Blackburn and District Trades Union Council

Response to "Employment Status Consultation" by BEIS, HMRC and HM Treasury

The 2017 Taylor Review of "modern working practices" proposed that the "flexibility" and low level of regulation in the UK labour market was fundamentally a positive feature. It gave prominence in particular to the views of the CBI - *"Flexible labour markets tend to enjoy higher employment rates and lower unemployment than those with more rigid approaches and – as CBI research from 2014 shows – over many decades, they have better protected the labour share and delivered more real terms wage growth than more rigid systems".*

In our view the CBI statement is misleading on several levels. The CBI Report referenced – "A Better Off Britain" – does not deal at all with the question of "the labour share". The reality is that the development of a more "flexible" UK labour market since the 1980s has at least correlated with, if not caused, a decline in the relative position of labour.

For almost all the 1960s and 1970s the UK wage share of Gross Domestic Product was between 58% and 61%. The exception was the three years 1974 to 1976 where the wage share briefly went above 62% of GDP (peaking at 64.5% in1975). After 1981 the wage share declined rapidly, falling to 53.8% of GDP by 1988. The end of the 1980s saw a partial recovery (to 56% by 1991) and then a further decline, to a low point of 51.7% in 1996. The late 1990s saw another partial recovery (to 55.3% in 2001) and then a small decline through the 2000s to 53.5% in 2007.

There may be an argument that labour market flexibility has brought workers a smaller slice of a bigger pie, which in real terms has meant more to them than had they kept a bigger slice of a smaller pie – but the CBI does not attempt to show this. Its analysis depends on the one hand on there having been a growth in "real" wages overall – a measure that ignores the significance of growing wage inequality over the period. And on the other, that their members like to have a "flexible" workforce; *"More than nine in every ten respondents (97%) to the 2013 CBI/Accenture Employment trends survey stated the UK's flexible workforce is either vital or important to their competitiveness, including prospects for business investment and jobs growth".* Frankly, the last comment sounds very much like special pleading.

"A Better Off Britain" notes that *"In the aftermath of the economic crisis, calls to restrict the UK's flexible labour market have multiplied, be it concern over zero-hour contracts or the fact that the number of people who are working part-time but would rather work full-time has risen".* It says that this sort of "flexibility" has been made a "scapegoat". The Taylor Review does not go so far, but it tends to see the evils of "flexibility" as being overstated. *"Flexibility does work for many people"*, it says, and the problem is really a more limited one of whether *"vulnerable workers, or those with limited choice"* are adequately protected.

One does wonder how long Mr Taylor would feel inclined to sustain this point of view had he the benefit of being unemployed with few qualifications and limited work experience in a town like Blackburn with Darwen.

In 2014 our Trades Union Council considered a report on changes in the labour market that said the following:

"The New Policy Institute report "Monitoring Poverty and Social Exclusion 2014" had shown how, over the last decade, the number of working families in poverty had got worse. Only half the 13 million people in poverty in the UK were in families which, for one reason or another, had no work.

The TUC Report "Decent Jobs Deficit" had shown how a particular feature of the recession had been an increase in insecure forms of work. Over 1 million people were in part-time work because they could not get full-time work and there had been a corresponding growth in 0hrs contracts, Agency work and involuntary "Self-employment". The problem of low pay was particularly associated with workers in insecure employment. The Quarterly Labour Force Survey April-June 2013 found that Average gross weekly pay for permanent workers was £479.26 whilst for those on 0hrs contracts it was £185.19.

Table 7: Pay for all employees and selected employment statuses

	Average gross weekly pay	Average gross hourly pay	Median hourly pay
All employees	£469.03	£13.19	£10.58
Permanent workers	£479.26	£13.30	£10.71
Temporary workers	£296.06	£11.28	£8.40
Agency workers	£407.57	£11.17	£8.97
Zero-hours contract workers	£188.19	£8.46	£6.77

Source: *Quarterly Labour Force Survey, April–June 2013*

The growth in insecure and badly paid employment was associated with a feature that Dr Steve McIntosh called "hollowing out" in a Report for the Department of Business, Industry and Skills.

