evade the rules.

We understand that the Taylor Review is unlikely to address all of these issues. We therefore believe that it should recommend a dedicated review of how employers and contractors are taxed and the impact of this on security at work, with the aim of ensuring that the tax system is supporting the creation of more

⁵⁰https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/567491/OTS_report_web_final.pdf

secure jobs. The review should include representation from unions, business and government.

How the social security system doesn't yet offer everyone protection when they cannot work

As set out above, the TUC believes that the government's aim should be to minimise insecurity at work, rather than redesign the social security system to accommodate ever increased flexibility for employers. However, there are some clear areas where the social security and pensions system has not kept pace with the modern workplace, and the Taylor Review is a good opportunity to ensure that everyone gets the protections they need when they cannot work. Below we outline issues and potential solutions with the current design of sick pay, parental benefits, and Universal Credit.

Sick pay

As set out in the introduction, those in insecure work are significantly more likely to face low pay.

Median hourly pay for those on a ZHC in 2016 was worth just 66 per cent of the median for all employees.

Median hourly pay for those working for an employment agency was just 80 per cent that of the average employee; for those in casual or seasonal work, pay was just 60 per cent of the employee average.

This means that these workers are less likely to be paying (or credited into) national insurance, which only kicks in when workers earn £113 a week or more.⁵¹ And because national insurance is the gateway to a range of contributory benefits, including statutory sick pay,⁵² many workers miss out on these protections when they cannot work.

The TUC estimates that nearly 500,000 workers on ZHCs or in insecure temporary work miss out on the right to statutory sick pay (SSP) because their pay is too low.

We don't think it is right that you can be considered too low paid to fall ill. The Taylor review should recommend that low-paid workers should have equal rights to SSP, paid at the normal rate, or at a rate equivalent to their normal weekly earnings if that is lower.

Parental benefits

⁵¹ This is the 'lower earnings threshold' at which workers are credited into the National Insurance system. Actual contributions are only levied on earnings above £157 a week, the current primary threshold.

⁵² National Insurance contributions are also necessary to claim contributory Jobseekers Allowance, contributory Employment and Support Allowance, and bereavement benefits.

National Insurance contributions are also necessary to qualify for statutory maternity, adoption and paternity pay (SMP, SAP and SPP), meaning many new parents in insecure work also miss out on decent support when their child is young.

For mothers, the system is slightly improved by the existence of Maternity Allowance, available both to those who do not earn enough to qualify for SMP and to the self-employed. Maternity Allowance (MA) is, however, significantly less generous than SMP. Whereas who qualify for SMP can receive up to 90 per cent of their normal earnings for the first six weeks of maternity leave, those on MA are capped at a maximum of £140.98.

But one particularly anachronistic feature of the current set of social security rights is the lack of any dedicated support for new fathers or adoptive parents who do not qualify for SPP. In 2015 the TUC estimated that over 9,000 agency workers don't qualify for paternity leave or pay and about 93,000 self-employed fathers receive no help to take time off work when they have a baby.

The TUC believes that government should introduce an allowance similar to Maternity Allowance for new fathers, adoptive parents or new parents who opt to take shared parental leave in the first year after birth or adoption.

Government could also significantly improve provision for mothers in insecure work by paying Maternity Allowance at an equivalent rate to earnings-related Statutory Maternity Pay, for the first six weeks.

Universal Credit

The low pay faced by those in insecure work means that they are significantly more likely to qualify for in-work benefits which are assessed on a means tested basis. Currently this means tax credits, but these are soon to be replaced by Universal Credit

Universal Credit will be significantly less generous than tax credits, and cuts to the proposed level of 'work allowances' (the amount that can be earned before benefits start to be tapered away) within Universal Credit over the course of this parliament are set to leave families significantly worse off. The Institute for Fiscal Studies (IFS) estimates that, for example, a working lone parent will be over £2,000 a year worse off in 2020 compared to 2015 because of the impact of tax and benefit reforms, including Universal Credit.⁵³

In addition, the six-week waiting period for Universal Credit – in effect a cut in the level of support - will be particularly difficult for those in insecure work and on a low income meaning that many will have to request advance payments which are repayable out of benefit subsequently received.

The next government should cancel cuts in the work-allowance, which will leave insecure workers on low incomes significantly worse off, and abolish the six week waiting period for payment of benefit.

