Good Work

The Taylor Review of Modern Working Practices

July 2017

Contents

Foreword by Matthew

To be asked by Her Majesty's Government to develop proposals to improve the lives of this country's citizens is an honour. I am grateful to the Prime Minister for giving me that honour and for the support and the respect for my independence which has been shown by her team in Downing Street.

Matthew Taylor

Greg Marsh

Diane Nicol

Paul Broadbent

I was not the only person appointed to the Review. My fellow Review team members, Greg Marsh, Diane Nicol and Paul Broadbent have not only been an important source of ideas and wisdom throughout the process but have led in engaging with key groups of stakeholders; respectively, entrepreneurs and business, the legal profession and enforcement agencies. This project may sometimes have been referred to as the Taylor Review and I may have been the public face of our work, but we would not have been able to produce this report or to have engaged nearly as many people without the time and energy invested by Greg, Diane and Paul.

The day to day work of the Review, researching and developing the detail of our recommendations, planning and delivering our ambitious engagement process, negotiating with officials in other departments, putting up with the often unreasonable expectations of the Review Chair; these are among the tasks that have been performed with diligence and skill by the team in the Department for Business, Energy and Industrial Strategy. We received strong support from a wide variety of people in the department at many levels, including Secretary of State Greg Clark and his ministerial team. Officials tend to remain nameless and faceless to the public but I would like to pay particular tribute to the commitment and insight of the core team of Paula Lovitt, Jessica Skilbeck and Tony Thomas, I know that they have worked tirelessly to deliver this ambitious and wide ranging report on schedule.

From the outset I was determined that the Review process should be open and engaging. We held public hearings around the country, Review members and officials hosted innumerable round table and small group discussions, across just about every week of the Review's ten month life I have made speeches to audiences small and large, specialist and general. At a time when we sometimes see scepticism towards policy making processes, I have been encouraged and inspired by the positive, constructive and thoughtful response our work has received from people ranging from employment lawyers to gig workers. Not everyone has agreed with our emerging ideas, but just about everyone has been supportive of our efforts and respectful of our aims. Furthermore, and, of course, this may now change, I am grateful to the journalists who have reported our work – ranging from national correspondents and broadcasters to the authors of specialist blogs – who have with very few exceptions reported and discussed the Review's progress in a responsible and informed way.

I will continue to make the case for better work as an individual and through the RSA (I should also thank the Society's Trustees and Fellows for allowing me effectively to be a part-time Chief Executive since last October), but with the publication of this Report the work of the Review is complete. It now falls to the Prime Minister, the Government and Parliament to decide how to respond to our recommendations.

The Report includes recommendations for specific measures we would like to see enacted as soon as possible, it makes the case for longer term strategic shifts and, overarching all of this, issues a call for us as a country to sign up to the ambition of all work being good work. From time to time people have asked me what as Chair of the Review I would see as success. While I would be proud to see our recommendations enacted and our strategic proposals fully debated, more than anything I hope this Review will come to be seen to have won the argument that good work for all should be a national priority.

If policy makers and the public come to recognise the vital importance of good work to social justice, economic dynamism and civic engagement then the efforts of the Review team and all who have supported us will have been richly rewarded.

Matthew Taylor

2. Our approach

Summary

The work of this Review is based on a single overriding ambition: All work in the UK economy should be fair and decent with realistic scope for development and fulfilment. Good work matters for several reasons:

- Because, despite the important contribution of the living wage and the benefit system, fairness demands that we ensure people, particularly those on lower incomes, have routes to progress in work, have the opportunity to boost their earning power, and are treated with respect and decency at work.
- Because, while having employment is itself vital to people's health and well-being, the quality of people's work is also a major factor in helping people to stay healthy and happy, something which benefits them and serves the wider public interest.
- Because better designed work that gets the best out of people can make an important contribution to tackling our complex challenge of low productivity.
- Because we should, as a matter of principle, want the experience of work to match the aspirations we have for modern citizenship; that people feel they are respected, trusted and enabled and expected to take responsibility.
- Because the pace of change in the modern economy, and particularly in technology and the development of new business models, means we need a concerted approach to work which is both up to date and responsive and based on enduring principles of fairness.

Our rationale

Our goal of good work for all is ambitious and involves concerted action ranging from specific changes in the short term to longer term strategic shifts. We advocate change but in doing so we seek to build on the distinctive strengths of our existing labour market and framework of regulation; the British way. It is inevitable that public concern focusses on the things that are seen to be going wrong or areas where it is believed that the UK lags behind other countries. But we are more likely to succeed in achieving a good work economy if we build upon our existing national strengths and seek to go further through the modern industrial strategy.

We describe some of those strengths in the next chapter but it is important from the outset to acknowledge the UK's successful record in creating jobs, including flexible jobs which open up work to people with different needs and priorities and at different stages of life. It is equally important to address certain assumptions about the nature of our challenges. For example, although over recent years take home pay rates have stagnated for many workers, if tax levels and tax credits are taken into account average take home pay for families with a member in full-time employment is higher in the UK than the rest of the G7. Also, the widespread belief that there has been a 'hollowing out' of the labour market is, as yet, not reflected in the statistical evidence.

National labour markets have strengths and weaknesses and involve trade-offs between different goals but the British way is rightly seen internationally as largely successful. We believe it is possible to build on that success without undermining its foundations while also better preparing for future challenges such as demographic change, accelerating automation and the emergence of new business models.

The labour market is changing, self-employment is rising, innovative forms of working are causing us to question established norms and how our current legislative framework fits with these developments. These changes have impacts for ordinary people, who may be less certain about their rights, or who might feel that the system doesn't accommodate the reality of their working relationships. It also has impacts for the state, which sees the fiscal impact of rising self-employment and incorporation.

But we also think now is the time to organise our national framework around an explicit commitment to good work for all. As we have talked to people about good work – employees, employers, academics, advocacy organisations and interested citizens from all walks of life – we have been impressed by their enthusiasm for this ambition.

The most important factors determining people's experience of work lie in the relationship between those who hire, employ and manage on the one hand, and those whose services they employ on the other. For most people the benefits of work go well beyond the minima established in law; the vast majority of employers understand the value of good employment practice. National policy cannot mandate best practice and should not put extra burdens on those already acting responsibly. It can and should support good practice and ensure that those who aim for better work – on either side of the work relationship – should not have to do so in the face of regulatory barriers, opaque rules or unfair competition.

On this basis, we believe the perspectives and recommendations of this Review can enable a significant shift in the quality of work in the UK economy. Improving work is however a complex, multi-faceted and long-term challenge. We have interpreted our brief widely focusing not just on new forms of labour such as gig work but on good work in general. Nevertheless the constraints of time mean there are no doubt important aspects to good work which we fail to cover adequately in our report. By asserting the principle of good work we hope at least to open up new debates in these areas.

> **"Good Work is shaped by working practices that benefit employees through good reward schemes and terms and conditions, having a secure position, better training and development, good communication and ways of working that support task discretion and involve employees in securing business improvements."**
>
> The Commission on Good Work

In terms of our recommendations we have focussed broadly on three challenges:

- Tackling exploitation and the potential for exploitation at work;
- Increasing clarity in the law and helping people know and exercise their rights; and
- Over the longer term, aligning the incentives driving the nature of our labour market with our modern industrial strategy and broader national objectives.

As such our recommendations vary in nature. Some are very specific and can, we hope, be implemented by Government as soon as time allows; others are broader, although based on clear principles, and will require further consultation and consideration before implementation; some are long term and strategic indicating a destination for policy but not prescribing in detail the route to that destination. That some of our recommendations are more specific about ends than means should not be taken to imply that these are less significant to a good work future.

We have tried to write this report in a way that makes it accessible to the interested lay person as well the policy community. However, with the range of our proposals and the need to lay them out systematically in the following chapters there is a danger that important themes get lost behind the detail. Below we lay out the seven key policy approaches which can be found in this report and around which we hope this Review will stimulate an informed, inclusive and ambitious national discussion.

“Beyond the external factors shaping the labour market and the nature of jobs, employers have a major role to play in improving outcome for workers through good workplace practice… We believe work should provide us all with the opportunity to fulfil our own needs and potential in ways that suit our situations throughout our lives.”

CIPD submission to Review

Seven steps towards fair and decent work with realistic scope for development and fulfilment

1. Our national strategy for work – the British way - should be explicitly directed toward the goal of good work for all, recognising that good work and plentiful work can and should go together. Good work is something for which Government needs to be held accountable but for which we all need to take responsibility.

    a) The same basic principles should apply to all forms of employment in the British economy – there should be a fair balance of rights and responsibilities, everyone should have a baseline of protection and there should be routes to enable progression at work.

    b) Over the long term, in the interests of innovation, fair competition and sound public finances we need to make the taxation of labour more consistent across employment forms while at the same time improving the rights and entitlements of self-employed people.

    c) Technological change will impact work and types of employment and we need to be able to adapt, but technology can also offer new opportunities for smarter regulation, more flexible entitlements and new ways for people to organise.

2. Platform based working offers welcome opportunities for genuine two way flexibility and can provide opportunities for those who may not be able to work in more conventional ways. These should be protected while ensuring fairness for those who work through these platforms and those who compete with them. Worker (or 'Dependent Contractor' as we suggest renaming it) status should be maintained but we should be clearer about how to distinguish workers from those who are legitimately self-employed.

3. The law and the way it is promulgated and enforced should help firms make the right choices and individuals to know and exercise their rights. Although there are some things that can be done to improve working practices for employees, the 'employment wedge' (the additional, largely non-wage, costs associated with taking someone on as an employee) is already high and we should avoid increasing it further. 'Dependent contractors' are the group most likely to suffer from unfair one-sided flexibility and therefore we need to provide additional protections for this group and stronger incentives for firms to treat them fairly.

4. The best way to achieve better work is not national regulation but responsible corporate governance, good management and strong employment relations within the organisation, which is why it is important that companies are seen to take good work seriously and are open about their practices and that all workers are able to be engaged and heard.

5. It is vital to individuals and the health of our economy that everyone feels they have realistically attainable ways to strengthen their future work prospects and that they can, from the beginning to the end of their working life, record and enhance the capabilities developed in formal and informal learning and in on the job and off the job activities.

6. The shape and content of work and individual health and well-being are strongly related. For the benefit for firms, workers and the public interest we need to develop a more proactive approach to workplace health.

7. The National Living Wage is a powerful tool to raise the financial base line of low paid workers. It needs to be accompanied by sectoral strategies engaging employers, employees and stakeholders to ensure that people – particularly in low paid sectors – are not stuck at the living wage minimum or facing insecurity but can progress in their current and future work.

The remainder of this report outlines the practical ways we advocate to further these principles. We start by describing key aspects of the UK's current largely successful labour market and exploring the idea of good work and what it comprises before turning to individual policy areas and the steps we propose.

3. Quality of work

Summary

Ensuring all work is fair and decent with realistic scope for development and fulfilment relies on the provision of quality work. However, as we have discovered during this Review, what represents quality work to one person may not for another. In order to make recommendations, it is first important to understand the characteristics that can make up 'quality work'.

In this section, we examine factors that are important to different people and why. In doing so, it is important to remember that:

- **People are driven by different motivations at different points in their career** and so what represents quality to them now may not represent quality ten years later;
- **Pay is only one aspect in determining quality work;** for many people fulfilment, personal development, work life balance or flexibility are just as important to many people;
- **People are most likely to enjoy what they do when they have a meaningful say at work.**

The importance of quality work

How much a person earns is often used to judge the quality of their job, but fair and decent work is about more than pay. The most recent British Social Attitudes survey shows that less than half of us feel our job is just a way of making money. What is more, the importance individuals place on having a high income has been declining in recent years[1]. Whilst some workers might be happy to accept a poor working environment in exchange for higher pay, the reality is that this choice is not binary and poor working environments rarely result in higher wages.

For those in society who struggle to make ends meet, work is a pathway out of poverty. However, we have to examine why, with employment levels at record highs, a significant number of people living in poverty are in work. The introduction of the National Living Wage last year will help, but will not deal with this issue in isolation; in-work poverty is not just a matter of pay. Individuals can be paid above the National Living Wage, but if they have no guarantee of work from week to week or even day to day, this not only affects their immediate ability to pay the bills but can have further, long-lasting effects, increasing stress levels and putting a strain on family life.

With more and more people working well into their sixties, many individuals will now spend around 50 years of their life in paid-work. As such, work is strongly related to the quality of individuals' lives and their well-being. Quality jobs increase participation rates, productivity and economic performance, whereas, low quality work can push people out of the labour market or in to work which does not fully utilise their skills and experience, reducing well-being and productivity. Low quality work can also affect worker health, as of course does unemployment. This is not only bad for the individual, but for businesses that may have to deal with the costs of worker absence. In 2016, 15 million working days were lost due to stress, anxiety or depression[2].

What is quality work?

The issue of quality work was raised with us across the country during our discussions. From delivery drivers to agency workers, everyone has their view on what they are looking for from work. We were also taken by some of the diametrically opposed views of the same job presented to the Work and Pensions Select Committee earlier in the year.

> **"It is good jobs that matter – where people feel a sense of stability, have a say in the workplace, know that their effort is recognised and rewarded, have the skills to do the job but also to develop their own potential, and trust that they will be treated fairly. And most critically, that they are paid a decent wage for the work that they do."**
>
> Leeds City Region submission to Review

Hearing one person describe a job as the best they have had followed by another person describing the same job as highly stressful or exploitative highlights the challenge for policy makers in seeking to promote better work for all. However, as we have already argued it has never been timelier to articulate what we mean by quality work. Once agreed upon, the Government should then seek to measure and publicise the levels of quality work in the UK in much the same way as it does quantity.

Foundations of quality work

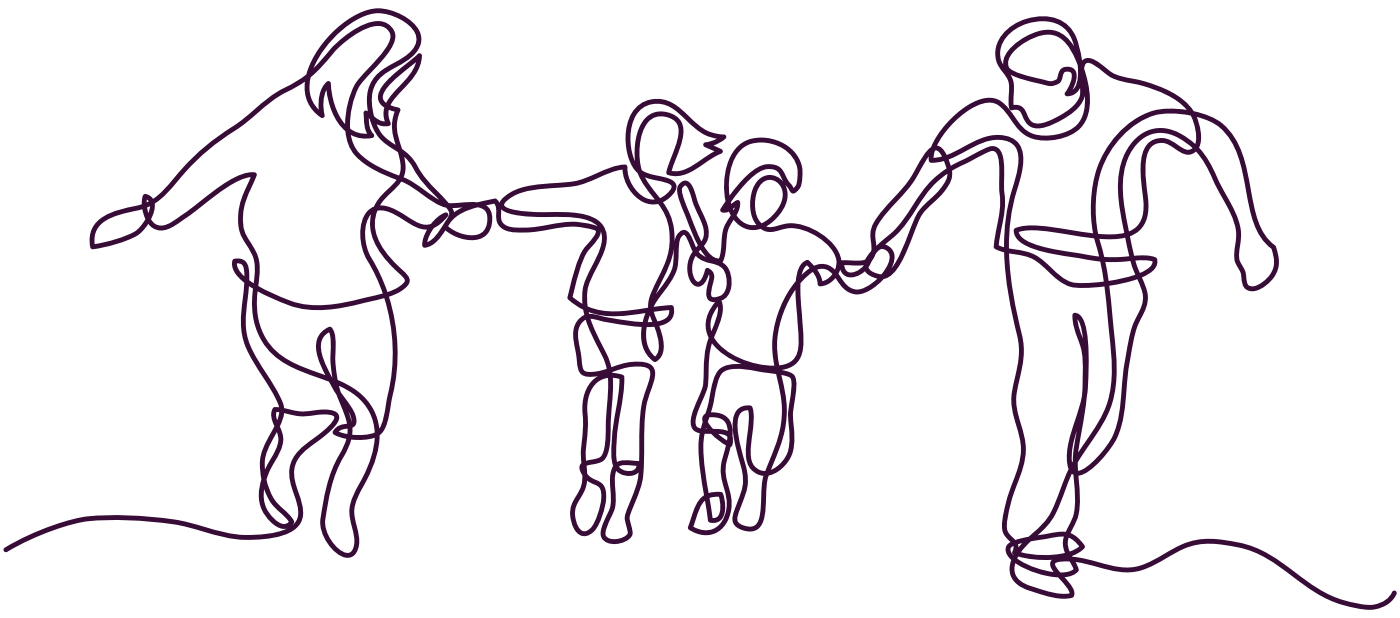
So how do we know what quality work is? It is important to consider it through the lens of the person looking for work as different people will have different motivations. For instance, students looking to earn extra money for tickets to a concert are likely to have very different motivations to someone who is hoping to settle down and buy a house or start a family. In order to ensure quality work is available for all, these different characteristics have to be factored in. For this reason, it is well-being at work (and in wider life) that has been the focus on measuring satisfaction.

This review is not the first to consider the quality of work and we could have picked on any number of frameworks designed to measure it. However, for ease of reference, the Review has settled upon the 'QuInnE' model of job quality, developed by the Institute of Employment Research and others as part of a pan-European research programme[3]. This outlines six high level indicators of quality:

- Wages;
- Employment quality;
- Education and training;
- Working conditions;
- Work life balance; and
- Consultative participation & collective representation.

> **"We believe it is important to have a variety of different types of employment to suit the needs and interests of employers and workers, while ensuring that all workers benefit from the same protections in law."**
>
> EHRC submission to Review

These seem to be a good starting point to measure quality and provide a sensible framework against which we can approach the next sections.



QuInnE indicators of quality work

Wages	Pay level relative to national minimum pay and average for required qualifications Pay variability
Employment Quality	Permanent/Temporary Status Job Security Internal Progression Opportunities Predictability of Weekly Hours (Overtime – Zero Hours) Presence/Absence Involuntary Long Hour Work (40 +) Presence/Absence Involuntary Part-Time Work (<30)
Education & Training	Learning Opportunities on the Job Training Incidence Training Quality Opportunities for General vs Specific Skill Acquisition (Transferability)
Working Conditions	Individual Task Discretion/ Autonomy Semi-Autonomous Teamwork Job Variety Work Intensity Health and Safety (Physical and Psychosocial) Supervisory Social Support Peer Group Social Support
Work Life Balance	Work Time Scheduling (Unsocial Hours) Hours of Work (Duration) Working Time Flexibility – Personal Control of Work Hours Working Time Flexibility – Provisions for Time Off for Personal Needs
Consultative Participation & Collective Representation	Direct Participation in Organisational Decisions Consultative Committees-Works Councils Union Presence Union Decision-Making Involvement

Wages

Money is obviously important. We all have bills to pay and things we want to do. As well as absolute pay levels, whether someone is happy with their earnings is often based on comparisons with the amount their peers are earning. Pay disparity in a workplace or particular industry can therefore make it harder for individuals to feel a sense of fairness at work. Satisfaction with pay can also include a range of other factors such as good pension provision, a fair bonus scheme and other work-based 'perks' such as health insurance.

In chapter six we consider the issue of income insecurity and one-sided flexibility in more detail, making recommendations to address some of the power imbalances that exist in some workplaces in the UK. However, in terms of measuring the quality of work it is important to recognise that the importance of pay and remuneration will vary depending on the individual and their stage of life.

Employment quality

This indicator captures what it means to be fulfilled at work and considers issues such as job security. Young people, lower-skilled, part-time and temporary workers tend to face higher levels of job insecurity for a range of reasons. The prevalence of involuntary long hours in a job is also a factor. Working longer hours increases the risk of occupational illness (such as stress and mental health problems). A culture has also grown up of unpaid overtime, with a recent national study suggesting that roughly half of workers were not paid for overtime.[4]

Education and training

Education and training support individuals to develop and progress in work. Moreover, upskilling can result in better employment rates, higher earnings quality, lower job insecurity and lower job strain. However there is evidence to suggest that the number of individuals who have access to regular training opportunities is falling. The percentage of workers receiving 'off-the-job' training in the past 4 weeks decreased from 10.1% in 2000 to 6.77% in June 2016. Yet, as the labour market changes and industries come and go, the importance of lifelong learning is growing.

What people want to learn in work will vary widely. For some, the ability to gain accredited qualifications is key – and this is more prevalent in particular sectors and with certain groups. For others the priority is 'on-the-job' training, although this may also enhance future employability. The opportunity to develop and progress should be available to all and we examine the role of education and training, through an employability skills framework in chapter 11.

Working conditions

People who have less autonomy over what they do at work tend to report lower wellbeing rates. The same is true of those people working in high-intensity environments. As such, allowing workers more autonomy over the content and pace of their work amongst other things can lead to higher wellbeing for these individuals and increased productivity.

This helps to explain the recent substantial increase in self-employment. Many individuals choose self-employment as this offers them more autonomy over their work, highlighting the need for variability and choice in the way individuals work. In a survey the Review conducted of 1,149 people working through platforms and other similar companies 73.1% said they were satisfied with their ability to be their own boss. However, autonomy over work does not have to equate to self-employment. Being able to structure tasks or decide on the approach to deliver can have a significant impact on the sense of fulfilment people have at work. While some will be content with work where they do what they are told, for many, being able to shape work is increasingly important.

Work life balance

Encouraging flexible work is good for everyone and has been shown to have a positive impact on productivity, worker retention and quality of work. The proportion of employees saying that flexible working was important to them when they initially decided to take up their current job has increased over recent years and in our survey of people working through platforms and other similar companies, 75% said they were satisfied with their ability to set their own hours with 68% satisfied with their work life balance.

> **"The UK's flexible labour market has been an invaluable strength of our economy, underpinning job creation, business investment and our competitiveness… Fairness – the way you are treated at work and the opportunities open to you – is equally important."**
>
> CBI submission to Review

Certain groups are also more likely to place a greater importance on flexibility such as carers, women, those with disabilities and older workers. For example, a survey showed 40% of women state that flexible working is 'very important' to them in comparison to 23% of men. Similarly, 42% of those with caring responsibilities said flexible working was important in comparison to 29% of those without caring responsibilities. Flexibility can allow these groups to participate more fully in the labour market by enabling them to balance work around other priorities.

Consultative participation & collective representation

A greater voice in the organisational decisions that affect your job can make people feel better about their work. It can also add to a more collegiate environment between management and staff, boosting the feeling of fulfilment and increasing productivity. The Review heard that for many having no say in the way they work had negative impacts on their wellbeing.

The importance of consultative participation has been highlighted by many and strengthening voice and good corporate practices is covered in chapter seven in more detail. However, it is clear to all of us on the Review team that no effective framework to measure quality work would be complete without assessing the extent to which individuals were able to engage with those who make the decisions governing their working life.

Understanding trade-offs

The factors listed here are not mutually exclusive. People value different facets of work. For instance, in return for greater job security individuals may decide to reduce their flexibility. Likewise, those opting for maximum flexibility may find that pay suffers as a result with fewer opportunities for further development through training. In order to maximise participation rates and levels of wellbeing, it is essential that this flexibility is retained as far as possible. However, individuals should be able to decide which aspects are more important to them and which elements they are willing to trade-off.

The following chapters examine what more can be done to ensure individuals have the opportunity to make these trade-offs, increasing clarity and transparency and addressing power imbalances that, left unchecked, can lead to exploitation. In making these recommendations we have tried to keep some clear objectives in mind:

- What people want from a job in order to suit their needs will differ considerably;
- In taking steps to protect those who are in a vulnerable position, we should not remove important working options for others;
- There is no silver bullet to delivering better work. Any changes involve a balancing act seeking to meet as many objectives for as many people as possible.

4. Evolution of the labour market

Summary

We are starting from a position of strength: the UK has employment levels and rates that are at historic highs and compare well internationally. Our flexible approach – what the Review calls 'the British way' – works. Full-time, permanent work remains the norm, but other 'atypical' arrangements are usually chosen and valued by the individuals concerned. There are immediate and longer-term challenges ahead, but we are in a good place to address them.

This section provides the context for the rest of the Review and sets out:

- **Current characteristics of the labour market**
- **Key trends in the way we work**
- **Key changes likely to affect the labour market going forward**

Overview of the current labour market[7]

In recent years the UK labour market has been characterised by strong performance, with record high levels of employment and the lowest unemployment rates since 1975. The current employment rate of 74.8%[8] is the highest since records began. The unemployment rate, at 4.7%, is the lowest since 1975. The inactivity rate[9], at 21.5% is the joint lowest since records began.