This meant that economies were losing jobs in the middle rank by income whilst the number of jobs that were the lowest paid had grown. The September 2014 "Centre for Cities" Report "Unequal Opportunity" showed that this feature affected some cities more than others. Of 59 cities compared in the Report Blackburn with Darwen ranked 7th highest in respect of the growth of polarization between 2001 and 2011 – and this in an area where low pay was already prevalent. In Blackburn one in three workers earns less than two thirds the median wage but this falls to one in ten in the South East".

In our view, precarious work ***has*** developed into a social evil. One of the clearest summaries we have seen was made by an article in "The Conversation", dated 21.11.2017:

"As part of an ongoing national study focusing on welfare conditionality, one man talked about his experience of starting zero hours work in food processing in the north of England. In his first week, he was told he would receive a text message saying whether he was needed the next day. For two days he didn't receive any messages:

Then the third day they gave me an option to just go up there and be a spare, so literally if people don't turn up you can go up there and stand around for half an hour and if they don't turn up then they'll use you. So I went up there, it was quite early in the morning, 7 o'clock; I was up at 5.45 to get there. I hung around for half an hour. I wasn't offered any work.

This man did manage to secure more hours, but the job was still temporary, and he remained on Universal Credit throughout this experience, knowing that he would be relying on the benefit again once the temporary work ended. This meant that in addition to worrying about whether or not he would have work from one day to the next, there were also still expectations on him from the Jobcentre to attend appointments and continue looking for work".

"Precarious workers often work in several jobs, but can still live in deep poverty. People with precarious work often have unpredictable or insufficient working hours and schedules which lead to irregular income and significant pay penalties. This can in turn cause increased levels of debt, a

limited choice of housing, or even eviction, as well as negative consequences for personal well-being."

"Another of our studies showed that the first contact with precarious jobs often starts at the Jobcentre where claimants are encouraged, directed or coerced to apply for low-skilled, low-paid and precarious jobs, such as temporary agency work and zero-hours work. Not doing so might lead to benefit sanctions – meaning their benefits will be suspended".

"Our research using the Annual Population Survey of over 100,000 employees in the UK is showing that precarious working contracts and conditions are driven mainly by employers' demands for flexibility – not what workers want. Only one in five of temporary agency workers in the UK included in the survey actually prefer to work in a temporary job. Many of the people we interviewed would not choose to work for an agency, would not recommend working for an agency and would like to see zero-hours contracts banned".

"Employer-driven flexibility also puts people in a situation where they have a limited power to negotiate their working conditions, as our research and other studies have found. We heard many stories of how peoples' working hours were cut, changed at a short notice or their jobs were taken away only because they weren't – as one person we spoke to put it – "servile to management".

Our research also shows that precarious working arrangements are also often coupled with employment practices that disadvantage workers. Many are often not provided with an employment contract or wage slips, and are not paid for holidays, sick leave or lunch breaks".

Despite the Taylor Review sounding rather proud of all this as being "the British Way", the phenomenon is not limited to the UK alone.

We don't know why the Review makes no reference to the European Union Proposal for a Directive on *"transparent and predictable working conditions in the European Union"*, which covers some of the same ground, but this makes it clear that issues relating to precarious employment are ubiquitous in market economies.

The proposed Directive is by no means a radical document, but it does at least have the merit of accepting that that there is a need for basic standards applicable to how human beings are treated: *"In this evolving world of work, there is therefore an increased need for workers to be fully informed about their essential working conditions, which should occur in a written form and in a timely manner. In order adequately to frame the development of new forms of employment, workers in the Union should also be provided with a number of new minimum rights aimed at promoting security and predictability in employment relationships while achieving upward convergence across Member States and preserving labour market adaptability".*

Problems with employment standards are not simply individual, they are society-wide. Ultimately, we will need something more ambitious than a solution based simply on individual legal claims. We do, however, strongly disagree with the recommendation of the Taylor Review that the current three tier system for rights is still relevant in the modern labour market. We believe that that a single universal definition of 'worker' is required to cover all those who perform work for another (other than those in business on their own account servicing clients and customers). The whole suite of employment rights should flow from this relationship. Possibly one of the most compelling illustrations of the need for this is presented by Table 1 of the Consultation Document, which graphically exposes the extent to which those currently defined as "workers", rather than "employees", are denied fundamental employment rights.