⁵³ https://www.ifs.org.uk/uploads/publications/budgets/as2016/as2016_tw.pdf see slide 7

Tax, social security and pensions

Tax Credits require people to work a minimum of 16 hours a week in order to qualify for financial support. But the last government wanted to enable people to work in shorter hours jobs, so there is no minimum hours qualification rule for Universal Credit. This means that the government has sought to find an alternative way to encourage people to work more hours, in 'in work conditionality'. This means that if claimants do not earn the equivalent of 35 hours at the minimum wage (with exceptions for those with caring responsibilities or a disability), they will be expected to attend the Jobcentre in order to find ways to increase their hours or hourly pay sufficiently in order to continue receiving Universal Credit, with the risk of facing a financial sanction if they are not seen to be making enough effort to improve their earnings.

Those in insecure work, particularly those on ZHCs, often face great fluctuation in their hours, over which they have little control. So they are particularly likely to be affected by the requirement to increase their hours. As the Work and Pensions Committee's report on this issue noted:

"The case for in-work conditionality backed up by financial sanctions is so far untested. Employed people self-evidently do not lack the motivation to work, and there is strong evidence that their barriers to earning more tend to be structural or due to personal circumstances, rather than motivational. The claimant's opportunities for progression are also dependent on the needs of the employer. Conditionality is less likely to be effective in these circumstances. Requiring an individual to pay a financial penalty can, in some cases, work against the aim to increase their earnings."

We believe that in-work conditionality proposals will have a particular impact on those in insecure jobs. The DWP should publish the results of the pilots it has conducted with a particular focus on the impact on insecure workers. And if it does proceed with in-work conditionality, it should set out clear proposals that guarantee it will not sanction anyone who is in a short-hours job because their employer will not offer them one with additional hours.

Families with a self-employed earner are likely to face reductions cuts in the level of support they receive due to the operation of the 'Minimum Income Floor' which comes into effect after a year. The floor effectively limits the amount of support self-employed claimants receive to the equivalent of what they would receive if earning 35 hours a week at the (age appropriate) National Minimum Wage.

With the introduction of this expected to lead to a £1.5bn saving for the Exchequer by 2021/22⁵⁴, it is clear that the self-employed are set to experience a significant hit to their income. As our affiliated trade unions BECTU and Equity set out in their submissions to this inquiry, this could leave many self-employed workers with legitimate businesses facing substantial cuts to their income. Equity gives the

⁵⁴ OBR (2017) Economic and fiscal outlook, March 2017
<http://budgetresponsibility.org.uk/efo/economic-fiscal-outlook-march-2017/>

example of an actor left almost £500 a month worse off due to the operation of the Minimum Income Floor.

The Work and Pensions Select Committee have recently recommended that:
The incoming government should commission an independent review of the MIF with a view to improving its sensitivity to the realities of self-employment. Until this is complete, the MIF should not apply to self-employed UC claimants.

The TUC endorses this recommendation.

How the pensions system needs to change to offer a decent retirement to more working people

Those in insecure work also face an insecure retirement, with the pensions system not yet fully fit for purpose for low paid workers or the self-employed. There is some evidence that employers use these forms of work in order to avoid taking responsibility for their workers' retirement.

The TUC has welcomed the roll out of auto-enrolment, which has brought many people into pensions savings for the first time. However, the 'Earnings Trigger' for qualification for auto-enrolment, currently £10,000, excludes many low paid and insecure workers from pensions provision. Over half a million people working on Zero Hours Contracts or in insecure temporary work have wages below this level.

Moreover, those working in multiple jobs also miss out, because each role earns them less than £10,000. We estimate that there are more than 100,000 people working in multiple jobs (70 per cent of them women) who miss out on being automatically enrolled because none of their jobs enables them to meet this qualifying threshold.

Low earners who do earn more than the earnings trigger from a single job are disadvantaged by the system of qualifying earnings that limits the proportion of income pension contributions are paid on. For instance, in the current tax year, the first £5,876 of an employee's earnings does not count for the purposes of auto enrolment and anything above £43,000 is not included either. So for someone on £10,000 a year, only £4,124 of their earnings are pensionable. For them, even when minimum pension contributions rise to eight per cent of qualifying earnings, just 3.3 per cent of their total salary will be contributed to a pension. Part time workers with more than one job are particularly affected because the qualifying earnings deduction applies to each job.