During the most recent recession, unemployment did not increase to the same extent experienced during past recessions, despite those being less severe and shorter in length. The economic recovery has been associated with strong job creation[10], which has shielded the employment rate, particularly in the face of public sector job losses. It is often argued that the flexibility of the UK's labour market is a key contributor to this positive performance.

The Organisation for Economic Co-operation and Development (OECD's) employment protection index[11,12] is a widely used indicator for labour market flexibility. According to this index, the UK has much lighter protections in place for individuals in the labour market relative to countries such as France or Germany. The US is considered to have the least protection in place. The UK's regulation of temporary work is also less strict than in countries such as France and Spain. Again, the US has an even lighter regime.

> **"The UK is widely recognised as having one of the most flexible labour markets in the world. The UK is rated as having the 5th most efficient labour market in the World Economic Forum's Global Competitiveness Report 2016-17, behind only Switzerland, Singapore, Hong Kong and the United States. 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. This is why flexibility matters."**
>
> CBI submission to Review

At this international level, the UK's[13] participation rate is stronger than both the EU and OECD averages, and the UK performs better than both the US and France, despite the level of labour market regulation being much lighter than France, and slightly more strict than the US. The UK also outperforms both countries in employment rate terms.

This tells us that the UK is good at creating jobs and this good performance on quantity of work should be celebrated, but not without acknowledging that there are a number of persistent weaknesses in the UK labour market, particularly real wage growth and productivity performance.

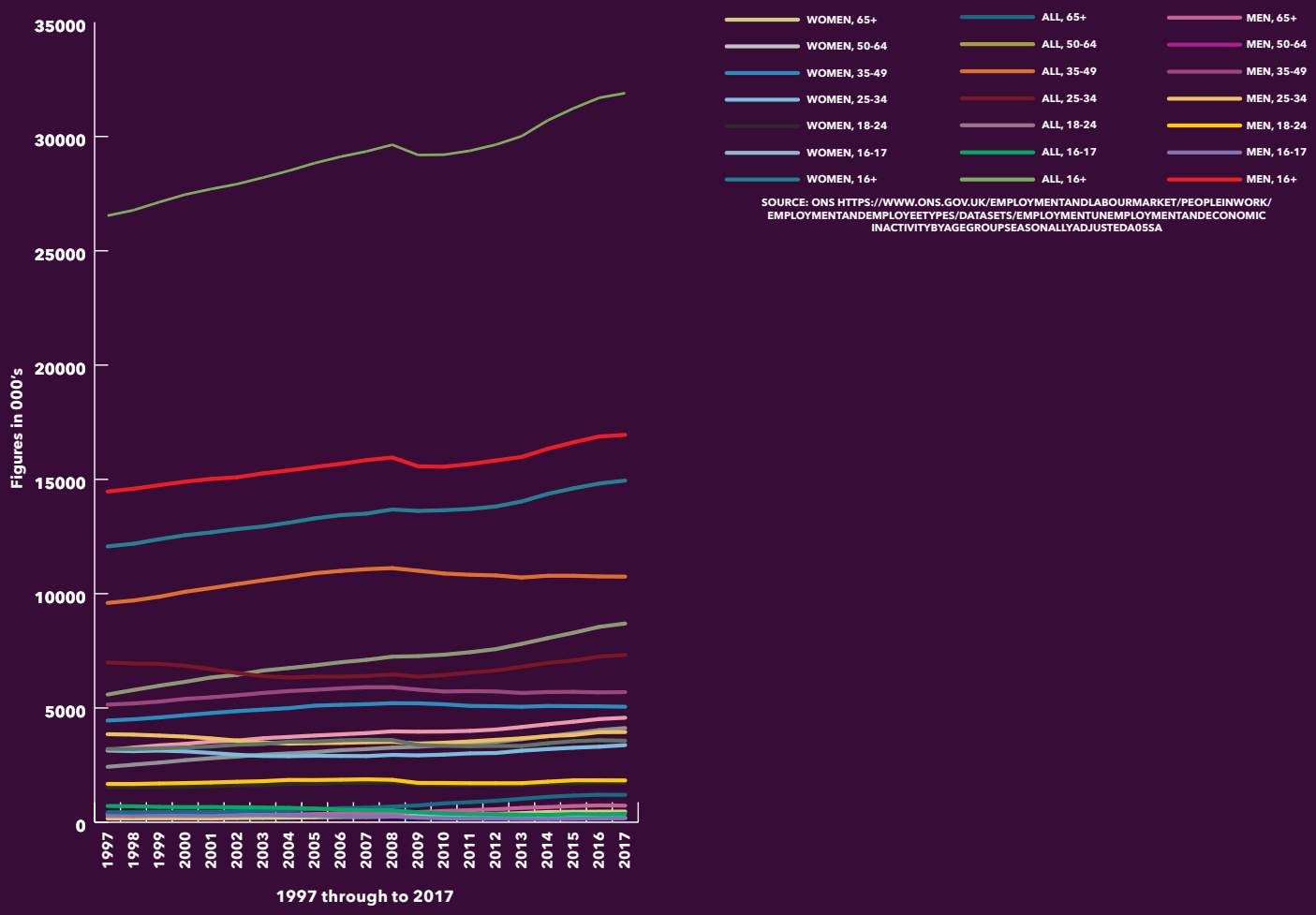
Who is working?

Participation amongst females has been growing more quickly than males over the last twenty years, evening up the proportion of female employees. Similarly, participation and employment amongst people aged 50+ has grown significantly over the last twenty years[14], coupled with a decline in economic activity amongst people aged 16-17[15], which has shifted the age profile of the labour market. Almost 3 in 10 workers are now over 50, compared to closer to 2 in 10 in 1997.

The ageing workforce is reflective of the UK's ageing population, with more people living longer and declining birth rates.

Breakdown of the workforce by gender and age

This chart shows the breakdown of the workforce by gender and age, from 1997 to 2017.



SOURCE: ONS HTTPS://WWW.ONS.GOV.UK/EMPLOYMENTANDLABOURMARKET/PEOPLEINWORK/EMPLOYMENTANDEMPLOYEETYPES/DATASETS/EMPLOYMENTUNEMPLOYMENTANDECONOMICINACTIVITYBYAGEGROUPSEASONALLYADJUSTEDA05SA

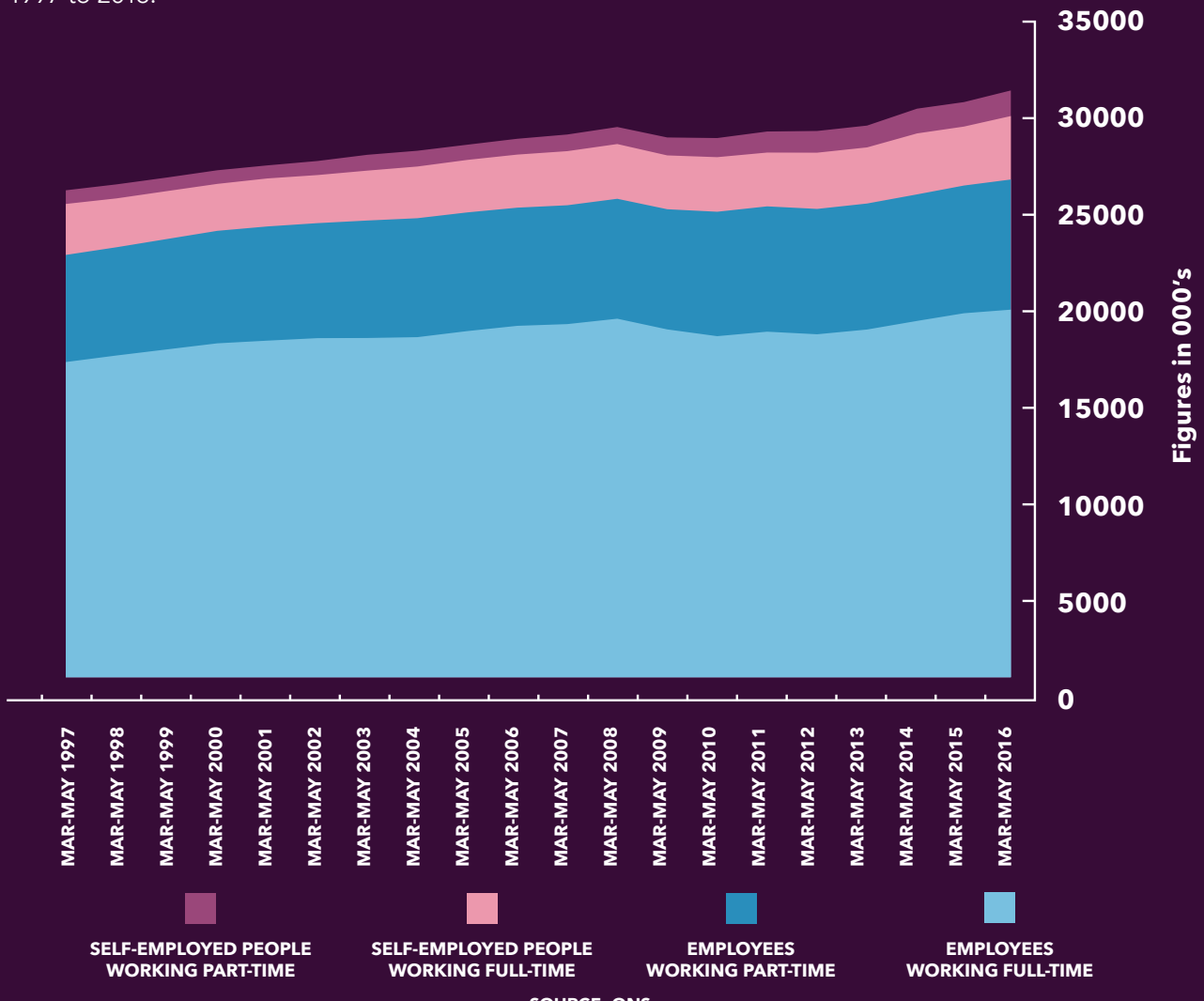
The declining number of people aged 16-17 participating in the labour market reflects the fact that young people are now staying in education for longer. Linked to this, the level of academic qualification of those in employment has significantly improved, with over a third of people (34.1%) having a degree or equivalent[16].

Full-time, permanent work as an employee continues to make up the majority of employment in the UK (63.0%). However, there has been a notable shift towards more flexible forms of working overtime, with changes in levels of self-employment and part-time working in particular.

Currently, almost 26.2% of employment is in part-time work, compared to 25% in 1997 and self-employment now accounts for around 15.1% of total employment.

Total employment broken down by employee/self-employment and working pattern

This chart shows the breakdown of total employment by employees/self-employed and their working pattern, from 1997 to 2016.



SOURCE: ONS

Despite the overall strong levels of employment, there is evidence of persistent under-employment. Measures of under-employment, which account for workers who want more hours, remain higher than they were during the most recent recession, despite some improvements since 2012.

This under-employment represents spare capacity in the labour market and indicates that a number of people are not likely to be working in the way that best suits them.

Total number of workers that want more hours

This chart shows the number of workers that want more hours, from 2002 to 2017. The chart rises from 2004 to a peak at 2013, before falling afterwards. It illustrates that there have been a larger number of workers wanting to work more hours in recent years.

SOURCE: ONS HTTPS://WWW.ONS.GOV.UK/EMPLOYMENTANDLABOURMARKET/PEOPLEINWORK/EMPLOYMENTANDEMPLOYEETYPES/DATASETS/UNDEREMPLOYMENTANDOVEREMPLOYMENTEMP16

In addition to looking at labour market indicators at an overarching level, it is important to examine the underlying dynamics. Quarterly labour market data shows strong flows from employment to unemployment and inactivity, and vice versa.

Quarterly Population Flows – Q1 (January to March) 2017 – UK, seasonally adjusted (thousands)

This chart shows the flows to and from different labour market statuses: employment, inactivity and unemployment, in the first quarter of 2017. There was a net flow from unemployment to employment of 187,000, a net flow from unemployment to inactivity of 9,000 and a net flow from inactivity to unemployment of 128,000.

Source: ONS, Labour market flows, May 2017.

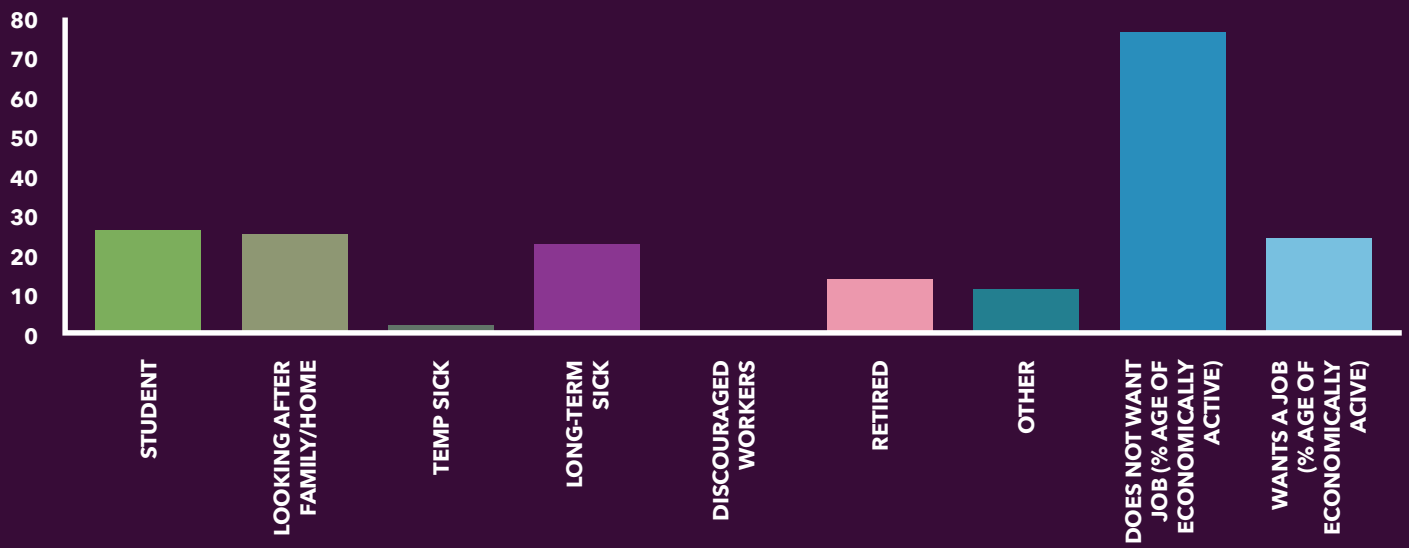
Between quarter 1 2017 and the previous quarter, just over a million people moved into employment, signalling that there are jobs available for those who want to participate in the labour market.

However 861,000 individuals also moved from employment and unemployment into economic inactivity.

The inactive population can be broken down as follows:

Economic Inactivity by reason (seasonally adjusted), ONS, (Feb – Apr 2017)

This chart shows the proportion of the economically inactive population by reason during February to April 2017. 26 per cent are students, 25 per cent are looking after the family or home, 22 per cent are long term sick, 14 per cent are retired, 2 per cent are temporarily sick and a small number of others (below 1 per cent) are discouraged workers.



SOURCE: ONS HTTPS://WWW.ONS.GOV.UK/EMPLOYMENTANDLABOURMARKET/PEOPLENOTINWORK/ECONOMICINACTIVITY/DATASETS/ECONOMICINACTIVITYBYREASONSEASONALLYADJUSTEDINAC01SA/CURRENT

While 70% of all employment-to inactivity flows occur because of personal reasons, the loss of potential associated with manpower and skills of those moving into inactivity squanders a valuable resource. 18% of those who are inactive and would like to work hold a degree or equivalent qualification.

Given the already high employment rate it is likely that any further increase in employment will be difficult to achieve unless groups who are not currently participating in the labour market can be encouraged to do so. There are currently 8.8 million working age people who are economically inactive. While the majority (76.0%) do not want a job, there are 2.1 million people that would like to work.

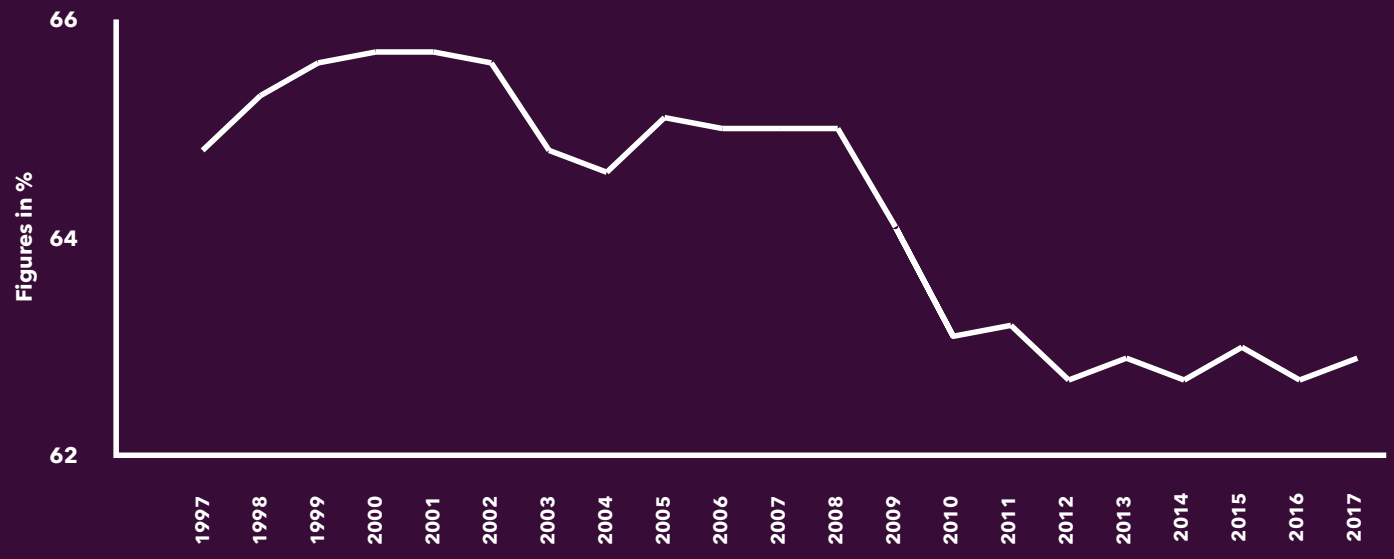
Key trends in the way we work

Changes in the degree of part-time working and self-employment have already been noted above. These are key examples of the 'atypical' work that features heavily in the current labour market narrative.

However, 'traditional' full-time employment as an employee as a proportion of total employment continues to dominate the UK labour market and has only declined 1.6 percentage points from 64.6% to 63.0% over the last twenty years; with the most noticeable fall occurring during the most recent recession.

Full-time employees as a proportion of total employment

This chart shows the proportion of total employment that is made up of full-time employees, from 1997 to 2017. The proportion fell from 65 per cent to 63 per cent between 2008 and 2010 and has remained around that level since.



SOURCE ONS - HTTPS://WWW.ONS.GOV.UK/EMPLOYMENTANDLABOURMARKET/PEOPLEINWORK/EMPLOYMENTANDEMPLOYEETYPES/DATASETS/FULLTIMEPARTTIMEANDTEMPORARYWORKERSSEASONALLYADJUSTEDEMP01SA

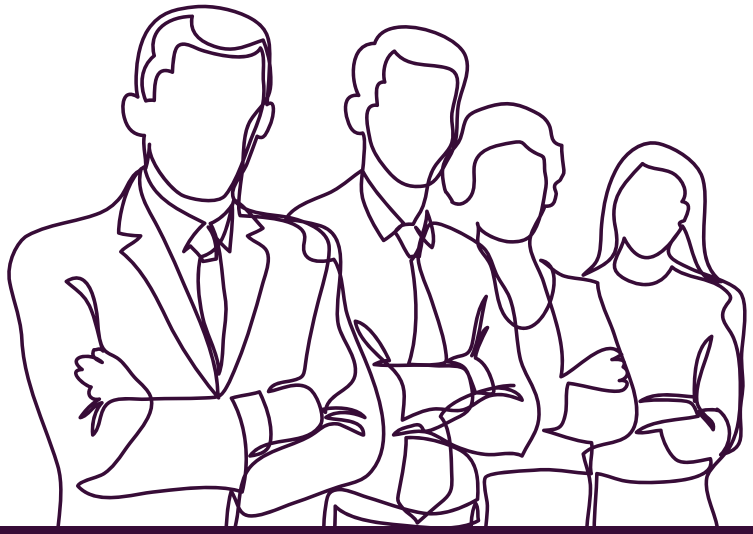
Permanent employment as an employee accounts for 60.0% of the total labour market, or 71.2% of employees[18].

This tells us that concerns that the UK's light touch approach to labour market regulation is leading to increased insecurity may be overstated.

Increasing atypical work is generally linked to a more flexible labour market, and the greater participation of women and older workers could be one driver of the move to increased flexibility. However, the exact drivers are not clear and this is where concern around the balance of flexibility and security for individuals arises.

The key trends in atypical types of work are summarised in the following table:

Type of work	Trends
Part-time working	As noted above, part-time working now sits at close to 26.2% of total employment. Part-time working has generally been on the rise for the past 20 years, hitting a high of 27.6% in 2012 suggesting that reduced hours working may have protected some jobs in the aftermath of the recession. Self-employed people are more likely to work part-time (29.0% of self-employed people work part-time) than employees (25.7% of employees work part-time). 12.4% of part-time workers say that they are working part-time because they could not find a full-time job. However, the majority of part-time workers (70.7%) say that they do not want a full-time job. This means that the ability to work part-time has benefitted around 18.4% of the total workforce who do not want a full-time job. In international terms, the UK has a much higher proportion of its workforce working part-time than most other countries. In 2015, the EU28 average level of part-time working was just 17.2%[19], lower than the rate of people working part-time in the UK (24%). Countries such as Germany and Ireland have somewhat comparable part-time employment rates though (at 22.4% and 23.3% respectively).
Self-employment	Self-employment reached a high of 15% of total employment during 2016. Self-employment was seen to be falling at the end of 1990s, but from around 2001 began to rise again. The rise was particularly rapid in the years post economic recession. Joinery, plumbing and construction are the largest sectors for self-employment. In international terms, the UK has a much higher level of self-employment than countries such as Canada, Germany and the USA. The UK rate is just below the EU average however.
Agency work	There is a lack of robust data on the number of agency workers in the UK. Estimates range from 800,000[20] to around 1.2 million[21]. The Recruitment and Employment Confederation (REC) estimate of 1.2 million is generally considered to be more reliable, with REC suggesting that the number of agency workers has remained fairly stable over the last number of years, but with a low of 900,000 in 2009/10.
Temporary work	Temporary workers, who include temporary agency workers, account for around 1.6 million of the total number of UK employees. Around a quarter of temporary workers (25.5%) state that they do not want a permanent job, while 27.4% say that they are a temporary worker because they could not find a permanent job. There are some caveats in comparing levels of temporary work across countries because of how the data is captured, but OECD data indicates that the UK has much lower than average levels of temporary employment (at 6.2%) relative to EU and OECD averages (of 14.2% and 11.4% respectively).



Zero hours contracts	905,000 people (2.8% of those in employment) are reported to be on a zero hours contract[22]. The majority of people on zero hour contract tend to work part-time (65%). Younger people, those aged 16-24, are also more likely to work on a zero hours contracts and account for one third of total zero hours contracts. 18% of those on a zero hours contract are in full-time education, which suggests that the flexibility of such a contract could be beneficial for those balancing work and study. Whilst data suggests that there have been large increases in the number of people on zero hours contracts since 2012, this increase is, at least in part, due to an improved recognition of this type of contract. This means that we cannot know with certainty that zero hour contracts are on the rise and in fact reported numbers have stabilised in recent periods.
Multi-jobs	According to official data, approximately 1.1 million people, or 3.5% of the total number in employment, have a second job. This proportion has fallen, from a high of 5.0% in the mid-1990s, with the level being fairly stable at between 3.5% and 4.0% for the last ten years. This official data is not likely to include the increasing number of people earning additional money in a more casual way, through the use of online platforms for example. McKinsey Global[23] estimates that 20-30% of the working age population are engaged in independent work. This includes self-employed people but also accounts for people using sharing or gig economy platforms e.g. individuals renting out rooms on Airbnb, driving for Uber, or selling goods on eBay or Etsy.
Gig economy work	Technology has facilitated new business models based around matching sellers and buyers of goods and services. This means that people can make money from assets that they own or their ability to do a certain type of work. The gig economy tends to refer to people using apps to sell their labour. The most commonly used examples are Uber and Deliveroo but there are many and a growing number of platforms facilitating working in this way. Current limitations on Labour Force Survey data means that we do not know with any certainty how many people are undertaking gig economy work and whether they are doing so to supplement other work, or substituting employment totally with this type of work. The Chartered Institute of Personnel and Development (CIPD)[24] estimate that there are approximately 1.3 million people (4% of all in employment) working in the gig economy in the UK. CIPD's research suggests that a high proportion of gig economy workers (58%) are permanent employees, engaging in gig economy activity on top of their more 'traditional' employment, which could indicate that this type of work is used to top-up income. The research also suggests that the gig economy will continue to grow, with 12% of UK working-age adults who have not participated in gig economy work in the last 12 months saying they are thinking about trying different forms of gig economy activity over the next year.