Such a move would put extra emphasis on preventing employers and end users of labour from escaping their obligations by categorising their workers as "self-employed". We believe that there

should be action taken to prevent “umbrella companies” being used to falsely categorise workers as self-employed and to prevent workers from being forced to accept bogus self-employed status. Part of the structure for achieving this would be to allow workers to approach a Tribunal on a fee-free basis in order to secure a definition as to whether they are a “worker” or “self-employed”. So far as establishing “self-employed” status goes, however, we agree with the recommendation of the Review that *“government should replace the minimalistic approach to legislation with a clearer outline of the tests for employment status, setting out the key principles in primary legislation, and using secondary legislation and guidance to provide more detail.”*

We do favour publication of a more detailed list of the factors to be considered in applying any such test. It will be important, we think, to place any contemporary engagement in a historical context. A genuinely self-employed music teacher, for instance, will have a record of having run their own business, advertised their services and of having done work for a number of clients. A labourer coerced into bogus self-employment may have a history of similar engagements but is unlikely to have advertised themselves as a contractor. A key factor is that of who controls the person’s status. The music teacher will do so in their case. In the case of bogus self-employment, it is the employer who does so.

Improving the definition of employment status would be a step in the right direction. It would not, however, be sufficient to tackle all the disadvantages created by precarious work.

It is our belief that the lives of workers adversely affected by precarious work will only be improved by changes across a number of areas of public life. We consequently further advocate:

That whether work offered on the basis of self-employment, agency work or zero-hours contracts is taken into account in assessing the obligation of claimants receiving Universal Credit of Jobseekers Allowance should be in the gift of the claimant rather than of the state. In other words, a claimant should be able to include looking for such vacancies as part of their “job search” activity but should not be compelled to do so or in any way sanctioned for not wishing to engage with such atypical “opportunities”.

That Sectoral Collective Bargaining should be introduced, initially in key sectors**:**

Agriculture
Warehousing
Call Centres
Food Industry and
Social Care

Through this process, unions and employers in each industry will negotiate a collective agreement binding on all employers and workers in the industry. This agreement will set minimum pay, terms and conditions and also stipulate the kind of employment arrangements acceptable in the industry and deal with issues like continuity between engagements, variable hours, use of agencies, and a dispute resolution mechanism to deal with any disputes.

That there should be established a system of Labour inspectors with the power to enforce compliance with employment rights.

That all workers should be entitled from day one to a written definition of the terms of their engagement, as envisaged in Paragraphs 1) and 2) of the proposed EU Directive on Transparent and Predictable Working Conditions. This should set out a minimum number of hours per week or month and provide for payment, at NMW, of any hours the worker is expected to be “on call”. If it is not possible to indicate a fixed work schedule due to the nature of the employment, workers should know how their work schedule will be established, including the time slots in which they

may be called to work and the minimum advance notice they should receive – which should be at least a minimum of 24hrs except where they are being paid to be “on call”.

That the maximum permitted time span for “probationary” periods should be six months and that six months should also be the maximum qualifying period for any statutory employment rights.

That there should be a presumption of continuity of employment where a worker works for the same employer, even if there are gaps between periods of qualifying work, and a legal right to regular contracted hours after 12 weeks of qualifying service.

That workers employed through an agency or any other 3rd party arrangement should be entitled to bring claims for employment rights as much against the end user of their labour as against their immediate employer.

That SSP should be a day one right for all workers without there being any impact on entitlement or duration of award linked to length of service. And,

That workplaces covered by Sectoral Collective Bargaining should, where there is no on-site TU appointed safety representative, be open to TU appointed "roving" safety reps.

Karen Narramore
Secretary
03.05.2018