Pensions are a key part of the reward for employment, and no-one should miss out because they are too low paid. The Taylor review should recommend that government:

- **Abolish the Earnings Trigger for employer contributions. Its current level is due to its historical link to a rapidly inflating Income Tax threshold. Removing it would give those in low-paid or part-time jobs the same rights to pension payments as colleagues who earn more.**

- **Radically simplify the system of band earnings. The current system adds complexity for both employer and worker. It disadvantages lower earners who may not realise that in effect a lower contribution rate is applied to their pension compared to higher-paid colleagues.**

The self-employed are also considerably less likely to be enrolled into a pension than those on regular contracts. With self-employment growing, this risks a growing number of people being forced to rely solely on the state pension, topped up by means tested benefits, in retirement.

The Taylor review should set out steps to address this including:

Utilise the principle of auto-enrolment that has successfully driven higher pension provision for employees, by using the tax return to automatically enrol self-employed workers into pension provision via NEST, unless they choose to opt out.

The tax return should also spell out the tax advantages of enrolling in a pension (in terms of pensions tax relief).

Summary of recommendations

- The Taylor review should recommend a dedicated review of how employers and contractors are taxed and the impact of this on security at work, with the aim of ensuring that the tax system is supporting the creation of more secure jobs. The review should include representation from unions, business and government.
- It's not right that you can be considered too low paid to fall ill. The Taylor review should recommend that low-paid workers should have equal rights to SSP, paid at the normal rate, or at a rate equivalent to their normal weekly earnings if that is lower.
- New fathers and adoptive parents in low paid work or self-employment should be able to take paid time off for a new baby. The TUC believes that government should introduce an allowance similar to Maternity Allowance for new fathers, adoptive parents or new parents who opt to take shared parental leave in the first year after birth or adoption.
- Government could also significantly improve provision for mothers in insecure work by paying Maternity Allowance at an equivalent rate to earnings-related Statutory Maternity Pay, for the first six weeks.
- Cuts to Universal Credit will have a significant impact on the low paid, particularly those in insecure work. The next government should cancel cuts in the work-allowance, which will leave insecure workers on low incomes significantly worse off, and abolish the six week waiting period for payment of benefit.
- The Minimum Income Floor in Universal Credit is set to take £1.5bn off the incomes of the self-employed by 2021/22. The incoming government should commission an independent review of the MIF with a view to improving its

sensitivity to the realities of self-employment. Until this is complete, the MIF should not apply to self-employed UC claimants.

- Auto-enrolment into a workplace pension has been a success, but has left out too many of those facing low pay and insecurity at work. To address this, the government should
 - Abolish the Earnings Trigger for employer contributions. Its current level is due to its historical link to a rapidly inflating Income Tax threshold. Removing it would give those in low-paid or part-time jobs the same rights to pension payments as colleagues who earn more.
 - Radically simplify the system of band earnings. The current system adds complexity for both employer and worker. It disadvantages lower earners who may not realise that in effect a lower contribution rate is applied to their pension compared to higher-paid colleagues.
 - The successful principle of auto-enrolment should also be used to increase pension provision for the self-employed. The tax return should be used to automatically enrol self-employed workers into pension provision via NEST, unless they choose to opt out. The tax return should also give an additional nudge towards pension enrolment by spelling out the tax advantages of enrolling in a pension (in terms of pensions tax relief).

Section seven

Concluding comments & case studies

The TUC believes that policy changes recommended throughout this report could make a significant difference to the 3.2 million people in insecure work in the UK.

But unions are also showing how they can improve the lives of their members. Here we outline recent examples of union successes in organising to tackle insecure work.

In recent years, unions have worked hard to organise and represent the interests of those employed in insecure forms of work and to campaign and negotiate for improvements in their pay and working conditions. In doing so, unions have adopted a range of different approaches.

Strategic litigation

Unions have supported strategic legal cases with a view to ensure that members can access and benefit from their rights at work.

Uber: In October 2016, GMB achieved a major victory securing key rights to rest breaks, paid vacation time and the NMW for 30,000 Uber drivers in the UK. Unions is now pursuing similar cases for couriers and delivery staff and for construction workers.

Social care: Unison is similarly assisting care workers to bring claims challenging underpayment of the national minimum wage.

Bargaining to minimise insecurity and improve working conditions

Across the UK, unions have reached agreements with employers to reduce their reliance on zero-hours contracts and to secure equal pay and treatment for agency workers. Unions also provide specialist support and advice to those who are self-employed.