Through the work of the Review we have come to understand that flexibility does work for many people, and it is clear that an agile labour market is good for protecting employment.

The key question in relation to atypical work is therefore whether vulnerable workers, or those with limited choice, are adequately protected in this type of employment.

Why the labour market doesn't work for everyone

While the Review acknowledges that the UK's labour market is currently looking strong, and that flexibility is likely to have played a role in its current success, there exist a number of factors that could lead to poorer outcomes at the individual level.

The key factor is an imbalance of power between individuals and employers. Where employers hold more power than employees, this can lead to poorer working conditions and lower wage levels. This type of power could exist where individuals have little choice over who they work for – where there is a dominant local employer in an area or dominant employers of certain skills for example. This type of power is likely to affect the low-skilled to a greater degree because they could struggle to get another job if they were to leave an unsatisfactory one. The Review notes that there have been high profile cases of poor working conditions at workplaces such as warehouses, which are illustrative of the existence of this sort of power.

The imbalance of power at a local level is linked to a second factor of immobile labour. Where individuals are geographically or occupationally immobile, this reduces the choice of jobs available to them and poses additional barriers for those people who want a different job.

The Review has heard evidence that the current employment status framework and the rights of individuals under each status are difficult to understand. This creates difficulties for both individuals and employers (as demonstrated in the useful evidence provided by Citizen's Advice Newham) but the outcome is likely to be more detrimental to individuals who could be missing out on key rights, such as holiday pay. Confusion around employment status becomes more pronounced for people working in atypical ways.

"The most common employment enquiry is unpaid wages, and uncertainty over employment status and terms and conditions is a cross-cutting underlying issue throughout many enquiries… Top three employment issues on the project are:

1. Unauthorised deduction of wages (26% of enquiries)

2. Unfair dismissal (19%)

3. Terms and conditions, many in relation to bogus self-employment (13%)

We find the issue with self-employment is with how the tests for employment status work both in a legal and practical sense. That is, many employees and employers are unaware they don't decide what an individual's employment status is, that it's a

factual assessment of the nature of their relationship. In combination with this, there appears to be a general lack of awareness of the fact that contracts do not need to be in writing, that the above is a substantive test of what exists in reality and not on paper. In other words, regardless of whether there is a written contract to the contrary, if in reality any of these tests are met it's unlikely the individual in question is self-employed.

We've found some employers genuinely do not realise that by arranging their affairs in such a way they create a contract for work or for employment.

We've also worked with clients whose employers have deliberately circumvented the above rules in full knowledge of how they work, usually by drafting a contract that purports to create a contract for self-employment, but in some cases, evidences satisfaction of some if not most of the above three tests.

One client, Sam, worked for a construction company for two months and was told by the company that he was self-employed. He was paid late but only for three weeks' work. When he came to us for advice, we advised that he appeared to be an employee owed both wages and accrued holiday pay, but he didn't want to claim holiday pay because he considered himself self-employed. His unpaid wages were eventually paid during early conciliation, but he did not receive any holiday pay. Sam was convinced that it was for the contracting company to decide whether or not he would be a worker, employee or self-employed."

Citizen's Advice Newham submission to Review

The shift towards greater variation in working patterns is likely to continue as the economy moves towards full employment and people look for work that suits their individual lifestyles and preferences. Given the positive externalities associated with employment, society benefits from allowing individuals to participate in the labour market in a way that suits them. The challenge for Government is to balance access to flexibility with suitable protection for those workers that may be more vulnerable to exploitation.

There are many examples of increasing media and public concern in relation to worker exploitation, and there have been two recent Government reviews looking at ways of working:

- The Business, Energy and Industrial Strategy Committee's 'future world of work and rights of workers inquiry', prompted by the Sports Direct scandal; and
- The Work and Pensions Committee's 'self-employment and the gig economy inquiry', focusing on bogus self-employment.

It is clear that we cannot ignore that there are real problems to solve if the labour market is to work for everyone.

What are the key labour market challenges ahead?

In addition to the already mentioned challenge of under-employment above, continuing poor real wage growth, poor productivity performance, new business models, skills mismatch and increasing automation all present problems for the labour market going forward:

- Poor real wage growth – Real wage growth has been a persistent concern for the UK labour market. Real wages have struggled for many years, and even more so after the recession. Despite growth in nominal weekly earnings, average real weekly earnings[25] remain below their 2008 level. Whilst we could argue that downward pressure on real wages is likely to have protected employment during the recession, now that the economy is in recovery, the failure of growth in real wages to pick up pace again raises questions about living standards. On a positive note, the introduction of the National Living Wage is lifting the earnings of those in the lowest paid jobs, meaning that wages are rising fastest for this group, shielding these earnings in real terms.

  The Resolution Foundation[26], although concerned that 1 in 5 employees continued to be low paid in Britain in 2015[27], have noted that the National Living Wage "is projected to lift 800,000 people out of low pay, marking the biggest single step forward since the introduction of the NMW".

- Poor productivity – Growth in pay is linked to improvements in labour productivity. The UK, like many other developed economies, has suffered from very weak productivity growth since the financial crisis (the "productivity puzzle"); however, the UK also has a long-standing productivity gap relative to international comparators. Over the long term, growth in productivity is essential for continued improvement in living standards. Achieving improved productivity will rely on a number of things, not least investment in infrastructure, improved skill-levels, more technological advancement and delivery of the modern industrial strategy.

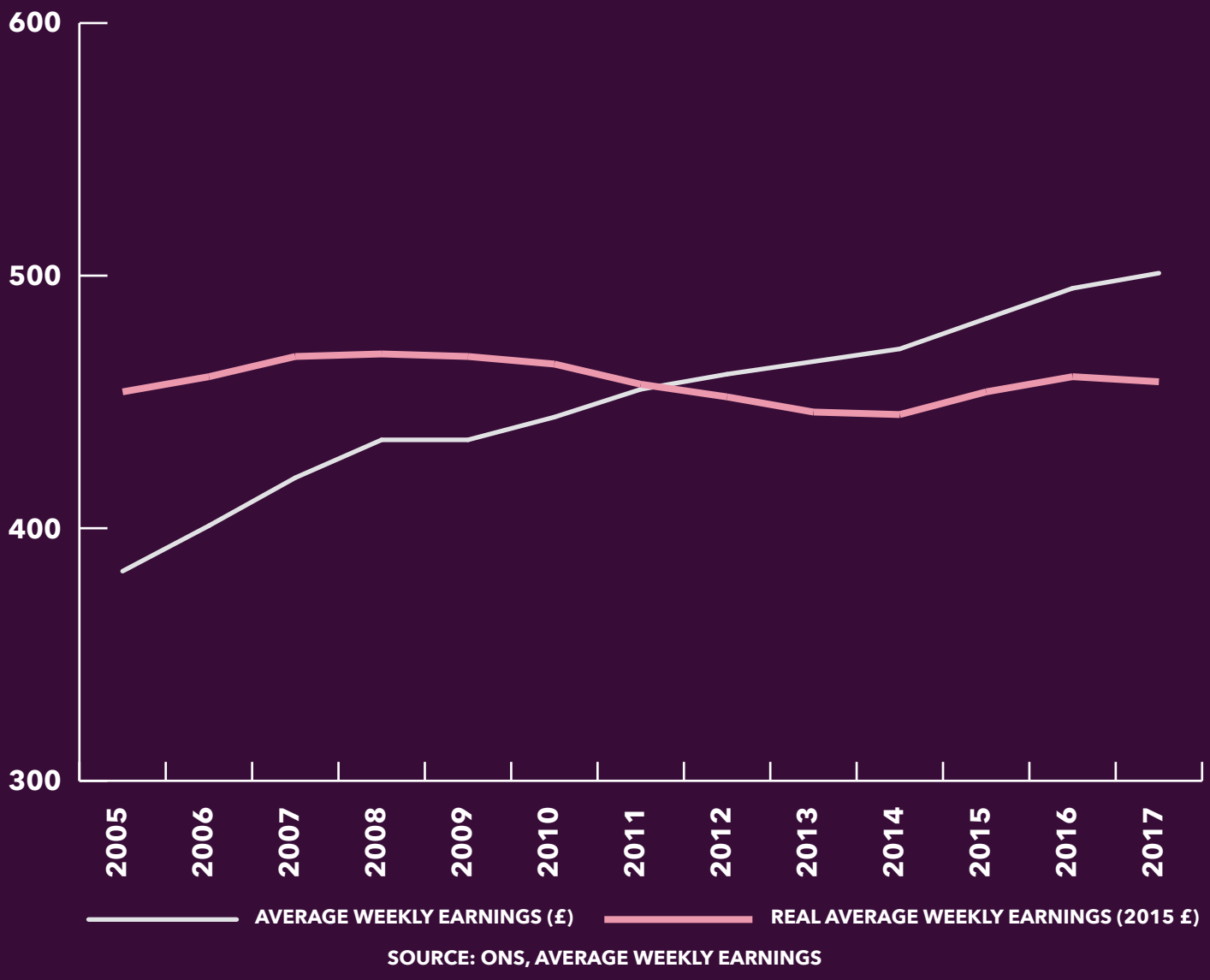
- Jobs to match the skills profile –The skills level of the UK workforce is improving, and the share of the workforce with degree level qualification is set to continue rising. This creates a challenge for the labour market in terms of creating jobs suitable to such graduate level skills. The proportion of graduates working in low-skilled jobs increased from 5.3% in 2008 to 8.1% in 2016. This under-utilisation of available skills will link to the productivity improvement agenda.

- New business models (including the 'sharing' and 'gig' economies) – as noted above, technology has facilitated new business models based around matching sellers and buyers of goods and services meaning that people can make money in new ways. The uptake of this technology is forecast to grow. The RSA's 'Good Gigs' report[28] highlights that gig working has the potential to expand into sectors such as retail. The RSA's report also highlights that this type of work is particularly attractive to young people; with 1 in 4 people aged 16-30 saying that they would consider some form of gig working in the future, again highlighting the potential for gig working to grow quickly. The benefits to an individual choosing to work in this way include flexibility and control over how they work, but this new way of working also raises questions about the suitability of the current employment law framework in addressing the needs of people actively choosing to work outside of the traditional employment model.

- **Automation** – Progress and recent developments in machine learning and processing capacity have resurfaced discussions on the automation of work. These discussions are often controversial, with widely varying predictions around the number of jobs that could be lost to automation. However, history has shown that technological advancements and the automation of individual tasks don't just result in substitution of labour, but also lead to job creation[29].

Average weekly earnings (AWE)

This chart shows nominal and real average weekly earnings between 2005 and 2017. Whilst the nominal average weekly earnings line rises steadily over time, this does not account for increases in inflation. The real average weekly earnings line, which is adjusted for inflation, shows that the value of real weekly earnings has remained fairly flat over time, falling from 2008 to 2014. Average real weekly wages in April 2017 were at a similar level to June 2006.

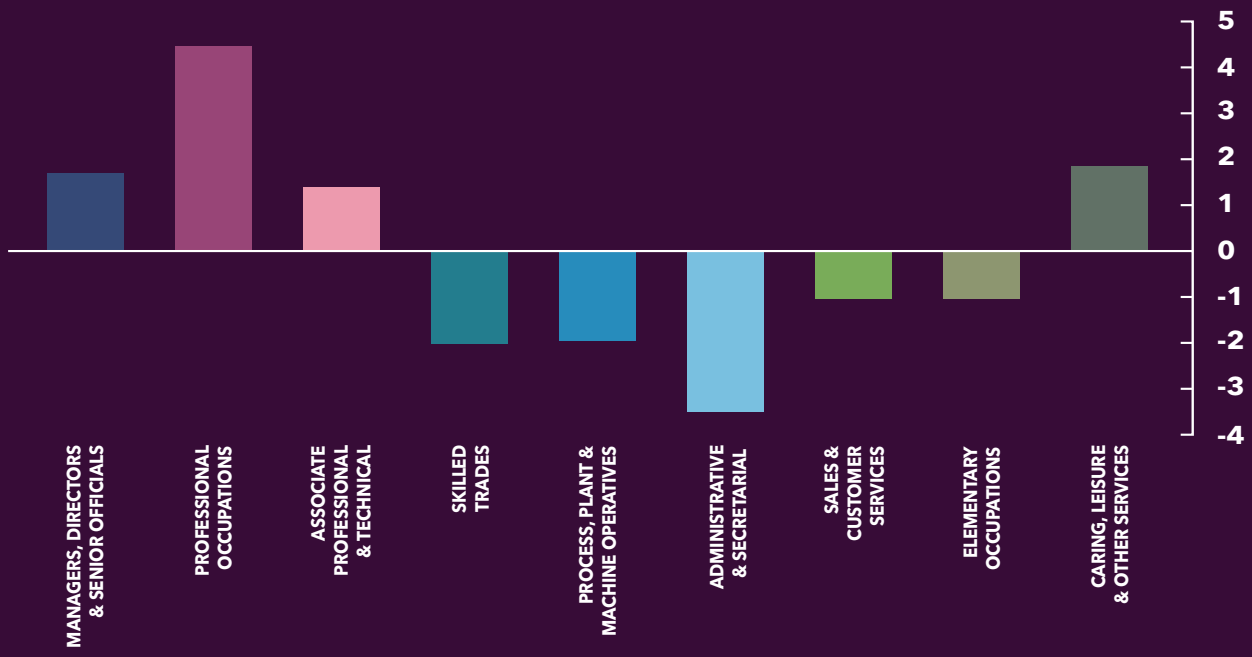


SOURCE: ONS, AVERAGE WEEKLY EARNINGS

Technology had previously been thought of as targeting tasks which are routine or process driven in nature, as roles requiring precision, creativity, perception or social intelligence were thought of as less susceptible to automation[30]. However, while computers less ably provide the flexibility needed for some service-related tasks, it is hypothesised that rapid advances in artificial intelligence and machine learning are increasingly automating the routine cognitive jobs that are not typically performed by the lowest-skilled workers. This has led to some suggesting a polarised labour market[31], where a decrease in middle-income roles has occurred, but high-income cognitive jobs and low-income manual occupations have grown. This is shown in the chart below.

Percentage point change in employment as a share of total employment, 2004 to 2014

This chart shows the percentage point change in employment amongst different occupational groups as a share of total employment between 2004 and 2014. Over this time period, there were increases in the share of professional occupations, managers, directors and senior officials, caring, leisure and other services staff and associate professional and technical staff. There were declines in the share of administrative and secretarial staff, process, plant and machine operatives, skilled tradespeople, sales and customer services staff and people in elementary occupations.



SOURCE BEIS ANALYSIS OF ONS
HTTPS://WWW.ONS.GOV.UK/EMPLOYMENTANDLABOURMARKET/PEOPLEINWORK/EMPLOYMENTANDEMPLOYEETYPES/DATASETS/ALLINEMPLOYMENTBYOCCUPATIONEMP08
HTTPS://WWW.ONS.GOV.UK/EMPLOYMENTANDLABOURMARKET/PEOPLEINWORK/EARNINGSANDWORKINGHOURS/DATASETS/GROSSWEEKLYEARNINGSBYOCCUPATIONEARN06

Some of this technological change has already manifested through the growth in the "gig economy". The challenge lies in how we adapt to these changes in the labour market.

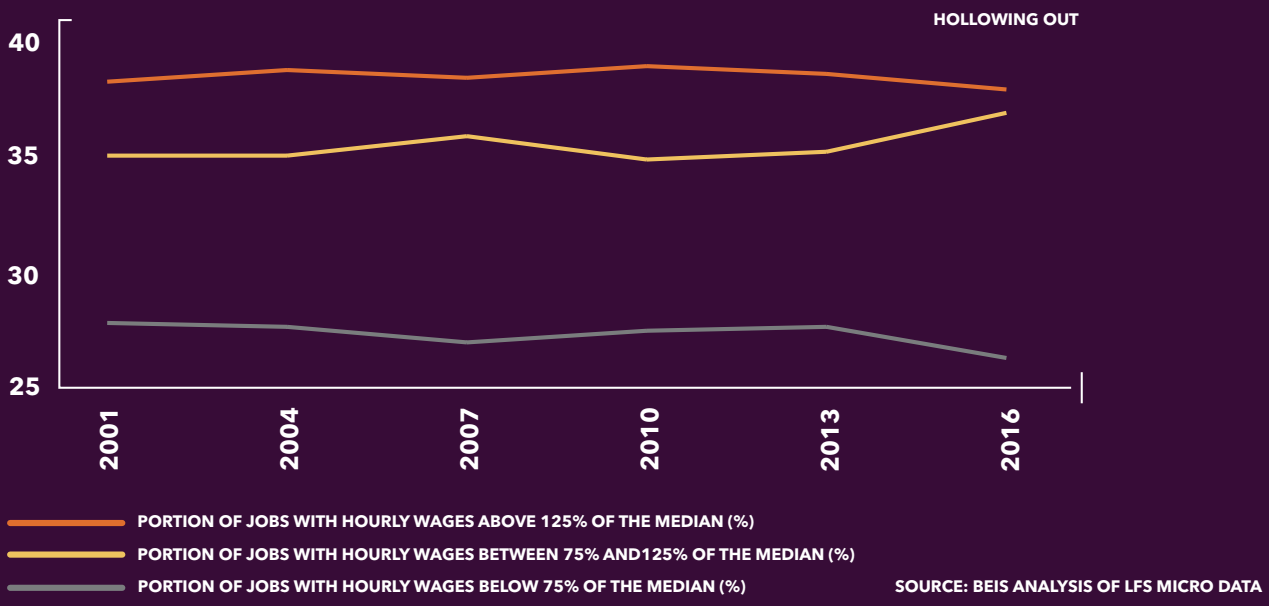
Human perception, creativity and social intelligence are all key components of tasks that currently lie outside the domain of robots[33]. Ensuring that the labour force is equipped with the necessary skills for a modern labour market will be important and will mitigate uneven redistributions of wealth caused by any possible "hollowing-out" effect.

Whilst the chart above suggest that automation is affecting middle-income occupations, analysis of Annual Survey of Hours and Earnings (ASHE) data indicates that the hollowing-out effect has not had an effect on the wage distribution, easing fears around increasing inequality.

Between 2001 and 2016, the proportion of people earning an hourly wage within 25% of the median hourly wage has remained fairly stable at just over one third of workers:

Proportion of jobs by distribution around median earnings, BEIS analysis of LFS micro data

This chart shows the proportion of jobs by distribution around median earnings, between 2001 and 2016, using BEIS analysis of LFS micro data.



This would indicate that new jobs are being created even as jobs are lost to automation.

The challenge is to develop new skills not targeted by automation, for example, further importance could be assigned to non-cognitive skills such as relationship-building, empathy and negotiation)[34]. Over time, these skills could become more valuable.

Whilst automation is a common theme in labour market dialogue currently, the Review considers this to be largely an area for a watching brief rather than immediate intervention. The likely pace of change simply makes it all the more important that we approach the future armed with a strong, value-based commitment to good work.

Summary:

The UK is good at encouraging economic activity and creating jobs. 'The British way' works and we don't need to overhaul the system. But persistent issues with wage growth and productivity provide sufficient rationale for us to look at how the labour market framework could be improved. We need to make sure the labour market remains dynamic enough to adapt successfully to new business models, automation and the uncertainty associated with Brexit.

The Review believes that maintaining the flexible and adaptable approach to labour market regulation that has benefitted the UK so far, but focusing more closely on the quality of work as well as the number of people employed, will take us in the right direction.

5. Clarity in the law

Summary

The way in which employment protections are applied relies on individuals and employers understanding the type of relationship that exists between them – most basically, deciding whether the individual is an 'employee', a 'worker' or genuinely self-employed. For a number of reasons, this is becoming more complex for an increasing proportion of the workforce. In this section, we examine what works and what does not in the current framework, making a range of recommendations to improve clarity and transparency for individuals and employers. In doing so, we have come to a number of conclusions:

- **The current framework works reasonably well**, but needs to adapt to reflect emerging business models, with greater clarity for individuals and employers;
- **The focus should be clarifying the line between 'worker' status and self-employment** as this is where there is greatest risk of vulnerability and exploitation;
- Further efforts should be made to **remove incentives for some businesses to gain competitive advantage by adopting business models** which may particularly disadvantage workers;
- The aim of a new legislative framework is that the **legislation does more of the work and the courts less**.

The current approach

Knowing which employment protections you have as an individual depends on knowing what your employment status is. However, even if an individual believes they know what their status is, if their employer does not agree it can make it difficult to claim rights without recourse to more formal channels.

Most people in the UK will be 'employees', with the full range of employment protections available. This is because the majority of people still work in traditional, full-time roles. For others who are genuinely self-employed, employment protections do not apply. For those who are neither employees nor self-employed, the status of 'worker' provides a relative safety net, ensuring that a group of more casual workers are protected by a set of baseline rights – such as the National Minimum Wage. However, agreeing what employment status exists for those on the margins of these groups can be difficult with each case based on the individual facts.

Definitions of 'employee' and 'worker' from the Employment Rights Act 1996

Section 230 of the Employment Rights Act 1996 – Employees, workers etc.

1) In this Act "employee" means an individual who has entered into works under (or where the employment has ceased, worked under) a contract of employment.
2) In this Act "contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.
3) In this Act "worker" (except in the phrases "shop worker" and "betting worker") means an individual who has entered into or works under (or, where the employment has ceased, worked under) -
   a) A contract of employment, or
   b) Any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.

The world of work is changing, and will continue to change as business and consumers embrace digital and technological advances. The courts have sought to ensure that the way in which employment legislation is applied keeps pace with these changes, with last year's ruling against Uber being one of the latest manifestations. However, in order to ensure that in the future, all work is fair and decent, we have to re-examine whether the legislation meets the needs of a modern labour market.

Getting this right is not only about protecting individuals. Businesses too want to ensure they are operating on a level playing field when complying with their legal responsibilities and not being undercut by less responsible employers seeking to play fast and loose with ambiguous legislation. Many of the submissions to the Review from business groups called for greater clarity in the legislative framework.

We have been told by many involved in employment law that the current framework – the British Way – works well and is flexible enough to deal with new ways of working – a point made in the recently published Employment Status Review, commissioned by Government in 2014. However, through our discussions, it has become clear that how the law is interpreted varies widely. Over time, the courts have tried to provide some clarity by introducing tests or factors for determining whether someone is an employee or worker. However, the relevance and weight given to these varies depending on the circumstances; without an encyclopaedic knowledge of case law, understanding how this might apply to your situation is almost impossible. The legislation must do more and the courts less if we are to improve clarity, and ensure that irresponsible employers are not able to game the system and take advantage of working people. Nowhere is this more evident than the line between worker status and genuine self-employment.

Current principles

As a result of legislation being minimal for so long, and therefore open to interpretation, the courts have established a range of tests and factors to help them make decisions on employment status. These include personal service (whether the individual is required to do the work themselves); the degree of control exercised by the employer, whether there are ongoing contractual obligations to provide and perform work (sometimes known as mutuality of obligation) and, more generally, whether the individual is carrying out a business undertaking.

If the Government believes these to be an accurate reflection of what they consider to be the main characteristics of a status, legislation should be updated to reflect this. We believe there is merit in outlining in primary legislation the high level criteria which need to be met. And, in order to allow the legislation to respond dynamically to changing conditions and relevant case law, the detail that underpins these criteria should be specified in a way that can be updated quickly, with a greater use of secondary legislation and guidance.

