

The HR Dept ([www.hrdept.co.uk](http://www.hrdept.co.uk)) believes the current categorisation of the UK's workforce is not fit for purpose, being confusing and overly complex.

Our philosophy is that great businesses recognise the importance of happy staff as a key business driver. It's something we embrace within our own business and also urge all of our licensees to encourage such attitudes among their client base. We are all about balance in company-individual relationships.

Our views are formed by the expertise of our network of 63 licensees around the UK and Ireland, who between them provide more than 6,000 SMEs with outsourced HR advice and support. We work at the 'coal face' with employers, helping them deal with the challenging, confusing and complex issues of employment status. We have dozens of case studies and anecdotal evidence of the real employment issues faced by business owners, which we can provide to this review if necessary.

We recently submitted our response to the Government's Business, Energy and Industrial Strategy Committee, for an enquiry entitled The Future World of Work.

Our submission made five key recommendations:

- employment status should be simplified and redefined
- all groups should be protected and given choice over their status
- insurance-type schemes should be provided for freelancers and self-employed
- business advisors should be educated about the definitions and risks for their clients
- care should be taken over the imposition of measures which result in costs to businesses.

The headline-grabber was our call for the abolition of worker status, which is a categorisation we feel is simply too complicated to be useful in the current climate, as the 'gig economy' becomes more prevalent and the working habits of our population change. We believe that there is no real foundation of awareness of 'worker status'. It would therefore be a much greater challenge for the Government to have to educate employers and individuals on the complexities of 'worker' status than it would be to put in place a simple 'employed' or 'self-employed' revised framework.

Specifically, in response to the questions posed by this review, our views are as follows.

#### **Security, pay and rights**

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

Generalisations are inappropriate here, as some highly-paid consultants can hold the balance of power with employers and others prefer the flexibility of not being a worker, for example freelancers who are unable to send a substitute but for all other intents and purposes are regarded and wanted by both parties to be self-employed.

However it is certainly true that in many cases the current arrangements are weighed heavily in favour of the employing company, which demands loyalty and carry out punitive practices if the employee/worker /self employed person refuses the work. In such cases, there is no true flexibility at all.

However, at the other end of the employment status spectrum, there are a vast number of 'self-employed' individual sole traders, who, if they were either aware of, or were made to would be entitled to 'worker' status. Forcing businesses to recognise those self-employed staff as 'workers' would have a significant impact on businesses, incurring additional costs for example for holiday pay and pension contributions - where such a cost would be of detriment to the overall business and likely to have a more negative impact on further exploiting those at the lower end. The irony is that those who want to be and remain as self-employed could be 'pushed' into worker status and those who should probably be workers if not employees could end up being forced further into self-employment!

We recognise Trade Unions can provide support to those individuals at the bottom end of the spectrum, in helping to educate them on their rights. Without education, if there's no real consequence for the employer then we will see no change in behaviour, as long as supply and demand of labour can be dictated by market forces.

Strong Trade Unions can help avoid sector exploitation. For example if there was a stronger voice in the cleaning sector then cases could be brought and pressure could be placed on big businesses to structure their outsourcing contracts to ensure non-exploitation. This is not the same as SME collective bargaining, which is not something we would like to promote.

The challenge for the Government is how to enforce any change in the categorisation of workers, for example with our proposal to move the exploited and those who choose not to be self-employed into employed status. So how would the Government stop cleaning companies, for example, from still forcing self-employed contracts on their workers where the driver to do so is an economic one, where they aren't able to compete on a level playing field otherwise.

However, we would not want to give the impression that all employers are intentionally bad. More realistically, it is the system which is the problem and has caused mass confusion.

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

Especially when through self-employment - rather than worker or employee status - the growth of these forms totally undermines the reach of the policies.

As the NLW increases, this will cause an increase in those being exploited and forced into self-employment unless there are effective consequences in place. There are also important consequences for those on zero hours contracts, who may be losing out on benefits such as sick pay in practice.

The answers could be to clarify the different provisions through employer/employee education or to adopt new definitions of employment, such as those we have recommended, with adult-to-adult agreement between the two parties about what these mean and a simple redefined categorisation of 'employed' and 'self-employed'. We also recommend the idea of a government backed insurance fund for the self-employed, to help support sickness pay and pensions.

Equally importantly, the growth in non-standard forms of employment takes away the duty of care that is fundamental in an employment arrangement.

### **Progression and training**

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

It is vital that businesses across the board recognise that an investment in their employees is integral to the growth of their business. Staff value training above many other benefits - it also maximises performance and helps them feel valued.

At the higher end of self-employment, people will be factoring their own skills development within their hourly rates.

At the lower end however, acquisition of skills will be key to people being able to progress to better jobs. Some ways to do this might include sector-specific training levies to address skills shortages, or programmes providing ongoing access to education for those on low incomes.

Professional development is going to be a major challenge for businesses, who are already facing the NLW for all staff and increased costs for auto-enrolment. You would expect training provision to take the hit. But businesses need to recognise that in order to compete, they need to upskill and get value from the increasing rates of pay. The alternative is to force more staff into self-employment, which is far from ideal but is a genuine risk.

We recommend that the Government should use any surplus generated from the Apprenticeship Levy to target SMEs with funding to help them upskill and train. There are some initiatives currently happening in some areas/sectors with other types of funding, for example from Local Enterprise Partnerships, but these need to be more systematic, more readily available and better communicated, especially to SMEs.

### **The balance of rights and responsibilities**

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

In our view, yes. The current definitions of employment status are employed, worker and self-employed. We are proposing that there should be just two employment status categories, without 'worker', each broad and flexible enough to allow an element of choice in a 'grown up' way. Therefore current definitions of status do need to be updated.

The key is to have flexible working practices. The split between employment and self-employment in principle covers all circumstances, but what is needed is clarity and education. We believe it is unnecessary to enshrine these definitions within statute - the grey areas are around the edges and are determined by case law. As ever, communication and education are crucial here.

As mentioned previously, we recommend the abolition of worker status - it's too confusing. Instead we would prefer true self-employment to those with genuine choice and where there is agreement between both parties, and employment status for those who are currently being exploited into self-employment where there are currently no employee benefits.

We would also like to see a review of relevant tax issues, aligning the rules so that each relevant tax and employment status is compatible.

Also, let's see the creation of a culture of entrepreneurship in the 'gig economy' for freelancers, where both parties are happy and where there's genuine choice.

We also would like to see voluntary insurance funding to protect the self-employed who want it, as long as expectations are managed and there is an understanding that part of the deal is that the self-employed take some responsibility.

### **Representation**

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

The key to representing those who are currently poorly catered for is providing genuine flexible working in an honest and open way. Better access to the internet and training if required is an obvious step to take, as well as incentives, tax breaks and funding for businesses who provide employment opportunities for these groups.

The big challenge is how these steps are put into practice. There need to be suitable deterrents and consequences where there is exploitation into forced self-employment and, as mentioned already, this is only likely to get worse as labour costs increase, margins tighten and wages and pensions go up.