Reducing reliance on insecure contracts

- Through its 'Stamp our Casual Contracts' campaign⁵⁵, the UCU has been pressing for a reduction in the use of zero-hours contracts in universities and further education colleges, with some success. For example, UCU recently secured union recognition for teaching staff who had been outsourced to work through a subsidiary company and were no longer covered by existing union agreements.

⁵⁵ https://www.ucu.org.uk/media/8395/Security-Matters-issue-2-Nov-16/pdf/ucu_securitymatters_2_nov16_.pdf

- In 2013, The Bakers' Union (BFAWU) secured an end to the use of zero hours contracts and pay parity for agency workers, following a dispute at the Hovis factory in Wigan. Throughout its campaign, the union engaged with the local community, as well as supporting its members.

Securing equal treatment for agency workers

- Unite has negotiated on the use of agency workers in Jaguar Land Rover (JLR). As a result of the agreement agency and fixed-term employees at JLR enjoy the same benefits as full-time employees and are covered by the same area shop stewards. Under the agreement agency employees progress through the appropriate pay increments and in the event of an agency employee reaching 100% rate of pay are, subject to certain conditions, offered a permanent JLR contract.

Improving pay and conditions

- Through its Professionally Made, Professionally Paid campaign,⁵⁶ Equity has been seeking to challenge poor practices and promote union contracts for use on low budget productions. Since the launch of the campaign, 168 productions have made use of the Equity Fringe Agreement, employing 800 performers and stage managers. Over 100 production companies have been involved in these shows and in total since the launch of the campaign over £1m in wages have been paid to performers and stage managers who may not have been paid before.
- In recent months, Unite has worked to expose poor working conditions in Sports Direct. Although changes are still on-going, following union's campaigning, improvements in working practices have included:
 - Engagement with Unite: The Board has confirmed that it unreservedly welcomes the more constructive and open dialogue that has been developing going forward to allow all parties to focus on Sports Direct becoming an exemplary employer
 - Workers have received back pay, following the underpayment of the minimum wage
 - There has been a 15p pay rise for all minimum wage workers
 - Potential end of zero hours contracts. The Board will provide directly engaged casual staff in the retail stores with the option to choose between a 'zero hours' contract or a permanent contract which will guarantee them at least 12 hours work a week. The company is also considering running a test scheme aimed at transferring ten 'picking staff' a month from the agencies to direct employment with Sports Direct. Currently around 2 people on average per month in all parts of the company transfer from agency work into permanent jobs.
 - A review of whether Sports Direct model of predominantly using agency workers in the warehouse, rather than directly employed staff

⁵⁶ <http://www.equity.org.uk/campaigns/professionally-made-professionally-paid/>

Concluding comments & case studies

- A workers' representative might be appointed onto the Sports Direct Board
- The appointment of a full time nurse and welfare officer
- The removal of the six strikes policy, after which workers could be dismissed
- An independent review of working practices and corporate governance is to take place.

Raising standards across sectors

UNISON's Ethical Care Charter has now been adopted by 29 councils in England, Wales and Scotland against a backdrop of savage cuts to social care budgets. It was brought into being because of widespread levels of poor treatment amongst the half a million strong homecare workforce. UNISON has documented the lack of time homecare workers are given to care for elderly and disabled people, a frightening lack of training for many, widespread non-compliance with the minimum wage and a growing use of zero hours contracts. All these problems conspire to rob homecare workers and the elderly and disabled people they care for of dignity and they contribute to poor levels of care.

The Charter provides a baseline of minimum standards that all homecare providers must adhere when a local council commissions its homecare contracts (the sector is overwhelmingly outsourced). These include better levels of training, payment of travel time between visits, guaranteed hours of work and continuity of care. It also ensures that homecare workers are paid at least the Living Wage. A series of modest steps that enable homecare workers to provide a better level of care. UNISON's analysis has shown that adoption of the Charter has had a positive impact on recruitment and retention levels in a sector where 900 workers are quitting their jobs every day. It is led to improved levels of satisfaction from people who rely on homecare services. By having a baseline in place it also prevents care providers who value their workforce from being undercut by more unscrupulous employers who are willing to take on a council contract for less by exploiting their workers.

So it is an initiative better for care users, care workers and care providers.



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