A new approach

A number of considerations must be addressed if a future framework is going to support fair and decent work. As a first principle, the Government must make legislation clearer. The employment statuses should also be distinct and not open to as much interpretation as currently, nor be so ambiguous that only a court can fully understand the basic principles. The law should also ensure that where individuals are under significant control in the way they work, they are not left unprotected as a result of the way their contract is drafted. It should not be as difficult as it is now for ordinary people or responsible employers to seek clarity on employment status.

Many of the people who attended the Review's evidence sessions told us they liked the flexibility of working atypically – and we must not lose this. However, flexibility must not be one-way with individuals absorbing all of the risk. For many, not knowing when work would be offered, or whether they were entitled to protections like sick pay or holiday pay meant they were unable to make informed choices, book a holiday or even arrange a hospital appointment. This is wrong. Wherever possible, people should know who they are working for, how much they will earn and what rights they have. While this is covered in more detail in chapter six, the underlying principle of power balance goes to the heart of our suggested approach to defining status.

Making changes to the law will only be effective if it is enforceable. Many we spoke to believed it was too easy for some employers to ignore their staff, especially when the only way to get redress was through an employment tribunal. People were reluctant to have conversations with their employers in case they suffered a reduction in hours where they had a zero, or low, hours contract. Employment tribunal fees were felt to be a barrier to people asserting their rights. As such, the changes in employment status law that we propose should be seen in the context of the importance we place on corporate governance and transparency (covered in chapter seven) as well as reforms to the enforcement landscape (set out in chapter eight).

"Determining whether you are an employee, a worker or genuinely self-employed requires the ability to understand complex legislation, which is spread over many Acts, and be aware of a mountain of case law. For individuals, not knowing your employment status means not knowing what employment rights you deserve. For businesses, this situation can lead to uncertainty about their responsibilities and what can be demanded from workers. The situation does not need to be this complicated."

The Law Society submission to Review

Establishing employment status

Regardless of how they are employed, whether in a traditional, full-time role or on a more flexible basis, people should understand what rights they have. Even many individuals working in the most casual of relationships are entitled to basic employment rights and should be aware of this. Employment status is the gateway through which an individual must go to access statutory rights. As we have said, determining employment status must be simpler, clearer, and give individuals and employers more information, a greater level of certainty and an understanding of which rights and responsibilities apply.

We feel it is time that Government takes a fresh look at the legislation. Clearer legislation should improve the ability of citizens, and those who support them, to understand what employment status applies and what rights they are entitled to. While better guidance plays its part, legislation that reflects the reality of the modern workplace is a key driver and must be the starting point. This will ultimately filter down to individuals as Government and advisory bodies are able to deliver clearer guidance and advice.

More clearly and definitively stating the basis for employment status in legislation will not be easy. However, as a number of organisations, including the Law Society recognise, there is now an overwhelming case to tackle this sooner rather than later.

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.

The future of the worker

We have had a number of representations suggesting that the three-tier approach to employment that we currently use should be replaced with a system similar to tax – a binary choice between employment and self-employment.[35] We disagree. The status of 'worker' provided in employment law is helpful in being able to apply basic protections to less formal employment relationships. As such, the current three-tier approach should be retained.

The Review also considered how the three-tier approach should be applied. At present, 'worker' status covers both employees and a wider group of working people who are sometimes called "limb (b) workers".[36] As such, all employees are workers, but not all workers are employees. We considered whether a nuanced version of this should be adopted that saw employee rights accrued after a certain period of time by all workers – in essence, baseline protections from day one for all workers and then enhanced protections once workers have completed a period of continuous service.

> **"The meaning of the term "worker" is ambiguous. The legal definition is excessively vague."**
>
> RMT submission to Review

But we do think, on reflection, that this would fail to reflect the increasing casualisation of the labour market – we think it is helpful to have an intermediate category covering casual, independent relationships, with a more limited set of key employment rights applying. We do though think that the current three-tier approach is confusing and that the two categories of people that are eligible for "worker" rights should be easier to distinguish from one another. With that in mind, government should introduce a new name to refer to the category of people who are eligible for "worker" rights but who are not employees. We recommend that the legislation refer to this group as 'dependent contractors'.

Government should retain the current three-tier approach to employment status as it remains relevant in the modern labour market, but rename as 'dependent contractors' the category of people who are eligible for worker rights but who are not employees.

It is also important that government identifies a clearer distinction between an 'employee' and a 'dependent contractor'. At present, the way in which the courts have interpreted the definitions of employee and worker has led to a situation where they appear to be broadly the same but with worker being a slightly lower bar. We believe that in developing a new framework now is the time to consider whether this is a situation we want to continue. Our view is that it should not. The status of 'dependent contractor' should have a clearer definition which better reflects the reality of modern working arrangements, properly capturing those more casual employment relationships that are on the increase today – an individual who is not an employee, but neither are they genuinely self-employed.

To do this, government should look at what the test is for worker status. Currently, an individual can have almost every aspect of their work controlled by a business, from rates of pay to disciplinary action and still not be considered a worker if a genuine right to substitution exists. We do not think this is fair, or reflects many of the opportunities presented in the modern world of work. The key employment protections which are available to 'workers' are there to support anyone who is not genuinely self-employed and it should not be that easy for employers to avoid any responsibilities in this way. We therefore think that it is important for Government to ensure that the absence of a requirement to perform work personally is no longer an automatic barrier to accessing basic employment rights.

Ultimately, if it looks and feels like employment, it should have the status and protection of employment.

In addition, we believe the principle of 'control' should be of greater importance when determining dependent contractor status, with the legislation outlining what it means in a modern labour market and not simply in terms of the supervision of day-to-day activities. We don't envisage a significant departure from the approach currently taken by the courts where control is often a key factor when deciding if someone is a 'worker' or 'self-employed'. We believe that, if done correctly, placing greater emphasis on control and less emphasis on personal service will result in more people being protected by employment law. While this number is likely to be very small in the overall context of employment levels nationally, we believe it is fairer. It will also make it harder for some employers to hide behind substitution clauses which can only be challenged effectively through the courts.

In developing the test for the new 'dependent contractor' status, control should be of greater importance, with less emphasis placed on the requirement to perform work personally.

As part of this process it will be important to consider whether developing a new test for dependent contractor results in the need for other clarifications to be made. For instance, it may be necessary to examine the subtly different definitions of workers which exists across different legislation.

Addressing unintended consequences

Government must make sure that re-defining the boundaries of worker status does not impact on those for whom the current system works well. The majority of the UK labour market is made up of 'employees' who have no dispute with their employer. This must remain the case under the new framework. Legislation should continue to ensure 'employees' remain as those individuals who work under a 'contract of employment', and we believe that greater detail on how the courts have determined whether someone is working under a contract of employment is all that is necessary. In the case of employees, the requirement to do work personally is well established and we believe still relevant today.

Supporting flexibility in the gig economy

For those who find themselves 'dependent contractors' now, rather than self-employed, the situation is more complicated. Many of those participating through the gig economy are already workers under today's framework – as is being established by the courts on a case by case basis. However, there will be some, especially where the right to substitution is genuine, who fall into this category for the first time. If a change of this type were to result in a loss of the flexibility so many platform workers desire, this would represent failure. As such, these changes must be accompanied by a new approach that supports genuine two-way flexibility enabled by digital platforms.

Key to the National Minimum Wage legislation is the definition of working time. Again, this issue has been raised repeatedly with the Review. If the National Minimum Wage were to apply to individuals such as many platform workers, it is important that working time is sensibly calculated. Platforms do not place limits on when individuals can log onto the app but no individual should be expecting to be paid for all the time that he or she has the app open (regardless of whether or not they are seeking work). For instance, it would clearly be unreasonable if someone could log onto an app when they know there is no work and expect to be paid.

Recent case law has attempted to tackle this, drawing a distinction between simply logging on to an app, and being available and genuinely looking for work. Individuals and companies working in the gig economy have also repeatedly said to us that they value the ability to 'sign on' for work as and when they please. Platforms present individuals with greater freedom over when to work, and what jobs to accept or decline, than most other business models. It is essential we do not lose this. However we have also heard reports of an oversupply of labour at certain times, effectively flooding the market and driving down the hourly rate to below that of the National Minimum Wage.

The richness of data available to online platforms is a tremendous asset in developing solutions that can work for both organisations and workers. Such data can, for example, provide individuals with an accurate guide to their potential earnings if they sign on to an online platform at any given time. We believe it could also be used to ensure a fair application of the National Minimum Wage. We considered a range of options, from licensing regimes to market led solutions. However, we were deeply conscious of the need to avoid undermining the National Minimum Wage – a fundamental tool to prevent exploitation. For these reasons we settled on an adaptation of piece rates legislation.

In re-defining 'dependent contractor' status, Government should adapt the piece rates legislation to ensure those working in the gig economy are still able to enjoy maximum flexibility whilst also being able to earn the NMW.

"It seems to us that employment status and payments of tax and NICs are often connected particularly when it comes to temporary work… We believe that the number of cases in the Employment Tribunal and higher courts each year evidences that the lack of clarity in relation to definitions in the law itself is central to a growing problem. The lack of consistency with tax law, which often uses variables adopted by the tax authorities based upon employment law principles, adds to this and together simply serves to create ambiguity and confusion."

The Association of Recruitment Consultancies submission to the Review

Piece rates

Building on the existing framework, platforms would be able to compensate workers based on their output (i.e. number of tasks performed), provided they are able to demonstrate through the data that they have available that an average individual, working averagely hard, successfully clears the National Minimum Wage with a 20% margin of error. This type of calculation (using 'fair piece rates') can already be used to work out National Minimum Wage payments where it is not possible for the employer to determine the hours worked in respect of "output work", for example, people who fill envelopes with information for mailshots from home.

If an individual knowingly chooses to work through a platform at times of low demand, then he or she should take some responsibility for this decision. Where piece rates are currently used, there is a requirement to issue a notice before the start of the pay reference period, explaining what the "mean hourly output rate" is and stating the rate of sum to be paid to the worker for the performance of the task in question. Platforms have access to a vast amount of data on current demand and work being carried out at any given time. Government should explore options for requiring that platforms provide real time data in addition to a 'notice' increasing transparency for workers.

Government should consider very carefully how this could be implemented to avoid abuse – taking into consideration issues like regional variations. A key consideration will be that the individual is completely free to choose the time of work, and whether or not to accept individual jobs. This is very different, for example, to a situation where a mobile worker is being expected to travel between a fixed number of appointments, for which the National Minimum Wage would clearly apply.

Aligning frameworks

In its consultations the Review frequently heard that the lack of alignment between worker and the self-employed in employment law and employed and self-employed in tax law is a source of confusion for organisations, individuals and the wider public.

There are reasons why employment status legislation and tax status legislation do not align at the moment. However, the approach to employment status suggested here will help to bring these two systems closer together and create clearer boundaries.

While self-employment is not an employment status, Government should aim for 'self-employed' to mean the same for both employment rights and tax purposes.

> In developing the new 'dependent contractor' test, renewed effort should be made to align the employment status framework with the tax status framework to ensure that differences between the two systems are reduced to an absolute minimum.

The dividing line should be between the new dependent contractor status outlined and self-employment so that being employed for tax purposes naturally means an individual is either an employee or a dependent contractor. Government could also consider how tax tribunal and employment tribunal rulings could be applied across jurisdictions – for example, in the shorter term and until the systems are aligned, Government could ensure that where a tribunal determines that an individual is an "employee" for tax purposes, that decision is also binding for employment law purposes.

Greater transparency of rights

Changes to legislation will be a significant step in improving the employment law framework and making the law do the work rather than the courts. But Government must continue to consider ways in which it can embed the rights and responsibilities set out in legislation so that there can be less misunderstanding or opportunity for avoidance.

> **"The employer should also be required to issue the written statement of terms from day one to all workers – not just those that might be employees."**
>
> GMB submission to Review

One way greater clarity over rights can be addressed is through a greater emphasis on providing people with helpful information when they start work. While there is no legal requirement to provide someone who works for you a written contract, for employees, there is a requirement to provide a written statement of employment particulars after two months, although we were told in evidence sessions that this is widely ignored. It is clear that a similar provision would be helpful for many 'dependent contractors'.

Government should build on and improve clarity, certainty and understanding of all working people by extending the right to a written statement to 'dependent contractors' as well as employees.

Government should make it a statutory requirement for employees and 'dependent contractors' to receive that written statement on day 1 of their job. The information currently required in a written statement includes basic matters such as the name of the employer, the place of work, hours of work, and pay including holiday pay, sick pay and pension. This should be developed further to ensure it is relevant to 'dependent contractors' and include the day 1 statutory rights 'workers' are entitled to, how they are calculated and how they will be paid. It would be helpful for government to specify the format of the written statement so that information is transparent, in plain English, and accessible. Government must take steps to prevent employers from attempting to bury information, or using overly legalistic and unintelligible language. This could be achieved by the development of a standard format that can be easily adapted with specific information by the employer.

To encourage employer compliance, Government should also consider introducing a standalone right for individuals to bring a claim for compensation if an employer has failed to provide a written statement. Legislation is not the only way to provide clarity and transparency around employment status and rights. Government should do more; working with the Advisory, Conciliation and Arbitration Service (Acas) and others to ensure information is accessible.

Online tool

With the advantages that digitalisation and machine learning brings, Government should develop and create a free to use online tool that provides individuals with an indication of their employment status, similar to the Employment Status Indicator tool for tax purposes. This online tool should also have the ability to provide employers with advice on the employment status of staff hired and of their responsibilities. Going forward, the tool could provide more than just an indication of employment status, such as advice and information on entitlement to rights, how to qualify for them, signposting further relevant information.

Government should build on legislative changes to further improve clarity and understanding by providing individuals and employers with access to an online tool that determines employment status in the majority of cases.

"There can and should be greater transparency for all workers as to the terms of their engagement and accrued rights, such as pay. Extending to "workers" similar rights of employees as regards particulars of engagement as well as itemised information regarding pay and other accrued entitlements could be the first step to informing workers on the most basic level about their rights and obligations."

LawWorks submission to the Review

In reality, this is a complicated task and work cannot begin until the legal framework is finalised. It is also going to be an iterative process and would benefit from starting with something manageable. For instance, as the National Minimum Wage is already enforced, the tool could initially be focused on providing a determination between 'dependent contractor' and self-employed and build, over time, to capture the higher threshold. Should the recommendations on sick pay in chapter 12 be adopted, it could also support people in determining whether they are entitled to payment whilst off work due to ill health.

Over time, and as the new tool develops, its scope could be expanded to determine whether individuals were employees. As the tool and its determinations become more robust, Government could also consider whether this mechanism could provide the early determination of status outlined in the chapter on enforcement, making the process of establishing what rights you are entitled to even simpler.

Next steps

We believe there is a compelling case for greater clarity in determining employment status. It is also clear that emerging relationships require a rethink of what employment actually looks like to ensure the new framework is fair. We have made a range of recommendations here that will require further consultation and examination if they are to be successful. We believe they are necessary to provide the foundations of fair and decent work. Over the coming year, Government should:

- **Develop legislation and guidance that adequately sets out the tests that need to be met to establish employee or dependent contractor status. This should retain the best elements of case law and better reflect the reality of modern day casual work in terms of the control exercised by employers over their staff.**

- **To reflect the realities of platform work, ensure that in developing legislation, legitimate business models that allow maximum flexibility to their dependent contractors are not prevented from operating by updating NMW legislation.**

- **Provide maximum clarity on status and rights for all individuals by extending the right to written particulars to all in employment and developing an online tool providing a clear steer on what rights an individual has.**

6. One-sided flexibility

Summary

The UK labour market is characterised by flexibility. Individuals and businesses are free to agree terms and conditions that best suit them, within the minimum standards set out in legislation. This is both a strength as well as an obvious risk. One of the points we heard most in our national consultation was concern about the way some employers use this flexibility to transfer risk to, and exert control over, workers. Being able to work when you want is a good thing; not knowing whether you have work from one day to the next when you have bills to pay is not. This section looks at what could be done to improve the situation for the vulnerable workers. It identifies a number of issues that require examination:

- **Flexibility in the labour market is important and must be retained** in order to keep participation rates high;
- **Employers must not use flexible working models simply to reduce costs** and must consider the impact on their workforce in terms of increased sickness rates and reduced productivity;
- **Further consideration should be given to the best way to incentivise employers who take a one sided view of flexibility**, encouraging them to use fairer and more responsible models.

The importance of flexibility

Flexibility has been a key part of enabling business to respond to changing market conditions and has supported record employment rates. Individuals have the opportunity to work in a range of different ways, on hours that fit around other responsibilities, such as studies or caring responsibilities. The Labour Force Survey published in March 2017 found that almost one fifth of people on zero hours contracts are in full-time education, and 68% of those on zero hours contracts do not want more hours.

> **"Brewing company Adnams used zero-hour contracts to accommodate the seasonal nature of the business. However, through involvement in the Beyond Pay inquiry, they recognised how this contributed to employees experiencing in-work poverty. They moved all their existing staff onto contracts that guaranteed a minimum number of hours a week. To tackle low pay, they reduced and redistributed bonuses paid to their senior team."**

Business in the Community submission to Review

However, we have heard repeatedly during the Review that there is an issue of flexibility not being reciprocated, with a requirement to be available for work at very short notice, without any guarantee that work will actually be available. This makes it very difficult for a person to manage their financial obligations, or for example secure a mortgage. This can feel unfair, especially when the reality of the working arrangement is that the individual regularly works 40 hours a week. While in theory individuals in these working arrangements have the right to turn down work, we were told that workers, needing work but lacking unfair dismissal rights, often felt that to express legitimate views about conditions or make even reasonable requests risked having future work denied to them.

The gig economy adds new challenges, but the fundamental issues are prevalent in many other sectors and business models. While there is undoubtedly an important role for flexibility in the labour market, we believe that too many employers and businesses are relying on zero hours, short-hours or agency contracts, when they could be more forward thinking in their scheduling. We want to incentivise employers to provide certainty of hours and income as far as possible, and to think carefully about how much flexibility they can reasonably expect from their workers. Workers need to be able to make informed decisions about the work that they do, to plan around it, and to be compensated if arrangements change at short notice.

Unravelling the Gordian knot

This is a complex issue with potential adverse consequences to most interventions. We have considered both regulatory and market solutions but there will always be trade-offs between finding a targeted solution, and one which allows the right level of flexibility. We have looked at how existing systems can be built on and how to minimise additional complexity for businesses to comply with. We have considered a range of penalties designed to punish employers who schedule work at late notice, or offer work only to cancel it at the last minute. However, these tend to have wider implications and would be highly complex to administer and enforce, meaning those who required additional protection may not benefit from any changes.

However, the fundamental point remains: Government must take steps to ensure that flexibility does not benefit the employer, at the unreasonable expense of the worker, and that flexibility is genuinely a mutually beneficial arrangement. With this in mind, we believe that Government should ask the Low Pay Commission (LPC), in its next remit, to advise on the impact of bringing in a higher National Minimum Wage for hours which are not guaranteed in a contract.

> The Government should ask the LPC to consider the design and impacts of the introduction of a higher NMW rate for hours that are not guaranteed as part of the contract.

This new higher rate should be set at a level which incentivises employers to schedule guaranteed hours as far as reasonable within their business. Businesses would still have the ability to offer zero or short-hours contracts, or to request that an individual works longer hours than those guaranteed in their contract, but would have to compensate the most vulnerable workers (those on low wages) for the additional flexibility demanded of them.

For example, if an individual is on a contract which only guaranteed them 6 hours a week, but is regularly asked to work more than this, they should be entitled to the standard National Minimum or National Living Wage rate for the first 6 hours they worked in a week, and then this new higher rate for any hours beyond that. Following the current regime for calculating the minimum wage, an employer could average hours and pay out over a pay reference period. This would still give employers (particularly those using longer pay reference periods) a level of flexibility to respond to changing demand, but would give individuals more certainty over the pay they are likely to receive in a given period. It would also compensate them more fairly where they are asked to work additional shifts.

The LPC will need to consider the rate at which such a premium should be set and the potential impact on marginal hours of employment. It should also consider any potential impact on NMW compliance from a more complicated system. Government should also consider other ways in which employers might be encouraged to guarantee more hours to their staff, including the role of voluntary collective agreements.

Managing gaps in service

It is important here to reiterate that simply using more casual forms of labour does not necessarily reduce the obligations on an employer in terms of employment protections for their staff. For those zero hours workers for instance who work regular hours, it is possible that they will still be employees and, as such, entitled to the full suite of employment protections. However, it is not always possible for individuals to prove eligibility.

Current worker rights take effect on day 1, but many employee rights require a period of continuous employment before the individual is eligible. Whether this is 26 weeks in the case of requesting flexible working arrangements or two years for claiming unfair dismissal, most employees have no problem showing that they have been employed continuously. In fact, the date on which continuous employment begins has to be included in the written particulars provided to all employees within the first two months. We have already recommended improvements to provision of the written statement in the Greater transparency of rights section, earlier in this report.

> **"The archaic rules about continuity of employment compound the problems associated with employment status so someone with many years of a relationship with an employer can often lose out through gaps in the provision of work. Government should seek to change the statutory definition of continuity so that accrued service is not lost through breaks. GMB advocate the abolition of continuous service requirements altogether and provide for full employment rights from day one."**
>
> GMB submission to Review

However, for those who work casually and intermittently it can be difficult to establish the minimum period of continuous employment needed to qualify for some employment rights. There are two ways in which casual workers have sought to overcome this problem. The first is to try to establish that there are ongoing commitments to provide and perform work spanning any periods of inactivity. However, this has proven to be difficult in circumstances where there is genuine flexibility on both sides. The second approach is to utilise the statutory rules on continuity of employment which allow gaps between assignments to be bridged in certain circumstances, for example, if there is less than a week between assignments or the break between assignments is down to a "temporary cessation of work". We believe that more should be done to make the process of establishing continuity of employment easier.

We did consider the option of creating a parallel mechanism to calculate eligibility for core rights in the form of accrued hours. However, given the complexity of this and the fact that it would be almost impossible to set thresholds at a level that was both fair to all (part-time and full-time) and meaningful, we decided this would not be appropriate. Instead, we believe the situation could be improved if the length of time an individual can be not working but retain their entitlement is increased. This could be achieved by increasing the gap between assignments which can be bridged under the statutory rules. For example, at the moment, a gap of a week is permitted before continuity is broken. The Review team believe this should be increased to a month.

In addition, Government should consider clarifying the situations where legitimate cessations of work for the same employer apply. Should it just be because no work is available, or should it apply to a wider set of situations? In practice this would mean that a casual worker who works one week and then has a gap of up to a month until they next work, would now accrue continuity of employment throughout that period (but only for the time they have worked). It would therefore be easier for them to access rights which require a qualifying period.

> The Government should extend, from one week to one month, the consideration of the relevant break in service for the calculation qualifying period for continuous service and clarify the situations where cessations of work could be justified.

This would help those individuals who work for the same company over a long period of time but who have regular breaks in service (for instance because of school holidays or students during term time). It would also help those individuals who work on and off over a long period of time and who have breaks between assignments of longer than a week which aren't due to there being no work available (for instance because work is assigned to other people). By allowing longer gaps between assignments to be bridged, these people would now find it easier to accrue service and to access rights with a qualifying period.

Informed choices

In 2015, the Government committed to examining the issue of pay transparency for agency workers. This resulted from a change in tax rules that saw many individuals, especially in the construction sector, paid through PAYE for the first time. This mean that while many considered themselves self-employed, they were being treated as employed – with all the deductions from pay that comes with that. In many cases, additionally it was umbrella companies that were responsible for running PAYE.

This initially resulted in a situation where individuals saw their take home pay drop, as a number of legitimate deductions were made at source. Some of these would have been deducted even if the person was self-employed, such as income tax and National Insurance Contributions (NICs), albeit at a lower rate as a self-employed person. However, also deducted now from the gross sum were secondary NICs and a handling fee of between £15-35 per week. This could leave individuals taking home as little as half of the money they were receiving before. Many agency workers have also raised concerns that they were not always made aware that it would be an intermediary that would become responsible for paying their wages and making deductions, even though the recruitment agency is required by law to make this clear.

> **"Employment rights therefore need to strike the right balance between security, flexibility and innovation. Above all though people need transparency, information and advice about what their rights and legal position may be in any particular context and relationship."**
>
> LawWorks submission to the Review

This situation has not improved and while most employment businesses that originally place the work seeker do provide information about pay rates and methods, this is not always as clear as it should be. More unscrupulous providers can bury important information in the small print of long contracts. The Government should re-examine the rules on what information needs to be provided to agency workers before accepting work.

> Government should amend the legislation to improve the transparency of information which must be provided to agency workers both in terms of rates of pay and those responsible for paying them.

During the Review's discussions with workers and trade unions, we heard a number of examples of people being denied rights indirectly. One example, raised consistently, was holiday pay. All workers in the UK are entitled to a total of 5.6 weeks of paid annual leave every year. For most, the only issue faced in taking this is finding a sufficiently quiet time in their work schedule to go on holiday. However, for those who work in more casual arrangements, or have variable hours from week to week, knowing how much they are entitled to be paid for annual leave can be difficult.

The legislation provides a solution. The holiday entitlement of a worker without normal working hours is based on the amount of hours worked over a pay reference period of 12 weeks. However, it is widely acknowledged that this does not work for everyone, especially where work is seasonal or there are significant peaks and troughs in work. For example, an individual may work 50 hours a week during the summer months and then scale back their hours for a month to just 10 hours a week before taking leave. In this situation, the individual would not necessarily get all the holiday pay to which they should have been entitled.

In addition, it was suggested to us that some workers - especially true in the case of lower skilled, lower paid agency workers and those on zero hours contracts - either did not know they were entitled to paid annual leave or were afraid to take it. While this may simply be a matter of awareness, bad employers can use this to their advantage. Having a large workforce of people on zero hours contracts who do not take all their annual leave can be worth a significant amount of money to a business.

The Government should intensify their efforts in communicating who is entitled to holiday pay in the same way as they provide clear messaging every year on the NMW and NLW rates. However, we believe the Government can go further. In the first instance, the pay reference period should be increased to take into account the seasonal nature of a great deal of casual and zero hours work. We believe this should be extended to 52 weeks.

We also believe individuals should have greater choice in the way in which they receive paid annual leave. As a general rule, annual leave entitlement equates to 12.07% of hours worked. We believe individuals should have the choice to be paid for this entitlement in real time – known as "rolled-up" holiday pay. This would result in dependent contractors receiving a 12.07% premium on their pay. So in the case of someone being paid the NLW of £7.50, their actual remuneration would be £8.41 an hour. Additional safeguards would have to be built in to ensure individuals did not simply work 52 weeks a year as a result, but we believe giving individuals this kind of choice will suit many working in casual arrangements and in the on-demand economy.

Government should do more to promote awareness of holiday pay entitlements, increasing the pay reference period to 52 weeks to take account of seasonal variations and give dependent contractors the opportunity to receive rolled-up holiday pay.

Providing stability

Agency work has an important part to play in a vibrant, flexible labour market and many choose to work in this way. However, there is increasing evidence that some companies are relying on temporary workers to fill longer term positions, with the same agency worker doing the same job for years. This works for some people. They have the freedom to leave whenever they want with no notice whatsoever but for many, this level of uncertainty, not knowing whether work will be terminated and having no security of income, does not work. What is more, individuals in this situation can find it hard to seek work elsewhere, especially if they fear taking time off from the current contract may count against them in future allocations of work.

> **"Government can introduce a statutory right to a fixed hours contract after a period of time has elapsed since the start of the employment relationship… this would ensure that companies cannot keep workers on never ending agency contracts when they are, in effect, working a permanent job."**
>
> GMB submission to Review

The Review does not want to stop companies using agency staff but we propose to address situations in which companies use agency workers over a longer period of time as a substitute for effective workforce management. As such, we believe as well as a right to equal pay (discussed later in this report), agency workers should have the right to request a direct employment contract with the hirer when they have been engaged with the same hirer for 12 months. According to a survey in 2014/15 by the Recruitment and Employment Confederation (REC), 4.3% of temporary assignments were of length greater than 12 months.

> The Government should introduce a right to request a direct contract of employment for agency workers who have been placed with the same hirer for 12 months, and an obligation on the hirer to consider the request in a reasonable manner.

The same issue is faced by some on zero hours contracts. To ban zero hours contracts in their totality would negatively impact many more people than it helped. However, all the risk must not sit with the individual and after a long period of time contract, zero hours workers should have the opportunity to request a fixed hours contract. While it could be argued that the right to request flexible working already allows for this, we believe an explicit right for this group should be introduced. The average weekly hours worked over the previous 12 months should be the starting assumption for any new contract.

> Government should act to create a right to request a contract that guarantees hours which better reflect the actual hours worked, for those on zero hour contracts who have been in post for 12 months.

Through these two new rights, individuals who want to have a way to reduce their income insecurity and be able to plan better for the future.

Next steps

Choice is good both for individuals and businesses. However, those employers who decide to demand more insecure forms of work from large sections of their workforce should consider the impact this may be having. Individuals deserve the opportunity to plan for the future and where they commit to regular work, employers who can, should be obliged to reciprocate. Over the coming year, Government should:

- **Task the Low Pay Commission with examining how a higher NMW rate might apply to non-guaranteed hours.**
- **Develop legislation to make it easier for all working people to receive basic details about their employment relationship up front as well as updating the rules on continuous employment to make it easier to accrue service.**
- **Reform holiday pay entitlements to make it easier for people in very flexible arrangements to receive their entitlements in real time as well as extending the pay reference period to 52 weeks for those who do not.**
- **Develop legislation that allows agency workers and those on zero hours contracts the ability to request to formalise the reality of the working relationship.**

CASE STUDY

In April 2017, McDonald's offered 115,000 UK workers on zero-hours contracts the option of moving to fixed contracts with a minimum number of guaranteed hours every week. The fast-food chain offered fixed-hours contracts after staff in its restaurants complained they were struggling to get loans, mortgages and mobile phone contracts because they were not guaranteed employment each week.

The company found that about 80% of workers in the trial chose to remain on flexible contracts and it reported an increase in levels of employee and customer satisfaction after the offer. Staff were offered contracts in line with the average hours per week they worked. This included contracts of four, eight, 16, 30 or 35 hours a week.

They initially offered these fixed hour contracts to 50 more restaurants, but plan to roll it out nationwide to existing and new employees later this year.

7. Responsible Business

Summary

At its heart, this Review is about the relationship between employers and the people who work for them. We have heard many examples of excellent employment relations where the principles of quality work are woven into the fabric of the corporate ethos. We have also heard accounts of poor management practices which make people's working lives miserable.

The Review believes firmly that the tone for fair and decent work is set at the top of an organisation, reflecting the demands of shareholders and consumers and extending out into the workforce and the wider supply chain. If more employers behaved as the best do, the long tail of lower productivity in the UK could be considerably shorter.

To this end:

- Drawing on expertise in bodies such as Investors in People and Acas, there should be a renewed focus on good **employee engagement**, especially in low-paying sectors. As part of this Government should look again at the effectiveness of the **Information & Consultation Regulations** in encouraging 'voice' in the workplace and significantly lower the bar to gaining consultation rights.
- Businesses should be more **transparent about the structure of their workforces**, so that consumers, shareholders and workers can take informed decisions.

Good Employment Relations

Well-run companies recognise the importance of the people who work for them. They invest time and effort in good management relationships, both between individuals and at a collective level. Throughout the Review, we heard excellent examples, with employers involving their workforces in decisions that affect them. These examples had different forms in different organisations, reflecting the prevailing culture and context. From the automotive industry we heard accounts of formal agreements with the Trade Unions around the use and progression of agency workers. From a small manufacturing employer in Kent, we heard how the entire shop floor is involved in the development and presentation of the company business plan.

The Review believes that for work to be fair and decent, workers must have a voice. Most of us take for granted that we are treated with respect by our managers at work. Day-to-day business is conducted civilly and our views on how the work is done are considered relevant and potentially useful. We have a broad understanding of the direction that the company or organisation is taking and how our efforts contribute to that. We are informed of big strategic decisions that may affect us.

In the case of most SMEs, people consider this type of dialogue part and parcel of normal human interaction rather than anything special or mandated. This confirms our view that good legislation works with the grain of business practice, rather than to mandate a particular form – this is part of what we call the British way. For example, survey evidence suggests that 35% of employees with no legal right to flexible working worked with flexible working practices prior to the introduction of the Right to Request Flexible Working legislation.

However we also know that the UK has traditionally not performed strongly on leadership & management skills[38]. This is a key component of the productivity gap and particularly pronounced in SMEs.

As well as many examples of excellent employee relations, during the Review we also heard reports of bad management practices. Sometimes this related to a particular supervisor treating individuals badly and contributing to the experience of 'one-sided flexibility' discussed in the previous chapter. But there is a broader issue of engagement; only half of employees say that their manager is good at seeking their views, while just one in three managers say that they allow employees to influence decision making.[39]

Sometimes issues are institutional, with workers feeling that they had no say in or even visibility of significant decisions that would affect their working lives. Some employers seem to be unwilling to permit employees to exercise any meaningful control over their work. It must be a matter of concern that the proportion of 'routine and semi-routine' workers who say that they have no freedom to decide the organisation of their work increased from 42% in 2005 to 57% in 2015.[40]

This type of attitude can contribute to a negative perception of a typical work, but this doesn't give the whole picture. A recent CIPD[41] report found that only a small minority of gig economy workers say they were working this way because they could not find a permanent job, with just 14% of gig economy respondents agreeing that the reason they worked in the gig economy was because they could not find a traditional job with an employer. Interestingly the CIPD survey found that the proportion of gig economy workers who were satisfied with the gig economy work they had done over the last 12 months was significantly higher among those who said the gig economy work they did was their main job (68%).

The challenge is to extend the good practice we have seen more widely, especially to smaller companies and those engaging significant numbers of atypical workers.

‘Voice’ in the workplace

The Review is encouraged by the recent political focus on the relationship between good workforce relations and good governance at a corporate level. We do not have a strong view on whether workers should be directly represented on company boards, as they are in some other countries, or whether other solutions would work better in a British context. However we very much share the view that company owners have a wider responsibility towards the people who work for them – both directly and through their supply chain – and should take this responsibility seriously.

Effective worker voice has several purposes: for managers or company owners to receive timely feedback about business practices from those who are charged with delivering them every day, for individuals to get together (physically or virtually and with or without management) to discuss common issues affecting them; to have a safe route for the workforce to raise concerns and finally, offer the ability for the workforce to hear and influence big strategic issues which may have an impact on them. These are clearly related to questions around formal Trade Union representation, including for the purposes of collective bargaining and we heard many positive examples of the role trade unions can play in good employment relations. But voice can and should be exercised even where there is little or no trade union organisation and representation.

Since their introduction in 2005, the Information and Consultation of Employees (ICE) Regulations have offered a framework to encourage long-term information and consultation arrangements between employers and employees. Such arrangements mean employees’ views can be taken into account in business decisions, for example by inviting alternative solutions for restructuring so that these do not result in unnecessary redundancies or the worsening of working conditions. The employer must provide the employee representatives with information on a range of issues, including decisions likely to lead to substantial changes in work organisation or in contractual relations. The Regulations set out the process for the election of employee representatives and includes protection against suffering detriment for those who fulfil this role.

Currently, the Regulations only apply to organisations with 50 or more employees. To be successful in getting ICE applied, at least 10% of (and a minimum of 15) employees must support it. Largely as a result of these restrictions, only 14% of workplaces in organisations with 50 or more employees had an on-site joint consultative committee or works council in 2011. As a Review team we have had lively discussion about the role that regulation, in general, can play in changing behaviour. However we believe that there is merit in examining ICE more thoroughly and considering whether it should be changed or extended.

> **“Having a voice is essential not just at the moment of entering an employment relationship, but as it progresses, too.”**
>
> CIPD submission to Review

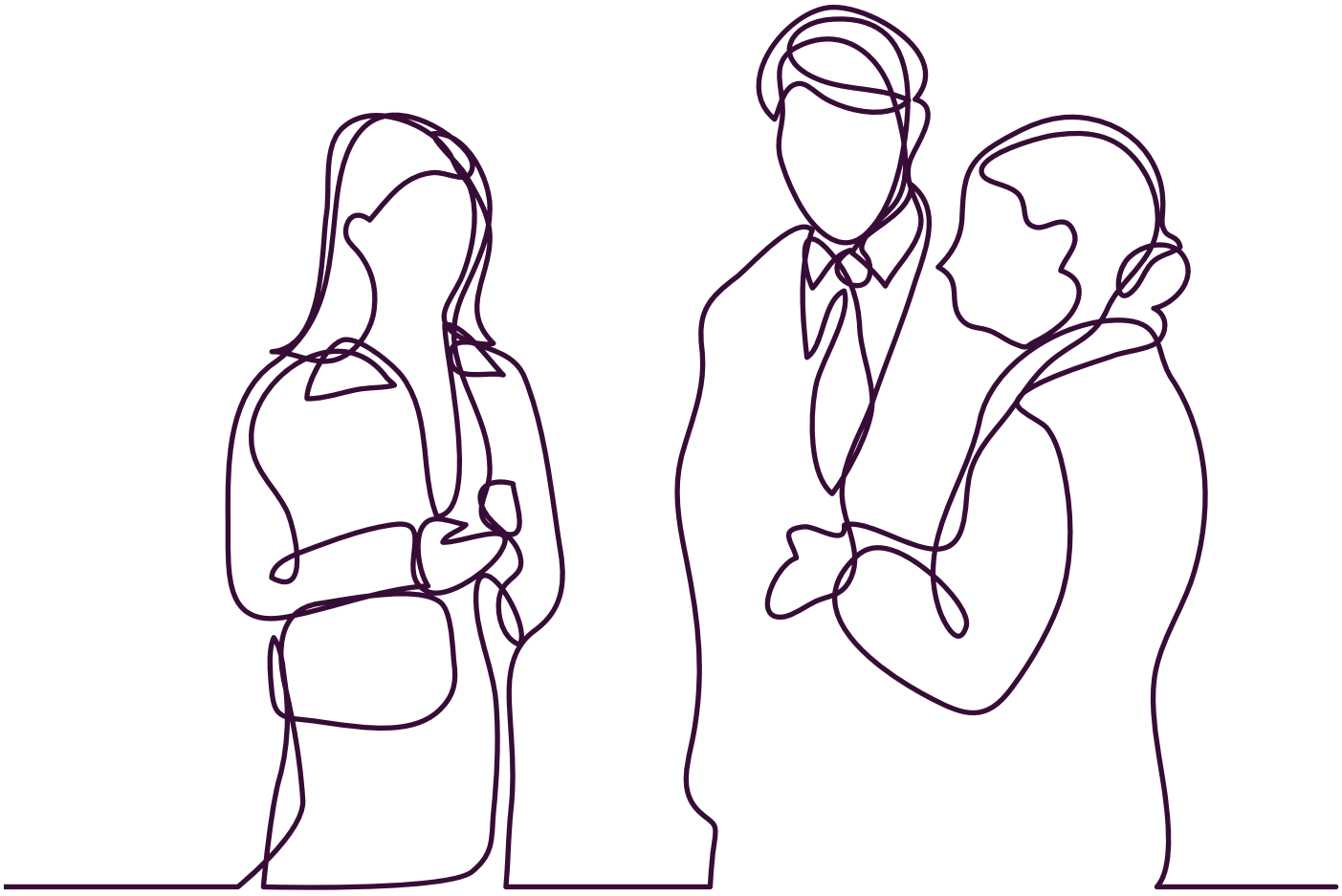
As a first step to changing the culture in many organisations, the threshold for employee sign up to ICE should be significantly reduced and all workers should count in that number, extending the reach out to many organisations operating with more dynamic workforces.

Government should examine the effectiveness of the Information and Consultation Regulations in improving employee engagement in the workplace. In particular it should extend the Regulation to include employees and workers and reduce the threshold for implementation from 10% to 2% of the workforce making the request.

Reviewing and altering legislation would send an important signal about the importance Government places on the voice of people at work. In some cases, the adoption of Information & Consultation practices might be a step on the way to greater involvement of collective representation more generally. However, the Review recognises that legislation alone is not going to engender the sort of change that we are looking to achieve. There are a wide variety of organisations, including Investors in People, Acas and Trade Unions, who have extensive expertise in workplace relations.

Government should work with Investors in People, Acas, Trade Unions and others with extensive expertise in this area to promote further the development of better employee engagement and workforce relations, especially in sectors with significant levels of casual employment.

During the Review we heard from several organisations who represent the self-employed, whether professional associations or registered Trade Unions. As the numbers of self-employed people increases, particularly in certain industries, it is important that people working in this way are able to discuss issues that affect them. As set out in Chapter 10, innovative 'Workertech' solutions may facilitate this, whilst not cutting across important competition protections.



Transparency

Recent media coverage has brought to public attention the practices of some companies in relation to their workforce. In certain cases, this has been sufficient to drive change. Consumers are also clearly a significant driver of company behaviour, as well as shareholders. People take decisions on when, how and what they purchase based on whether the real or perceived 'ethics' of a company fit their personal values, as well as on factors such as price. But very often company practices are not visible to the end-user. It is possible, for example, that customers would be more willing to pay delivery charges for their online purchases if they had assurance that the person delivering them was being treated fairly and decently.

> **"Companies and public bodies should be required to report on the use of zero and short hour contracts and agency work in annual reports, including in their supply chains. Workers employed on zero and short hours contracts should have a right to be paid a premium for any non-contractual hours worked and compensation for shifts cancelled at short notice."**

Unison submission to Review

The benefit of transparency also extends to workers and those looking to work in a particular role or sector. Better information means that workers can take informed decisions about where and how they want to work. 'Top 100 Employer' awards by organisations such as Stonewall and Business in the Community provide a spotlight on good practice. Sites such as glassdoor.co.uk allow individuals to provide real-life reviews on employers to help address the inherent information asymmetry facing job-seekers.

Rather than employers being judged simply on word of mouth or on individual comments on websites we believe it is good employment practice to undertake regular independently verified surveys of staff engagement and satisfaction of the kind promoted by Investors in People and Best Companies. The Review also encourages organisations to publish the headline data and investors, consumers, commissioners and potential employees to see this data as an important measure of organisational resilience and strength. Some parts of the public sector already publish data of this kind and more should be encouraged to follow.

As we have seen before, in some sectors there has been a move to more complex labour supply chains, including the use of agency workers. In the previous Chapter we have outlined why we think individuals need greater clarity on these sort of arrangements – for example through a basic upfront statement of their terms and conditions when they start work – but we also believe that there should be greater transparency at a corporate level.

As we have stated repeatedly, there are many positive benefits to atypical work. However we believe that companies should take decisions about how to structure their workforces consciously, rather than by default or through regulatory arbitrage. We are very conscious of not imposing unnecessary or pointless reporting burdens on businesses, but we do consider that there would be merit in organisations above a certain size being publicly accountable for their workforce structure.

Government should introduce new duties on employers to report (and to bring to the attention of the workforce) certain information on workforce structure.

The Government should require companies beyond a certain size to:

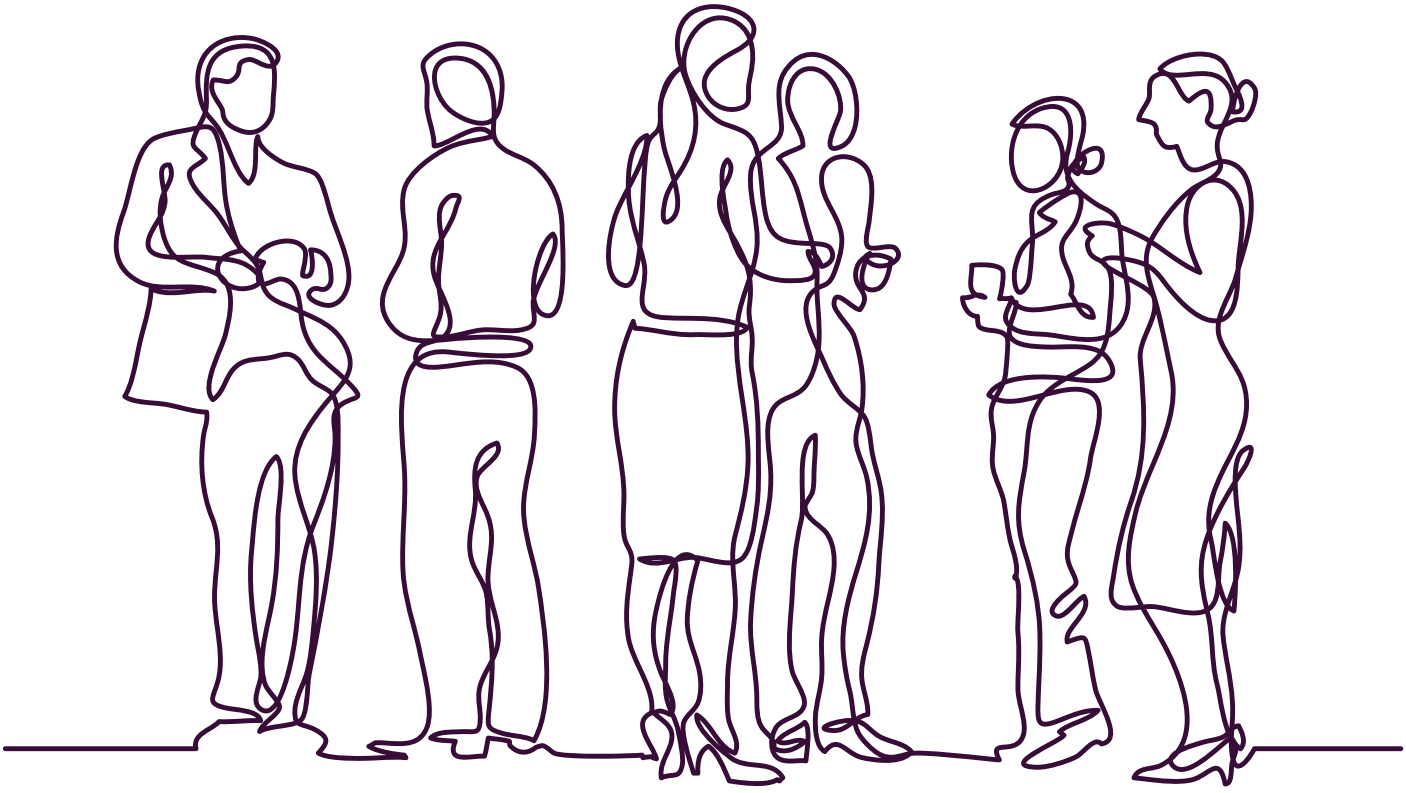
- Make public their model of employment and use of agency services beyond a certain threshold.
- Report on how many requests they have received (and number agreed to) from zero hours contracts workers for fixed hours after a certain period.
- Report on how many requests they have received (and number agreed) from agency workers for permanent positions with a hirer after a certain period.

Next steps

Engaging properly with the people who work for you – either directly or indirectly – is part and parcel of good business practice. A good relationship with your manager and your employer as an organisation is a very important part of quality work.

Over the next year, the Government should therefore:-

- Draw on expert bodies to drive a much greater push on what constitutes good workplace relations, especially in sectors with high instances of low pay or atypical work.
- Review the effectiveness of the Information & Consultation Regulations, including their scope and thresholds, in driving good employee engagement in the workplace.
- In thinking about corporate governance more generally, develop proposals to require companies to be much more transparent about their workforce structure.



8. Fairer enforcement

Summary

Removing incentives, clarifying the legal framework and addressing unfair risk transfer to vulnerable workers are all important steps to ensuring fair and decent work. However, this will not have the necessary impact unless people are able to enforce their rights when things go wrong.

In this section we examine the current enforcement framework, identify the barriers people face and make recommendations on how the end-to-end process can be made fairer. We identify a number of issues for examination:

- **Action is needed to ensure employment protections are enforced** and that vulnerable people have confidence that they will get redress for exploitation;
- **Those seeking justice in the courts should be enabled to discover whether they are eligible for the rights they wish to pursue before incurring a fee**;
- **The State should show its support for successful claimants** by acting to ensure they get paid monies due.

The current landscape

Making the law clearer makes it easier for responsible employers to comply with their legal duties. The recommended guidance and the new online tool supporting the determination of employment status, outlined in earlier chapters, should mean fewer avoidable disagreements or accidental non-compliance from employers, but what happens when things go wrong? As the Review talked to people around the country, a consistent message was that enforcing rights is not as easy as it should be. This goes beyond employment tribunal fees which were acknowledged as an issue, with perceived (and real) barriers throughout the system.

> **"The present system provides few incentives for an unscrupulous employer not to mislabel staff as self-employed and deny them workers' rights. Until a worker challenges that classification at the tribunal, the employer has little to lose."**
>
> Leigh Day submission to Review

For the system to work, there not only has to be clarity, but justice. Employers who choose to break the rules must expect there to be consequences for their actions. Individuals who feel they have been wronged should feel that the system will listen to their case and make a fair decision. Where attempts to resolve or conciliate disputes are unsuccessful, individuals in the UK are responsible for enforcing the majority of employment rights by taking their employer to an employment tribunal. However, the state does enforce some aspects of employment law where there is considered to be a higher risk of vulnerability or exploitation. We believe there are improvements in both these areas that could make the process more balanced.

As a society, we accept there is a basic set of protections that anyone in work should receive. These rights are most likely to be relied on by those who are most vulnerable, working in environments where the balance of power sits squarely with the owner or manager. Vulnerable individuals should be able to rely on the state to protect them, challenging unlawful practices and taking action to enforce rights. Only then can we ensure that unscrupulous businesses are not able to use exploitation as a technique to gain competitive advantage.

The employment tribunal system is also not without its faults. While many raised the issue of fees during our discussions (a concern we share), which even business groups accept may be too high, it would be wrong to suggest reform should only take place there. From the decision to take action against your employer to winning or losing the case against them, the odds are often stacked against the worker. This has to change if we are to effectively police fair and decent work.

State enforcement

A number of government bodies are tasked with enforcing compliance against a range of basic employment rights. These include:

- **Her Majesty's Revenue and Customs (HMRC)** enforces both the National Minimum Wage (NMW) and National Living Wage (NLW) on behalf of BEIS, aiming to ensure the lowest paid and most vulnerable get the minimum required by law. In addition, HMRC provides the enforcement function for Statutory Sick Pay (SSP) as a legacy of this being a statutory payment, redeemable by employers through PAYE;

- **The Gangmasters and Labour Abuse Authority (GLAA)** operates a licensing regime for businesses that supply temporary labour in high risk sectors in the fresh food supply chain. This regime was put in place in the wake of the deaths of 23 Chinese Cockle pickers in Morecambe Bay in 2004. The Immigration Act 2016 gave GLAA additional powers to investigate modern slavery (forced/compulsory labour) and other labour abuse offences across England and Wales regardless of worker status or sector. These came into effect in April 2017;

- **The Employment Agency Standards Inspectorate (EAS)** is responsible for ensuring compliance with the Employment Agencies Act 1973 and the associated Conduct of Employment Agencies and Employment Businesses Regulations 2003. This legislation is designed to ensure agency workers are treated fairly by their agency;

- **The Health and Safety Executive (HSE)** enforces parts of the Working Time Regulations 1998 including the maximum weekly working time limit and night work limits, as well as the Health and Safety at Work Act 1974 (The Act). The Act places a duty on every employer to ensure, as far as reasonably practicable, the health, safety and welfare at work of all his employees. This applies to all employees including casual employees so that every employee enjoys the same level of protection in law. HSE is alive to the challenges irregular or temporary jobs can bring for workers and this is an area HSE are following closely. Again, in terms of health and safety requirements the nature of any employment contract arrangements does not change what the employer must do. An employer has a duty to manage workplace risks and should treat workers on non-standard contracts no differently to other workers. HSE guidance makes this clear.

The penalties available to these bodies for breaches range from civil penalties to criminal prosecution leading to imprisonment in the most serious cases. As such, these bodies have significant powers to deal with businesses behaving badly.

In 2016 the new statutory role of Director of Labour Market Enforcement was created. Professor Sir David Metcalf took up office at the beginning of this year and is tasked with producing an annual labour market enforcement strategy to set the strategic direction of the GLAA, EAS, and HMRC's NMW/NLW team. The aim is to ensure that enforcement efforts are coordinated and targeted. This means that, even though the three bodies remain operationally independent of each other, all must plan their resourcing and operations to deliver against a single set of objectives and priorities.

This is a welcome step and it was interesting to discuss the challenges ahead with the new Director as part of this review and get his early thoughts on what areas might require additional focus. There can be no doubt that the next couple of years are going to be challenging as he tries to establish the new role and ensure it provides maximum impact. However, as part of those considerations, there are some improvements the Review believes that both government and the new Director should consider, including ways to enhance the safety net for the most vulnerable in our labour market.

Agency workers

GLAA and EAS do a good job of protecting agency workers through their respective legal frameworks, although their remits differ. Within the sectors it is responsible for licensing, GLAA's remit includes all types of labour provider as well as making sure the end users of the labour are dealing with licensed labour providers. However, EAS inspectors can mainly only take enforcement action and apply penalties to recruitment agencies and not the end user of the agency workers.

This is an increasing issue as more employment businesses outsource payroll and other services to intermediaries, such as umbrella companies. In itself, this is not a problem; however, there have been examples of individuals being compelled into these arrangements or signed up to them with the detail hidden in the small print of a contract. This can result in a range of issues from a worker not knowing who their employer is if they want to make a complaint to not fully understanding pay rates.

We have heard from some who would like to see umbrella companies removed from the supply chain altogether. However, we do not believe this is a proportionate response to the issues faced. That said, while umbrella companies have played a legitimate role in higher skilled, higher paid sectors for years, at the lower paid, lower skilled end, their role is more questionable for a number of reasons. For instance, agency workers are generally charged between £15-35 per week in admin fees when paid through an umbrella company – something that would be unlawful if these deductions were made by the employment business themselves.

> The new Director of Labour Market Enforcement should consider whether the remit of EAS should be extended to cover policing umbrella companies and other intermediaries in the supply chain.

In addition, GLAA has the ability to withdraw a licence if gangmasters and intermediaries operating in their sectors are not complying with the Agency Workers Regulations (AWR). Stemming from European legislation, the AWR ensure agency workers are not used as cheap labour. The headline protection is the right to equal pay. This means that agency workers are entitled to be paid the same as a permanent member of staff doing the same job (after a 12 week qualifying period). However, the legislation allows agency workers to opt out of equal pay if they sign what is called a "pay between assignments" contract (referred to as the "Swedish Derogation") with the employment business.

This guarantees the agency worker some pay between assignments if the agency is not able to find them work.

Many have raised concerns about the use of "Swedish Derogation" contracts – named after the original derogation in the Agency Workers Directive. There have been numerous examples cited of agency workers forced to accept these contracts either at the start of an assignment or after 11 weeks. While this is unlawful (the AWR specifically prohibits the structuring of assignments to avoid equal pay), it is clearly happening. What is more, it is far too easy for employment businesses, and increasingly umbrella companies, to avoid paying workers between assignments anyway. Sometimes this is because agency workers get work through another company and fail to draw down what they are owed. However, we have also heard examples of recruitment agencies structuring short-term assignments to avoid their liability. While some have made a case for these types of contract, we do not believe this is strong enough to warrant their continued use and so these contracts should not be permitted.

Dealing effectively with abuses of 'pay between assignments' contracts will go a long way to protecting agency workers. However, EAS does not have the power to enforce the AWR, so hundreds of thousands of agency workers are left to take other cases through the tribunal system if they feel the law has not been complied with. We do not believe this is right and think the system should adapt.

> The Government should repeal the legislation that allows agency workers to opt out of equal pay entitlements. In addition, the Government should consider extending the remit of the EAS Inspectorate to include compliance with the AWR.

It has been suggested that such a move might limit the options for agency workers who wish to benefit from the protections associated with being an employee of the recruitment agency but we do not agree: Employment businesses will still be able to offer permanent employment contracts to their agency workers in the same way that they could prior to 2010. The individuals will also still be able to benefit from equal pay after 12 weeks. Recruitment agencies should already have mechanisms in place to ensure equal pay after the qualifying period as it would be unlawful to structure arrangements to avoid equal pay. As such, any administrative costs should be minimal.

Basic protections

HMRC currently enforce both NMW and Statutory Sick Pay (SSP) given its legacy as a social security payment redeemed by business through PAYE. In 2015/16, HMRC dealt with over 2,500 NMW complaints, helping to provide a safety net for some of the lowest paid and most vulnerable workers in the UK. However, when it comes to holiday pay disputes individuals have to bring claims to an employment tribunal, with some of these claims going through several stages of appeal and even going all the way to the European Courts given the link to the Working Time Directive.

All three of these entitlements require the enforcement body to have a detailed knowledge of calculating pay and as such, we believe HMRC should assume responsibility for enforcing these rights. As this proposal is designed to protect the most vulnerable in work, enforcement of holiday pay cases should be restricted to those on low pay and not be a state-funded resource for those who could afford to take their case to an employment tribunal. The Review does acknowledge the complexity in achieving this though and would expect any changes in this area to be phased in over a realistic timeframe.

> HMRC should take responsibility for enforcing the basic set of core pay rights that apply to all workers – NMW, sick pay and holiday pay for the lowest paid workers.

Going forward, Government should consider whether other pay-based protections, such as the protection against unlawful deduction from salary, are also state enforced for the lowest paid workers.

Employment tribunals

Only a handful of the protections afforded to working people in the UK are enforced by the state with the majority of rights, from unfair dismissal claims through to discrimination claims, requiring an individual to take their employer to an employment tribunal. Before an individual can do so there is a statutory requirement to notify Acas of the dispute so that its mediators can attempt to resolve it via the Early Conciliation process. However, taking part in conciliation is not mandatory and either party can turn down the opportunity.

Employment tribunals were designed to be a less legalistic jurisdiction and suitable for non-represented litigants to present their own case. Non-legal panel members provide experience of the workplace so that decisions are based on knowledge of employment

practices as well as the law. Fees are now charged for bringing claims and the level of fee will depend on the type of claim, these are either £160 or £250 for bringing the claim, with further hearing fees of either £230 or £950 payable prior to the hearing itself. There are even more substantial fees for lodging an appeal at the Employment Appeal Tribunal and having it heard. There is a remissions scheme for those whose income and savings fall below a certain level, or who are in receipt of certain benefits.

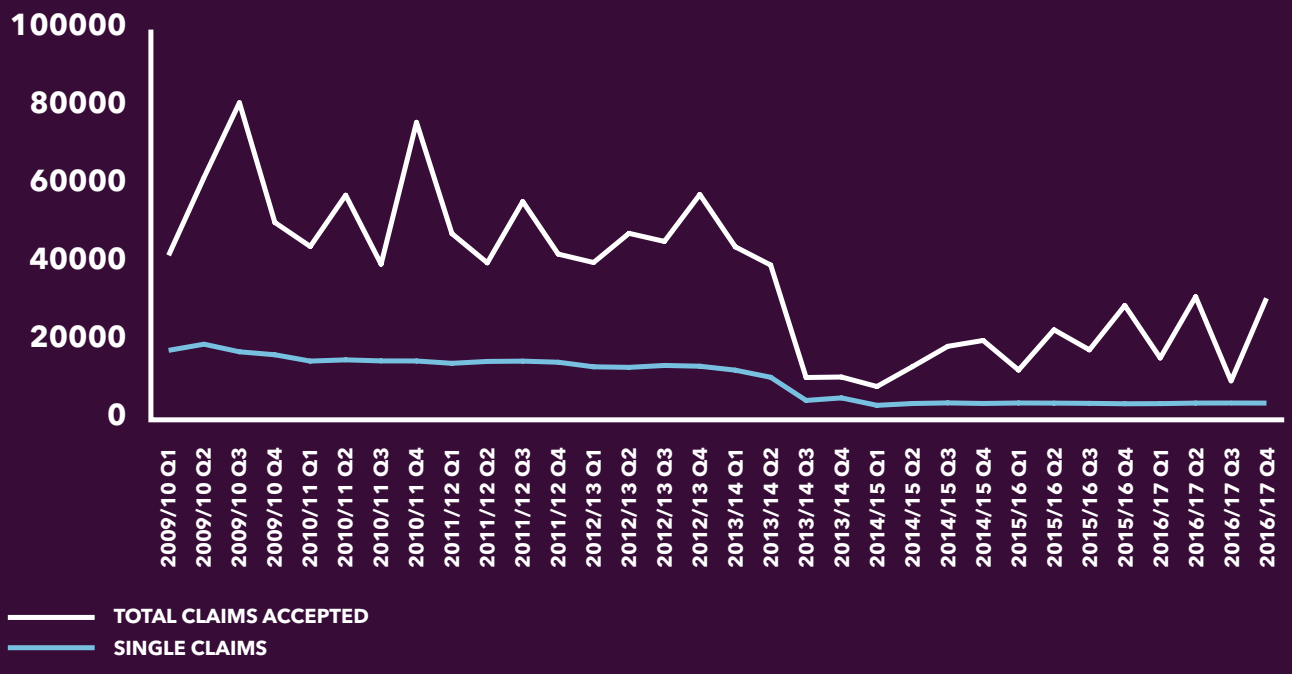
If an employment tribunal finds that an individual has had their employment rights breached, it can order the employer to pay a financial award to the individual. This can include redress (i.e. unpaid wages or redundancy payments) and compensation (e.g. for future loss of earnings or hurt caused by discrimination). The types of awards which can be made, and limits (if any), differ from right to right.

Many have raised concerns with us during this review that the odds are stacked against individuals throughout this process. From the decision to initiate action to receiving any financial award, individuals can find themselves having to fight hard every step of the way, even when they have been treated unfairly. The employment tribunal process can be broken down into four principal stages:

- Deciding to take action;
- Employment tribunal fees;
- Making a case at employment tribunal; and
- Winning or losing, with possible appeals.

Employment Tribunal – Total number of receipts by jurisdiction

This chart shows the number of Employment tribunal receipts by jurisdiction from 2007/08 to 2016/17. Both the total number of claims accepted and the number of single claims fell towards the end of the time period, with a sharp fall in the total number of claims during 2013/14.



SOURCE: HTTPS://WWW.GOV.UK/GOVERNMENT/STATISTICS/TRIBUNALS-AND-GENDER-RECOGNITIONS-CERTIFICATES-STATISTICS-QUARTERLY-JANUARY-TO-MARCH-2017-AND-2016-TO-2017

Source:
HMCTS: Tribunals Quarterly and Annual reconciled returns
ET Management Information Database

Deciding to take action

It is not always clear to an individual that they have been wronged, or that an employer has broken the law. There will always be cases when that assessment is highly subjective or employees misunderstand how the law protects them. Where things go wrong at work, most of us would expect to speak to our manager and discuss the situation and resolve it or raise a grievance through an internal grievance process – and indeed in workplaces up and down the country this does happen. However, for some in work, this simply isn't an option. Raising a concern at work can lead to unfair consequences, such as reduced hours, mistreatment or even the loss of work/ job/engagement.

While this may not be legally compliant the prospect of a long tribunal process may well be enough to prevent a wronged individual seeking justice. However, for those working in organisations with a trade union presence, there is a safety net that protects them against detriment and unfairness. With this in mind, the recommendations we have made to enhance worker voice and participation in the previous chapter should go some way to improving the position.

> **"The current system puts too much onus on the individual to assert that they are being exploited, which for obvious reasons many find difficult to do... Much could be achieved if the need to prove was reversed."**
>
> NickDenys, via Dialogue

Employment tribunal fees

Employment tribunal fees have been raised with us as a significant barrier for some individuals in bringing a case against their employer. There can be no doubt that the introduction of fees has resulted in a significant reduction in the number of cases brought, although part of that reduction is likely to be associated with the introduction of Early Conciliation through Acas. With regret we recognise that it is unlikely that the Government will move to abolish these higher fees but we do ask that the Government continues to keep the level of the fees under review.

Fees themselves are split into two parts. There is an initial issue fee of either £160 or £250 and then a further hearing fee of £230 or £950 if the case goes to a final hearing. The level of fee is based on the right the individual is trying to enforce with rights such unpaid wages attracting the lower fee and more complicated rights such as unfair dismissal and discrimination attracting the higher fee.

While paying these fees represents a large financial risk, for many, particularly in atypical working arrangements, the jeopardy is two-fold. As well as the risk that they are not able to prove that they were treated unfairly (in the widest sense depending on the right being enforced), they also carry the risk that they are not able to prove they are even entitled to bring their claim in the first place because their status is uncertain. This is because one of the first things a tribunal will consider is whether the individual has the appropriate employment status to bring the case. For instance, in the case of whistleblowing, is the individual a worker and in the case of unfair dismissal, are they an employee (as only employees can bring unfair dismissal claims)? In some cases, the business will be arguing on both fronts and will take as a preliminary point that the employment tribunal does not have jurisdiction to hear the relevant claim because the individual lacks the necessary status. While an employment tribunal will generally try to determine the status of the individual at a preliminary hearing, this does not always happen and this issue is sometimes dealt with alongside the substantive claim. Therefore the individual could end up paying up to £1,200 in total only to find out that they were not even entitled to have their case heard.

We believe that this is unfair, especially as the responsibility of proving the nature of the working relationship sits squarely with the individual. This is especially so when an employer/engager chooses not to engage in a constructive assessment of the individual's employment status. Such an employer/engager can,

very simply, ensure the process of securing justice is as costly (and time consuming) as possible for the individual. We feel there should be a way for individuals to determine their working status more easily ahead of a hearing. While the clarification of the law on working status, the new online tool and codes of practice and the shifting of the burden of proof in certain circumstances will go some way to assisting in this, ultimately only a tribunal judgment can determine status where the employee or worker's claim is resisted by the employer/engager. The Review believes a judgment on status should not require tribunal initiation and hearing fees to be paid. A determination on status at a preliminary hearing should not attract any fees and after the preliminary hearing the individual will have the ability to make an informed choice as to whether to progress their substantive case to the next stage – where the usual initiation and hearing fees would still apply.

There may be scope within the existing framework to make this happen more quickly. Currently there may be a preliminary hearing to determine status before the substantive issue is heard and determined. If this process were streamlined and made more accessible, it could mean that individuals would be able to find out their status more quickly and without paying the full hearing fee.

> Government should ensure individuals are able to get an authoritative determination of their employment status without paying any fee and at an expedited preliminary hearing.

While this new process would not prevent the individual from proceeding to a full hearing straight away if that person wanted to pay the relevant fees, it would reduce the risk for those for whom eligibility was a concern. While a ruling at this stage can still be ignored by an employer who does not want to follow the law, forcing an individual, in some cases, to continue down the employment tribunal route, the question of status would not be debatable in the final hearing. We explain later how the awards process should be toughened to deal with employers who disregard court rulings against them.

Making a case

Other steps could also make the employment tribunal process fairer. As we have mentioned, when an individual brings a case to an employment tribunal, the onus is on them to prove their status. We believe this is an unfair burden. We suggest that the system be changed to create a presumption of employment or worker status (depending on what the individual claims), shifting the burden onto the employer to prove that this is not the case. This means that if an individual brings a claim that requires them to be an employee, or a worker, it is for the employer to prove that they are not. The same would be true of dependent contractors which we have suggested replaces the current category of worker. This would be subject to a number of conditions, having obtained from the online tool confirmation that they are either an employee or a worker/dependent contractor, having had input from Acas and certification that they consider them to be of an employee or a worker/independent contractor.

> The burden of proof in employment tribunal hearings where status is in dispute should be reversed so that the employer has to prove that the individual is not entitled to the relevant employment rights, not the other way round subject to certain safeguards to discourage vexatious claims.

Winning or losing, including the appeals process

As we have said, if the individual is successful, the tribunal award could include redress (i.e. unpaid wages or redundancy payments) and/or compensation (e.g. for future loss of earnings or hurt caused by discrimination). We believe that, given the level at which fees are set, it should be made clear that the presumption is that in all successful hearings, the individual should receive at least the cost of the tribunal fees required for bringing the case from the employer, unless the judge feels there is a strong justification to the contrary. However, the problem goes beyond the size of the financial award relative to the fee paid to obtain it. At the end of this process, which in complex cases with numerous appeals can take years, justice should follow. However, this is not always true. Even when an individual wins a case and a financial award is ordered, they may still not receive it.

There have been widespread concerns about the number of employment tribunal awards that go unpaid. While this data is not routinely collected, to try to get a sense of the scale of the problem, the government commissioned research in 2013. It showed that, following enforcement action taken by an individual, 34% of employment tribunal awards in England and Wales and 46% in Scotland remained unpaid. The Review believes this is unacceptable.

Civil tribunals have no enforcement powers so the award is treated as if it were a county court order. When a judgment is made, claimants are sent an information

booklet advising them of their options for recovering or enforcing their award if payment is not made by the respondent. They are then presented with two enforcement routes. These are through the Fast Track scheme to send a High Court Enforcement Officer (if in England or Wales), or the county court (or Sheriff Court in Scotland). Both these routes have their limitations and incur the individual further fees.

In response to concerns about the non-payment of employment tribunal awards, a system was set up which gives the Department for Business, Energy and Industrial Strategy (BEIS) power to levy penalties against employers who have not paid up. This is a free and successful route as a first step in prosecuting unpaid employment tribunal awards. An individual notifies BEIS of the non-payment of an award or settlement. Following consideration and the employer's continued failure to pay despite the issuing of a warning letter and subsequent penalty notice, BEIS instigates debt recovery action on the unpaid penalty.

However, BEIS has no powers to pursue the actual award. This means that while BEIS collects the state enforced penalty fine from the employer (for non-payment), the individual still does not receive their financial award. The Review believes this to be unfair.

> Government should make the enforcement process simpler for employees and workers by taking enforcement action against employers/engagers who do not pay employment tribunal awards without the employee/worker having to fill in extra forms or pay an extra fee and having to initiate additional court proceedings.

In addition, more should be done to create a deterrent for employers who think they can simply ignore the law. Given the huge success of the naming and shaming regime for those employers who fail to pay the NMW, government should consider how a similar scheme could be established to identify those employers who do not pay awards made by employment tribunals.

> Government should establish a naming and shaming scheme for those employers who do not pay employment tribunal awards within a reasonable time. This could perhaps be an element of the reporting which we have suggested in relation to the composition of the workforce including the proportion of atypical workers in the workforce.

Broader justice

The question of fairness goes beyond the individual bringing a case. The recent case against Uber raised questions about the applicability of tribunal rulings to the wider workforce. While many have suggested that the judgment (which is being appealed) means all Uber drivers are workers, the reality is that the ruling only applies to the two drivers who brought cases. It is neither just nor efficient for the system to operate so that every single person in an organisation has to bring a case to be recognised as a worker for the judgment to apply to the whole workforce.

We have considered a number of solutions to this, including applying tribunal judgments to entire workforces or all those on similar contracts. However, these are not practical given that status is based on the reality of the working relationship and not the terms of any contract. That said, we do believe that there is a middle ground and the emphasis should be placed on the employer/engager to do the right thing.

We believe employmnet tribunals should routinely apply penalties (see below) and award costs should subsequent cases be brought by individuals working under broadly comparable arrangements where the company has not taken steps to apply the initial court ruling, without good justification for not doing so. This would build on the current 'aggravated breach' penalty regime which gives employment judges the power to increase a financial award, in certain circumstances, if employers have breached the employment rights of an individual and there are aggravating circumstances.

It could also include expanding the current costs regime so that, if an employer unreasonably defends a case when they know, or ought to know, they are already breaking the law because of the existence of broadly comparable judgements against them, the presumption should be that they are forced to pay all of the claimant's costs.

> Government should create an obligation on employment tribunals to consider the use of aggravated breach penalties and costs orders if an employer has already lost an employment status case on broadly comparable facts – punishing those employers who believe they can ignore the law.

Going further, we think that there could be a way of increasing the value of financial awards in future cases to act as a greater deterrent where the facts are the same or materially the same. This would encourage

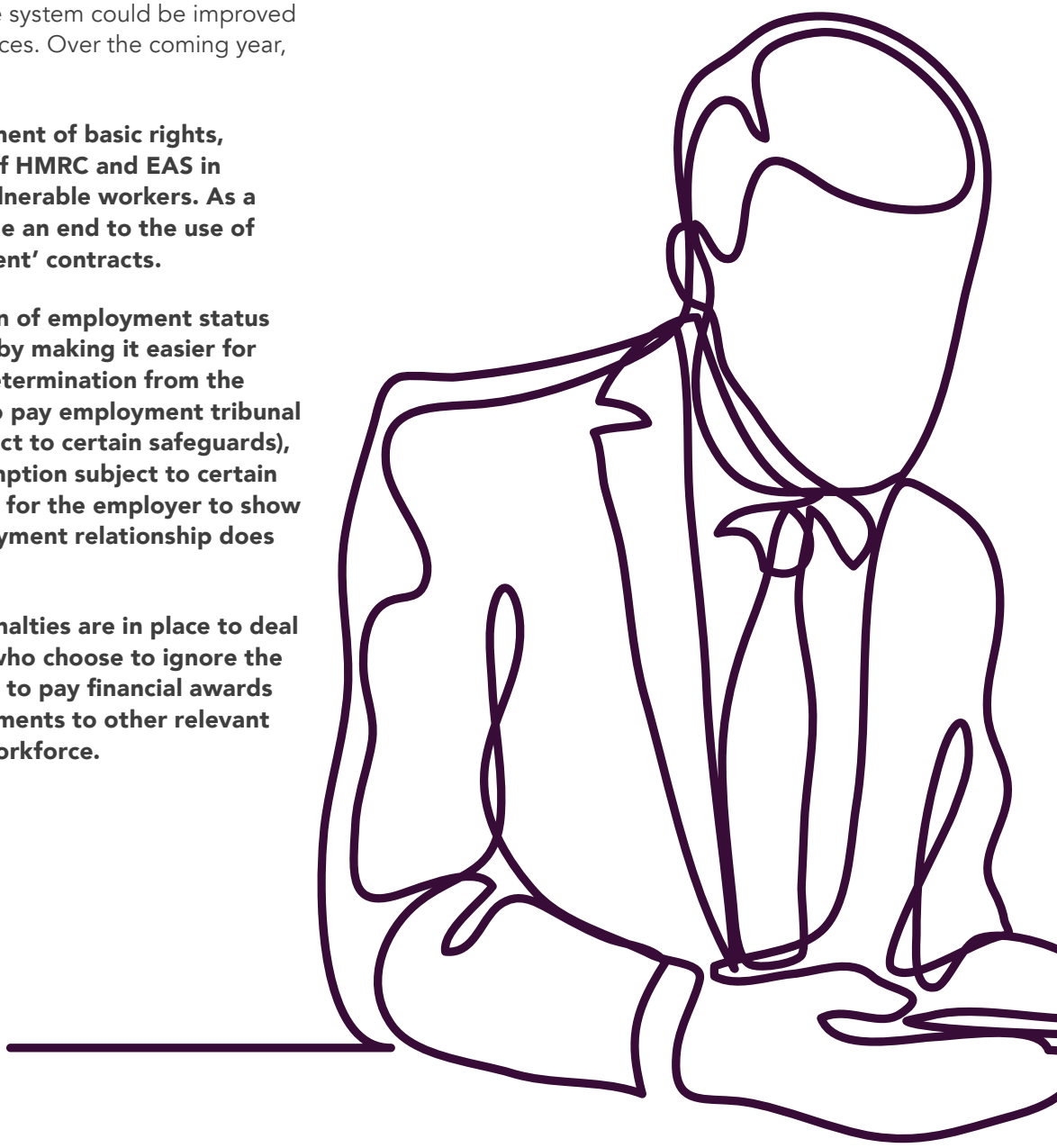
employers to take tribunal rulings seriously and give tribunals the power to penalise those employers who choose to ignore the judicial process. Also, this could be an incentive for other individuals with the same working arrangements to take action.

Government should allow tribunals to award uplifts in compensation if there are subsequent breaches against workers with the same or materially the same working arrangements.

Next steps

The two-tier enforcement framework in the UK works. It is right that those most vulnerable to exploitation are protected by state enforcement with others taking their case to an employment tribunal. However, there are a number of ways in which the system could be improved to address inherent imbalances. Over the coming year, the Government should:

- **Enhance state enforcement of basic rights, considering the remit of HMRC and EAS in protecting the most vulnerable workers. As a start, this should include an end to the use of 'Pay Between Assignment' contracts.**
- **Make the determination of employment status fairer to the individual by making it easier for them to get an early determination from the court without having to pay employment tribunal fees for doing so (subject to certain safeguards), and flipping the presumption subject to certain protections so that it is for the employer to show that a particular employment relationship does not exist.**
- **Ensure more robust penalties are in place to deal with those employers who choose to ignore the courts, either by failing to pay financial awards or failing to apply judgments to other relevant relationships in their workforce.**



9. Incentives in the system

Summary

Last year, the UK government collected around £670bn in tax receipts. Tax – and the public services that it pays for – is a key function of Government. But the tax system does not just raise money: it also influences the choices that people make, the products that they buy or the way that they work.

It is clear to us – based on evidence that was submitted to the Review – that **the nature of the tax system acts as an incentive for practices such as bogus claiming of self-employed status**, by both businesses or individuals.

Whilst specific tax changes are formally outside the remit of the Review, we believe that treating different forms of employment more equally in the tax system would be fairer, more economically efficient and support better quality work. It would also reflect the reality of the modern UK labour market.

The biggest source of Government revenue is from people in work: of the £670bn[42] raised in 2016-17, approximately 45% was paid by over 30 million people on their earnings from employment or self-employment. The UK is not alone in its reliance on work as a source of tax revenue – across the OECD, the latest data shows that over 90% of countries receive the majority of their tax receipts from taxes on earnings.

History

The role of direct taxes (particularly taxes on labour) to the UK Exchequer has risen over the past hundred years. At the outbreak of the First World War, only one million people in the UK paid income tax. By the end of WWII, the number of income taxpayers was closer to 15 million, and the basic rate of income tax had increased from 6% in 1914 to 45% in 1948. And then, shortly after the war, the National Insurance system that David Lloyd George had created in 1911 was expanded as part of the Beveridge reforms of the welfare state. This meant that people in work were required to pay an additional charge in exchange for protection when they were out of work, either during working age or in retirement.

From the post-war period to today, National Insurance contributions (NICs) and tax paid by those in work have retained their importance, with both the share of GDP collected through income tax and NICs and the proportion of government revenue coming from these sources staying fairly constant. This reliance on work as a source of revenue is largely down to the fact that (compared to other tax bases) work provides a stable and broad revenue base, and revenue from it is relatively easy to collect.

The issue of tax, how it affects those working casually or for themselves and the behaviour it drives, was raised many times in the Review.

Taxing Labour

As a rule, an organisation should establish what its labour requirement is and then fulfil any responsibilities arising from that. However, there are significant incentives in the system, a legacy of the history outlined above, that can steer businesses towards designing workforce models that generate the lowest costs.

In these circumstances, a business that can design a workforce model that relies almost exclusively on self-employed labour has the potential to gain a significant market advantage. We heard repeatedly in the Review that this is becoming the norm in certain sectors, to the disadvantage of those companies who have a more traditional employment model.

In 2010, the Mirrlees Review[43] concluded that the tax system should strive toward neutrality i.e. that it should seek to tax the same activity in the same way, based on the substance of the activity, not the legal form in which it is organised. On this basis, labour income would be taxed similarly regardless of whether it is in the form of a salary from an employer or as self-employment profits. This would be economically more efficient and fairer, as well as ensuring that tax receipts are sustainable.

While this was the overall approach, the Mirrlees Review did acknowledge that some sorts of economic activity should be encouraged through the tax system. For example, the tax system seeks to incentivise investment in the economy; targeted tax reliefs, such as the Seed Enterprise Investment Scheme[44], are designed to encourage people to invest in start-up and growing businesses. Mirrlees also acknowledged that there should be differences in the tax rules applicable to different forms of working, largely reflecting the fact that self-employed people are generally running their own business, whereas employees work for someone else's business. In particular this is apparent in the tax treatment of business expenses for different groups.

National Insurance

Currently, the different rates of National Insurance in particular mean that the UK system of taxing labour is not neutral – a self-employed person doing the same work as an employed person can pay a different amount of tax or National Insurance despite receiving similar contributory benefit entitlements in return.

The Review considers that this situation is not justified, or sustainable, nor is it conducive to the goal of a good work economy.

The difference in NICs partly reflects the evolution of the contributory benefit system in the UK. Following the introduction of the National Insurance Act 1946 anyone in work was required to buy a National Insurance stamp. For an employee this was the equivalent of 25p a week; their employer also paid 21p. The self-employed paid 31p. This lower overall rate paid by the self-employed compared to that paid by an employee and their employer combined meant that they did not have the same benefits from the government.

> **"The £60bn elephant in the room is Employers NI at 13.8%. This massively encourages employers to use flexible workers whenever possible. We need a tax overhaul."**
>
> Contractor Calculator submission to Review

The self-employed no longer pay any of the employer NICs contribution and their own rate is now lower than the employee rate[45] : an employee pays NICs on their earnings at a rate of 12%, and their employer pays 13.8% on top of this. Their self-employed counterpart pays 9% with no equivalent of the employer charge[46]. The self-employed also currently pay a weekly charge of £2.85[47]. This means that, as set out below, the effective tax rates of a self-employed person are significantly below that of those in employment.

Rates of tax and NICs for employed and self-employed (2017/18)

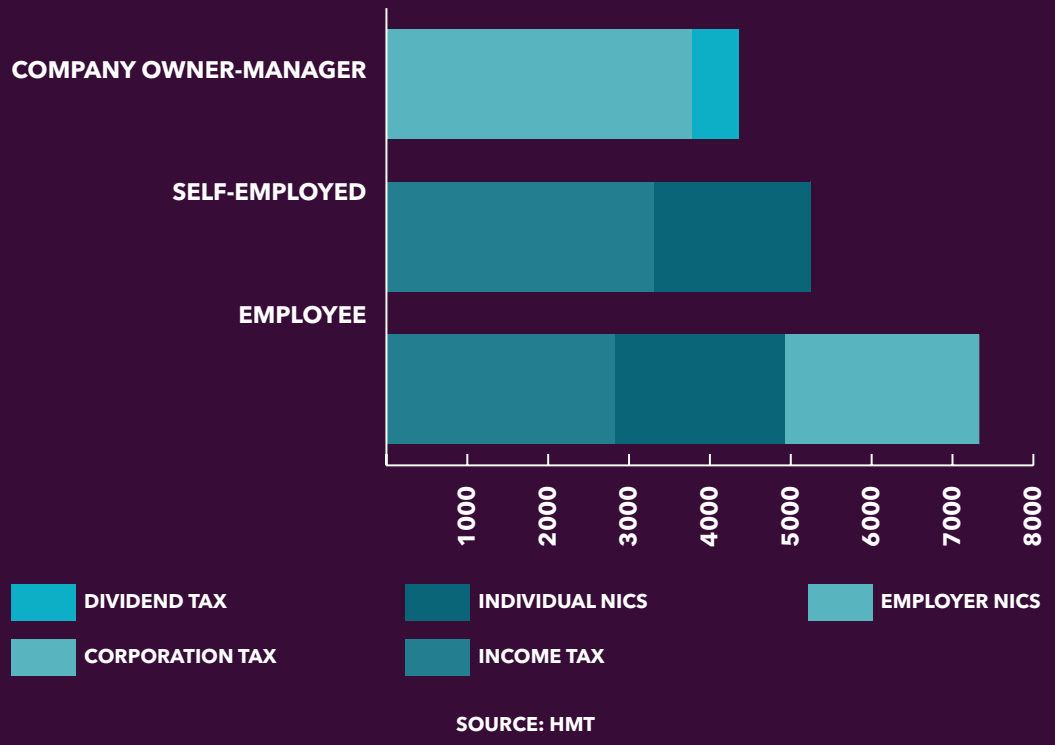
	Employee	Self-employed
Basic rate of income tax	20%	20%
Higher rate of income tax	40%	40%
Additional rate of income tax	45%	45%
Class 4 NICs for self-employed	12%	9%
Class 1 Primary NICs for employed		
Class 4 and Class 1 Primary NICs upper rate (paid above £45,000)	2%	2%
Class 2 NICs (profits above £6,025 until 2018)[48]	–	£2.85pw
Employer NICs (paid by the employer)	13.8%	–

For example, someone earning an average UK salary (around £28,000[49]) would pay £2,095 in National Insurance if they were employed. But they would pay £159 less if they were self-employed. In addition, the employed person's employer would have to pay £2,409 in National Insurance on top of this. But the self-employed person does not face this charge. This means that for both the individual and their employer, they will pay less in tax/NICs if they are self-employed rather than employed.

These differences in tax are even larger for people working through their own company. An increasing number of people are providing their labour through a company structure. This may be to access limited liability or for other commercial reasons, but they are also likely to pay less in tax and NICs than if they were self-employed or employed[50]. Someone working in this way who makes the equivalent of the average UK salary will pay £4,360 in total tax, mainly in corporation tax. This compares to total tax and NICs for someone on average UK salary who is self-employed of £5,240, while an employee pays £7,330[51].

Total tax paid on UK average salary, by legal form

This chart shows a breakdown of the total tax paid on a UK average salary in terms of income tax, corporation tax, employer NICS, individual NICS and dividend tax. This illustrates the text above the chart.



SOURCE: HMT

> "NICs are just another form of tax, but the NIC rates, who pays them and on what give rise to distortions… It does not make sense that 2 people with income of £100,000 can pay different amounts of tax and NIC depending on the form in which they receive the income. We need to remove distortions in the economy because this leads to tax avoidance."

Fletcherthorley, via Dialogue

At an organisational level, to businesses operating on tight margins, these costs are substantial. Of course there are other reasons why a company might choose to employ people directly rather than contract self-employed labour but these differences in the tax system create incentives for both the individual and the company to move towards a self-employment model, whether or not it is the most appropriate for their circumstances.

The Review heard several examples from sectors where a contractor or self-employment model was prevalent. In many cases in Belfast the work being undertaken by the self-employed or incorporated individual was very hard to distinguish from someone working alongside them who were directly employed. We also heard examples of individuals being pressured to work in this way.

Businesses should structure their workforces in the most appropriate and efficient way possible, without the tax position distorting the decision.

State-based entitlements

Whereas the rates of National Insurance paid by employed and self-employed have moved further apart in the last 50 years, the benefit entitlement has moved closer together.

Last year, approximately £100bn[52] was paid out in benefits funded by NICs. Around 94% of contributory benefit spending was on the State Pension – but since April 2016 the self-employed and employed have built up exactly the same State Pension entitlement. There are some differences in benefit entitlement but these are now relatively small – for example, the self-employed cannot access contribution-based Job Seeker's Allowance and do not receive the same parental benefits.

In keeping with our view that self-employment is a component part of the UK labour market and should be taxed neutrally, and following on from the recommendations made by Julie Deane OBE in her review last year, the Review considers that those working in this way should receive the same benefits from the state.

> **"Clearly there is an incentive for companies in the 'gig economy' to engage with working people in this way. but that incentive, in the form of heavily reduced or no employer obligations, has to be paid for by somebody. That somebody is the worker. It is also paid for by us, the taxpayers."**
>
> The Rt Hon Frank Field MP DL, Member of Parliament for Birkenhead submission to Review

Employment rights

Some argue that the rate or level of National Insurance contributions that someone pays should be related not just to the benefits they receive from the Government but also to the rights provided by their employer.

The rights that an employee gets are paid for by their employer: they form part of their overall remuneration. A self-employed person can set their own prices and keep all of their profits; from this they can choose how much to take home and how much to put into a pension or set aside for holiday pay. However, part of an employee's salary usually has to be received in the form of a pension and holiday pay.

An employed person's total remuneration is therefore rarely their headline salary: an employer paying someone a headline salary of £25,000 could actually pay that person at least £30,000[53] once other parts of their salary – such as mandatory holiday pay and pension contributions – are taken into account. This is partly to reflect the mutual relationship between an employee and employer: an employee has certain rights and benefits but also obligations to turn up to work and to carry out tasks as directed by their employer.

A genuine self-employed person is their own employer; they work on their own terms and provide themselves with their own pension and holiday pay. The costs associated with providing these benefits will usually be recovered through the amount that they charge.

This means that for a business engaging labour, the cost of labour (whether employed or self-employed) should be neutral: they will have to meet an employed person's costs (including wages, holiday pay and pension contributions) directly and a self-employed person's costs by paying a higher fee for their services.

The Review has considered elsewhere how employment rights affect business decisions. It is why we believe there is a need for much greater clarity on the boundary between employment and self-employment. In the next Chapter we talk about some of the challenges for the self-employed, for example in adequately providing for their pension requirements.

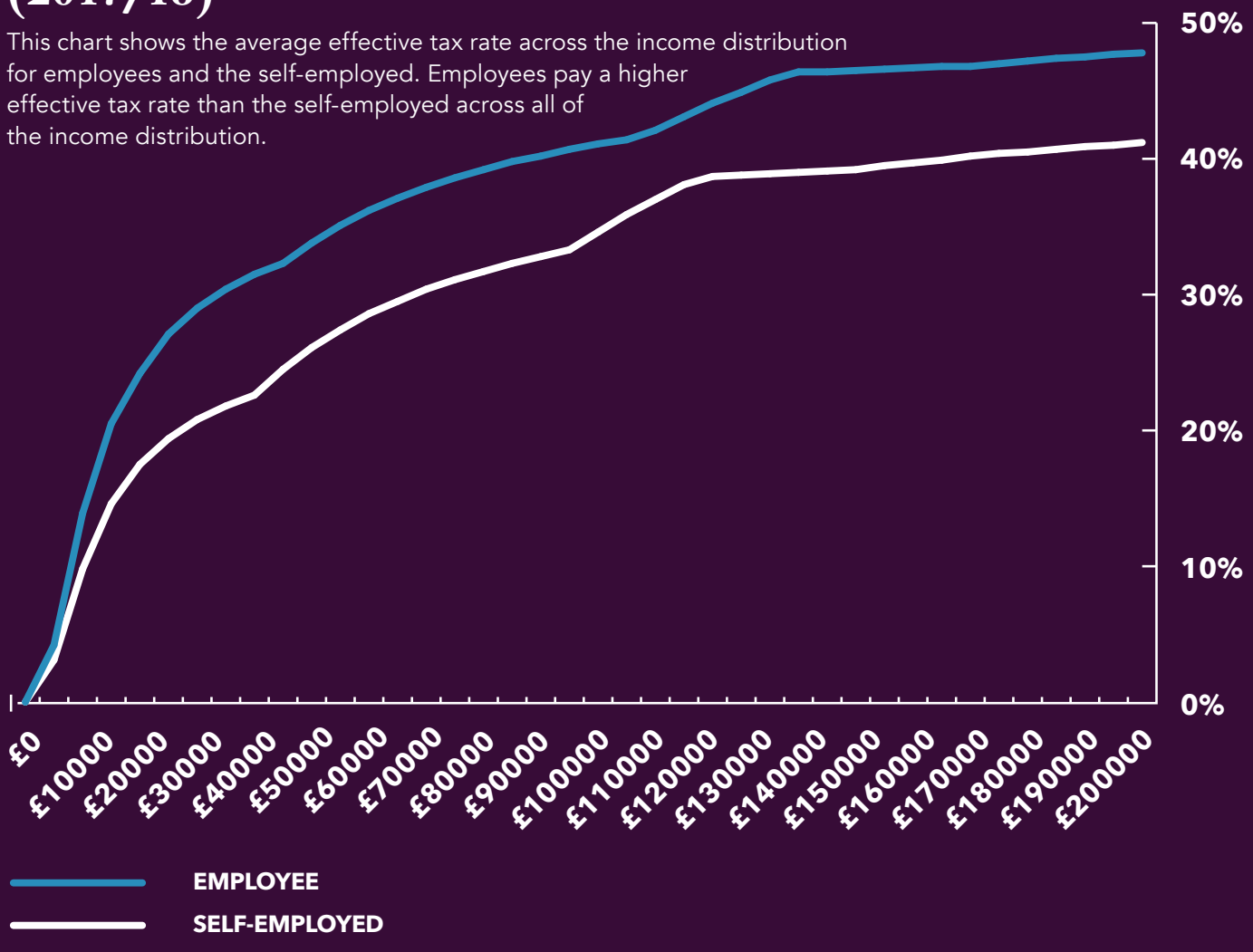
However, at present, the tax system distorts this position further by imposing an additional charge on employed labour that is not charged on self-employed labour. We believe this should change.

Fiscal Impact

As well as affecting the decisions that individual people and businesses take, the different rates of tax on different forms of work also have an impact on how much money the Government raises in tax revenue. HMRC estimates that the government loses out on £5.1bn a year from the lower rates of NICs paid by the self-employed.

Average effective tax rates across the income distribution (2017/18)

This chart shows the average effective tax rate across the income distribution for employees and the self-employed. Employees pay a higher effective tax rate than the self-employed across all of the income distribution.



SOURCE: HMT

As the nature of work changes, this is a growing cost to the Exchequer; the OBR estimated that the increasing number of people working through their own company will cost the Exchequer an additional £3.5bn a year by 2021-22.

With relative parity between employed and self-employed entitlements, and the fact that if things go disastrously wrong, the state remains the safety net on which self-employed people can rely, it does not seem right that employed people have a disproportionate responsibility for contributing.

The Review believes that the principles underlying the proposed NI reforms in the 2017 spring budget are correct. The level of NI contribution paid by employees and self- employed people should be moved closer to parity while the Government should also address those remaining areas of entitlement – parental leave in particular – where self-employed people lose out.

It is also important to recognise that the difference in NI contributions paid by the self-employed and employed individual is relatively small in comparison with the fact that employers pay 13.8% NI contributions on the labour of employees and workers (earning above the NI secondary threshold), whilst the engagers of self-employed labour do not make any NI contributions on behalf of those they hire. The Review believes that, over time, there is a case for moving to a more equal tax treatment of self-employment: it follows that there is a case for companies and others who engage self-employed labour to contribute more to the overall NI payments made by the self-employed, in the same way as they do for employees.

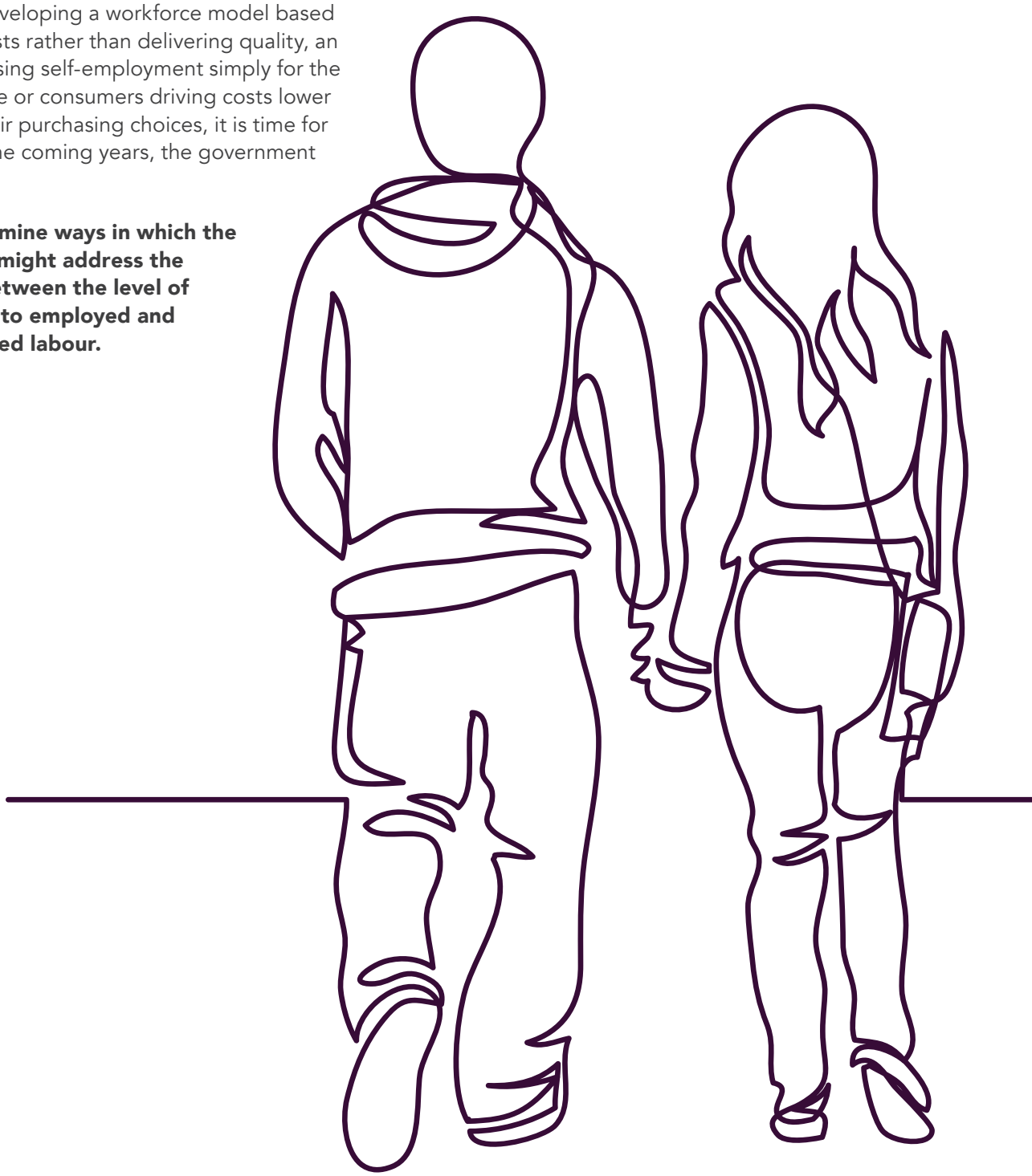
There are various ways in which the system could start to move to a more consistent level of taxation on different forms of labour and, as a consequence, help remove some of the perverse incentives in the system and address issues of fiscal sustainability. None of these measures would be easy or uncontroversial but, given that this Review is only the latest in a series of studies to make the point about the differential taxing of employed and self-employed, we would encourage the Government to raise public awareness of this issue and engage in debate with stakeholders about potential long term solutions.

Next steps

The world of work is experiencing the biggest structural change since the current system of taxation was introduced. This means that now is the right time to properly consider whether the way in which employment is taxed achieves what it is designed to.

It is clear to Review members that the current system is driving behaviours that are not always consistent with the delivery of fair and decent work. Whether this be the business developing a workforce model based on reducing costs rather than delivering quality, an individual choosing self-employment simply for the lower tax wedge or consumers driving costs lower still through their purchasing choices, it is time for change. Over the coming years, the government should:

- **Seek to examine ways in which the tax system might address the disparity between the level of tax applied to employed and self-employed labour.**



10. A new offer to the self-employed

Summary

There are more self-employed people in the UK than ever before. Many are now seizing the opportunities presented by the gig economy to supplement their income through, essentially, self-employed earnings. As such, it is time the Government reconsidered how self-employment is treated and what it can do to support those who choose to be their own boss. In particular, we conclude that:

- **Government should recognise the wide variety of forms of modern self-employment** and should act to support and protect those who need help. More effort should be made to harness the potential of digital platforms to offer support to self-employed people;
- **Government should focus on encouraging self-employed people to plan for the future**, reducing the potential that the taxpayer has to pick up additional costs associated with ill health or inadequate retirement saving.

A modern view of self-employment

The proportion of people in the UK who are self-employed is growing. As the labour market adapts to the digital age, and people seek out new ways to balance priorities in their personal lives with the need to earn money, it is likely this trend will continue. With this in mind, government has to decide what level of support it wants to give to this growing proportion of the labour market. To do this effectively, we have to confront some of the ingrained perceptions of self-employment in the UK.

To some, self-employment has always been seen as 'special', a homogenous group of individuals who ask nothing of the state, taking high levels of personal risk to grow a business in the hope of creating additional employment for others. This does not reflect the reality of self-employment in the UK. In the previous section we made recommendations designed to make the distinction between employment and self-employment clearer. For some individuals, this will mean they are workers for the first time and receive the baseline protections that any worker is entitled to. However, it is likely that the vast majority of the 4.8m self-employed people in the UK will continue to be self-employed, in addition to the millions of others who gain some income from self-employment.

It would be wrong to treat all self-employed people the same. Like those who are employed, the experiences and vulnerabilities of this group range from billionaire entrepreneurs to taxi drivers working 90 hours a week simply to pay their bills and includes many people who are gaining income from self-employed activity alongside their main job. As a result, policy interventions have to be tailored to respond to those who require support, while encouraging those doing well to think about the future and plan for unforeseen circumstances so that they do not end up relying on the tax payer.

As an example, many self-employed people experience greater financial certainty than some employed people, such as agency workers or those on zero-hours contracts. On the other hand, median annual earnings from self-employment have been falling, from £14,535 in 2007/8 to only £10,800 in 2013/14 and so many self-employed people also rely on the state to top up earnings and support them in their day-to-day lives or when they retire. It is also inaccurate to suggest that all self-employed people seek to create employment opportunities, with the overwhelming majority neither employing anyone nor having plans to do so.

The drivers for self-employment also differ. For some individuals, the opportunity to be their own boss and work when they want is the most important element – in fact financial security elsewhere in their life (such as alternative income or family wealth) may mean that income is not the main reason to work. For others, self-employment is not a choice but a necessity when other forms of work are not available. While many self-employed people would not expect sick pay, paid annual leave or automatic enrolment to a pension, for others, the availability of this safety net is essential to make sure they can pay their rent, put food on the table or plan for the future. This can lead to the same levels of anxiety and illness that are experienced by those employed on casual contracts. The Review believes the Government should treat self-employed people like any other section of the labour market, acknowledging that they require a spectrum of intervention, focused at protecting the most vulnerable.

In 2015, the Government asked Julie Deane OBE, the entrepreneur behind The Cambridge Satchel Company, to report on the difficulties and opportunities facing the UK's self-employed. Her final report, published last year outlines a number of areas where the Government could take steps to improve the support to this ever growing section of the UK labour market. This section builds on that insightful work.

Informed decisions

Self-employment will not be right for everyone but making the decision to become your own boss should be done with all the facts. Provision of advice to those considering self-employment should help them weigh up the pros and cons. Support and advice is currently available from a number of places from financial institutions to bodies like the Start Up Loans Company. In addition, there has also been a push in recent years by Jobcentre Plus to promote self-employment as a route into employment for those currently out of work.

Advice on becoming your own boss should be available whenever future career choices are considered. Whether this be as part of a careers chat at school or discussions with a National Careers Service adviser or Jobcentre Plus officer, individuals must be able to make an informed choice. The New Enterprise Allowance (NEA) scheme is a step in the right direction, supporting the move into self-employment for people who are unemployed and want to start their own business. But more should be done.

Government should continue to develop advice and support for people embarking on a self-employed career to ensure they have the greatest chance of succeeding. This includes ensuring that self-employment is considered by work coaches at Jobcentre Plus as an option where this would be appropriate as well as ensuring careers advice includes information on becoming your own boss.

A safety net at work

The most vulnerable self-employed people already have access to a range of protections and this (as we argued in the previous chapter) provides the rationale for equalising the payment of class 4 NICs in the short term. However, for many, self-employment is about flexibility and they will want to choose how to provide for themselves. New forms of support to self-employed people are one area where technology is playing a growing role, and the emergence in recent years of WorkerTech solutions, have made the opportunity for pooling risk and resources greater for self-employed individuals.

WHAT IS WORKERTECH?

WorkerTech can be considered as constituting a wide range of tech-enabled innovations that support working individuals to achieve a range of aims. This includes some of those aims that might be traditionally pursued through more established collective rights/ representation routes. This can include the facilitating of information sharing, bringing workers together and calculating and accessing benefits. International examples, show that there is an opportunity for innovative new WorkerTech models to help those in the workforce navigate the challenges of the modern economy.

Portable benefits platforms provide ways for people who are self-employed or engaging in other non-traditional labour market activity to gain access to a range of non-statutory benefits and protections. They also present an opportunity to 'nudge' people who are self-employed to set aside money for the long term, e.g. for retirement, in case of injury, or to pursue personal development and training opportunities to further their career. Unlike the statutory employment protections enjoyed by workers and employees, portable benefits reflect the more dynamic working arrangements of many self-employed people and so are tied to the individual, rather than to a specific company. In the sharing/gig economy, this means that individuals could effectively move freely between platforms because benefits accrued while working on one platform could be retained and topped up if the individual started working on another platform instead or even simultaneously.

CASE STUDY

The Black Car Fund is a benefits platform for limousine and black car drivers in New York. It is a not-for-profit insurance provider that provides compensation for drivers that are injured while working. A 2.5% surcharge is added to passenger's fares for drivers that are in the scheme, and this entitles the drivers to claim, in case of injury. The Fund also offers safety training for drivers in the scheme. Although this platform is not portable, its effective applications have led to it being the basis for some initial calls for Portable Benefit Platforms for those working in the sharing economy.

Portable benefit platforms can be third-party vehicles supporting gig economy businesses to make payments on behalf of an individual working through them. This might cover benefits such as sick leave, holiday leave, occupational illness or injury, pension plans, and further training. Payments could be pro-rated according to the number of hours worked or as a percentage of gross wages. Portable benefits platforms in the US are normally focused around the provision of benefits that are administered by private companies rather than by either national or local government. Portable benefits platforms offer a range of new opportunities by linking and enabling the accrual of entitlements and benefits to and by the individual while simultaneously empowering the individual to make decisions on which job opportunities they take up. There may also be the potential to link these vehicles and mechanisms to state-based welfare rights and entitlements.

A WorkerTech Catalyst could bring together key stakeholders to identify technological solutions to problems faced by working individuals. Catalysts work to accelerate innovation, by offering targeted support as well as access to investment needed to innovate. The Catalyst would focus on encouraging innovative ideas and then bringing together businesses, other stakeholders and government support to drive change and impact. The Catalyst would have three key functions: a sandbox, which would bring together key regulators to support innovation projects; a convening role to bring together relevant players in this space; and support for WorkerTech projects looking to access finance which could include accessing private investment opportunities.

Government should work with partners to create a Catalyst to stimulate the development of a range of WorkerTech models and platforms in the UK. This would allow new and emerging solutions to develop and grow, in a "sandbox environment" with a view to better supporting self-employed people.

CASE STUDY

Coworker.org is a petition website that has seen some success in lobbying for workers' rights in the US: notably, they are credited with prompting a change in maternity and paternity leave at Netflix. This was then extended to hourly as well as salaried workers. The reach of coworker.org is significant in scale. Unverified reports indicate they have reached up to 10% of Starbucks employees in the US. The size, scale and relatively low cost of coming together and driving change in this way seem to be increasingly attractive.

A stronger voice for the self-employed

Employees and workers in the UK are protected by a substantial body of trade union legislation. However, this does not extend to the self-employed. In sectors and markets where self-employment is prevalent, individuals could also benefit from being able to discuss issues collectively with a view to taking action. In addition to offering the opportunity of a tailored safety net, WorkerTech solutions also have the potential to bring self-employed contractors together and facilitate various forms of collective action, increasing the overall voice of individuals who would otherwise be unlikely to communicate in this way.

Government should actively support technology that helps ensure self-employed people have the opportunity to come together and discuss the issues that are affecting them, working with employers to make sure this is positively encouraged.

Saving

Self-employed people are less likely than employed people to be saving for their retirement. A 2015 report by the Resolution Foundation compared responses to the General Lifestyle Survey and the Family Resources Survey to conclude that as little as 27% of self-employed individuals are putting money into a pension, down from 33% only a few years earlier.[54] This is compared to over 50% of employees. This is backed up by statistics from the Wealth and Assets Survey which shows that only 23% of self-employed people intend to rely on a personal pension in retirement. A further 23% expect to rely on the state pension, 12% on personal savings and investments and only 6% on the proceeds from selling their business.

The changes made to state pension provision last year, increasing the level of state pension that self-employed people could accrue, is a welcome move and part of the justification for the increase in Class 4 NICs proposed at Budget. However, like the employed, self-employed people should not be relying solely on the state pension for their retirement income and should be considering the best way to supplement their earnings in old age. Our informal survey of those working in the gig economy and similar roles asked whether they would find a tool helping them to understand their state pension entitlement helpful.

Over two thirds (70%) said 'yes'. Against this backdrop only 13.1% of self-employed people were participating in a pension in 2014/15, dropping to only 4.2% amongst 25-34 year olds. The Panel notes that a state pension tool is available, 'Check your state pension' on .Gov.UK and that government has been supporting industry in designing and delivering a pensions dashboard by 2019, but it is clear that more can be done. For that reason, we welcome the DWP review of automatic enrolment announced in December 2016 which amongst other areas is looking at how the growing group of self-employed people can be helped to save for their retirement. We hope the Government will think creatively in its response to this consultation and take whatever steps necessary to change the behaviour of self-employed people. After all, it is likely many individuals would aspire to achieve a retirement income on top of the state pension alone.

> The Review calls on Government to explore ways to improve pension provision amongst the self-employed, making the most of opportunities presented by digital platforms and the move to more cashless transactions.

There are opportunities within the current system to make effective changes. For instance, the Government already provides a range of tax incentives aimed at encouraging people, including the self-employed, to save for the future. More effort should be made to present the benefits of saving from an early age. One approach would be to effectively auto-enrol self-employed people into a pension and administer this through the self-assessment process and the Review welcomes the Conservative manifesto commitment to make auto-enrolment available to the self-employed. For instance, when the individual provided HMRC with their self-assessment, as well as providing funds to cover income tax and NICs liability, they could also be expected to provide 4% of income towards a pension unless they choose to opt out. For those who already pay 4% or more into a private pension, this would be treated in the same way as it is now. A similar approach is set out in the final section of *Solving the under-saving problem among the self-employed*, an analysis by Aviva and Royal London in June 2017.

Self-employed individuals can already save into a private pension. The National Employment Savings Trust (NEST) was established by the Pensions Act 2008 to support the roll out of automatic enrolment but is also open, alongside other providers, as part of a market for the self-employed to save for their retirement. The introduction of Lifetime ISAs also presents a good opportunity to incentivise self-employed people to save for their future. From 6 April 2017, adults under age 40 will be able to open and save up to £4,000 each year into a Lifetime ISA and receive a 25% bonus from the Government, paid annually at the end of the tax year. Once open, people can save into a Lifetime ISA account until the age of 50.

> **"We are interested in exploring how technology can further support tax compliance. For example, through our API we enable third party developers to build services that can help partner drivers."**
>
> Uber submission to Review

If the Government wanted to be more ambitious, it could look at creating a more sustainable long-term solution. For instance, through auto-enrolment currently those who benefit from the labour of someone they employ have to pay a percentage of the worker's total remuneration into the worker's pension. The 'employer contribution' acts as an incentive for the employee not to opt-out of the pension scheme. The Government could look to establish a similar principle for the self-employed to save for their retirement, which could generate a step change in the way that self-employed people save for their future.

Of course, digital payments are not required to make the most of the opportunities presented above, but it could be possible to design payment software that automatically transfers money directly into a pension pot or Lifetime ISA so that it becomes as much of a norm as when an employed person has their employee contributions deducted at source.

Paying the right tax

Those in employment benefit from the fact that their employer or agency manages their tax and national insurance liabilities for them. This results in relatively low rates of non-compliance when it comes to paying the right amounts. However, the self-employed do not have this benefit and so have to decide how best to ensure they pay the right amounts.

Making Tax Digital (MTD) is arguably the most radical overhaul of the tax system in a generation and is a key part of the government's plans to make it easier for individuals and businesses to get their tax right – meaning the end of the annual tax return for millions. This is important because in 2016, of the 5.5m businesses in the UK, 96% employed fewer than nine people, with 4.2m (76% of all businesses) employing no one.[55] While the election may have delayed the legislation, it is clear that a more dynamic system of taxation for the self-employed is necessary and we expect the government to continue with MTD reforms as soon as possible.

> **"Hermes would be glad to provide guidance and advice to couriers about keeping their tax affairs in order. Hermes would welcome comfort from DWP and HMRC in this respect confirming that providing such guidance to its couriers does not put at risk their self-employed status."**

Hermes submission to Review

A number of concerns were raised by self-employed people, including the capacity for smaller firms to adapt and the overall increase in regulatory burden. The majority of businesses want to get their tax right, but the most recent tax gap figures show too many businesses are finding this hard. In fact, over half (72%) of those gig economy workers we surveyed said they would welcome an online tool to support them in paying the right tax. MTD will reduce the likelihood of avoidable errors and make the process of calculating tax liabilities easier. Once rolled out, most businesses, self-employed people and landlords will be able to keep track of their tax affairs digitally, in real time and update HMRC on a quarterly basis. This is clearly a step in the right direction.

We were encouraged that HMRC is already working with third party vendors to encourage development of apps and software through which small business, including the self-employed and landlords, will comply with their MTD obligations. A small number of developers even released products in time for the start of live testing in April 2017, with large players set to follow shortly. Testing has begun with small numbers and will increase to hundreds of thousands of businesses ahead of a mandatory start date (for businesses with turnover above £85,000) in April 2018.

> **"There is a need for financial services designed for people with irregular incomes. People with irregular incomes still need to meet regular outgoings such as rent, food etc. But financial services are often designed around regular payments even when they do not need to be."**

BreadfundsUK, via Dialogue

However, millions of self-employed individuals operating in the gig economy and other parts of the economy will have turnover of less than £10k a year. For many, this will be a second job, building on income earned in another role. For others (for instance, students and carers) this may represent a small additional income and not the main source of earnings in the household. In either case, individuals in this group should still be undertaking a self-assessment each year and, even where there is no income tax liability, there may be NICs due.

Government should continue to work with providers to ensure that self-employed people have access to online tools that support compliance with the principles of MTD even if they do not meet the minimum statutory threshold.

CASE STUDY

The Estonian Tax and Custom Board (ETCB) have been working with Uber in Estonia to pilot a collaborative project which simplifies taxation for Sharing Economy workers. This involves Uber sharing information on financial transactions between customers and drivers, which they already collect via their platform. This information can then be used by the ETCB to prefill the driver's tax-forms. This is made possible by the fact that Uber's services are paid for electronically. This pilot has now been completed and the ETCB are developing an e-service for online platforms and their customers to facilitate the declaration of income.

There are a number of ways in which platforms could support the self-employed in this space from the most basic interventions, for example ensuring income data could be drawn easily down into software and apps, to more sophisticated services, helping individuals save during the year. For instance, platforms could offer to hold a proportion of income to cover any potential tax liability that year so that individuals are not left short.

The hidden economy

The decision to become self-employed does not result in the individual opting out of wider society. We have already mentioned the case for equalisation of NICs, but it is also important that self-employed people pay the right taxes so that the country can afford to fund the NHS, the police and other national services. However, according to a HMRC consultation last year, the hidden economy cost as much as £6.2bn to the UK in 2013/14 – 18% of the total UK tax gap. Policing the hidden economy is harder where these is little or no audit route for enforcement officers to examine – which is what occurs when payment for the work of self-employed people is made in cash.

The move towards more digital transactions outlined in the last chapter is important because a cashless transfer creates a digital record of payment from one individual or business to another. This can help to change the behaviour of those individuals who are non-compliant as a result of inertia rather than through conscious choice. It can also support consumers in making the right choices. Not only are these digital records easier to bring together at the end of the year than paper receipts and invoices (avoiding forgotten or lost 'jobs'), but they also provide a clearer audit trail for HMRC to examine should an investigation be undertaken. The idea that self-employed people are required to provide a record of their earnings to Government and pay tax as they earn may seem intrusive but this is exactly the requirement placed upon and accepted by all employed people paying through PAYE.

Government should consider accrediting a range of platforms designed to support the move towards more cashless transactions with a view to increasing transparency of payments, supporting individuals to pay the right tax.

Most of those who hire casual self-employed people, for example, as gardeners, window cleaners or child-minders, want those workers to be paying the appropriate tax. However, it is hard to be sure that they are and so many people inadvertently participate in the informal economy, something that is bad for tax payers in general and unfair to the vast majority of self-employed people who pay their dues. Moving over time to cashless Government-accredited platforms for the payment of self-employed labour would shift the default significantly, meaning only those who intended to would participate in the informal economy. Fully implementing this move could reap several billions in additional revenues.

CASE STUDY

In 2012/13, there were over 65,000 incidents of metal theft in the UK, some of which, for instance railway cable theft, caused huge disruption for commuters and the economy. On 3 December 2012, all cash transactions for scrap metal recycling were banned. This was coupled with licensing requirements for sellers the following year through provisions in the Scrap Metal Dealers Act 2013. The impact has been huge, with only around 16,000 incidents of metal theft reported in 2015/16 – a reduction of 74% on 2012/13. While the precise cost of metal theft before these changes was not known – estimated to be between £260m-£770m a year – the reduction in levels to less than a quarter in such a short period of time shows how cashless transactions can have a significant impact.

At Budget this year, the Government set out next steps on how to tackle the hidden economy. The concept of conditionality is one that we think has significant merit and could become the springboard for a much more radical move towards promoting cashless transactions. The idea of making access to certain licences or services conditional on tax registration gets people over the first hurdle, but maintaining this pressure for individuals to comply with their legal obligations should not stop there and can link into the needs of consumers as much as the self-employed individual.

> HMRC should link up with others across government to examine whether the underlying principles of conditionality could be applied more broadly in this space, supporting both self-employed people and consumers in their choices.

This could include linking an individual's right to work to a certain payment mechanism. This would not only allow the Government to have some oversight of the work being undertaken by those working under visas in the UK, but also give confidence to consumers that the people they are paying are legally entitled to work in the UK.

Next steps

Self-employment is, and will continue to be part of the mainstream with self-employed people requiring different levels of state support and intervention. The Government should respect self-employed people who want to go it alone, but must do what they can to both encourage these to plan for the future as well as help to provide a safety net for those more vulnerable. Over the coming years, the Government should:

- **Examine the most effective ways to ensure self-employment is considered alongside employment at those points where people make career decisions, both through Jobcentre Plus and the National Careers Service.**
- **Government should invest time and money in technology, encouraging digital solutions to support self-employed people comply with their legal requirements as well as think about the future, through the provision of a Catalyst environment.**
- **Consider how embracing the move towards cashless transactions can both support self-employed people and consumers in making informed decisions as well as supporting HMRC in addressing the tax gap by looking to extend the principles of conditionality as far as possible.**

11. Scope for development

Summary

The Review believes that all work should be fair and decent, with scope for fulfilment and development. We have focussed particularly on the lower-paid end of the labour market where we believe that Government should do more to enable people to remain in and progress to better quality work. Key to this is how people working in atypical or casual work are able to obtain, improve and evidence skills and experience over the course of a working life.

The over-arching question of how to equip working people to succeed in a rapidly evolving marketplace is of course a very broad one. We do not pretend to have considered all the issues, let alone to have all the answers. However, particular questions around **apprenticeships**, **transferable skills** and the **interaction between employers and schools** have come up repeatedly in the Review and so we have focused on those.

As set out in Chapter 4, the UK labour market of 2017 is very different from that of 30 years ago. More people are working in less traditional ways and certain roles in certain sectors have been altered beyond recognition in the last decade, especially by technology. These trends are likely to continue and so the skills and attributes that an individual needs to be successful over his or her working life will also need to evolve. We must equip our children and young people to enter the labour market successfully, but Government, employers and individuals also need to make sure everyone is best placed to thrive throughout what might be a working life spanning 50 years or more.

During the course of the Review, we heard from employers about the value they place on the numeracy, literacy and digital skills of young people entering their workforces. We also heard time and time again about the importance of transferable skills, such as communication, team-working and organisation, alongside job-specific technical qualifications and training. This will be very familiar territory for anyone who has had even a passing involvement with skills policy over the last 20 years, but the particular issue it raised with us as a Review was how new forms of working – including in the gig economy – are giving rise to new opportunities or obstacles in this sphere.

As previously full-time, regular hour, occupations are parcelled up into 'gigs' or more temporary employment, there is clearly a challenge to make sure individuals working in this way can defend their position and progress as the context changes around them. This will mean ensuring they are able to articulate and evidence the skills and experience they are accumulating, as well as providing appropriately flexible opportunities for more formal 'off-the job' training.

The UK skills profile is characterised by rapidly increasing numbers of graduates, but low levels of higher intermediate skills when compared internationally, with nine million adults with low literacy, numeracy or both[56].

For those employed, there has been a gradual decline in the level of training: the number of employees working fewer hours due to attending a training course has declined from 140,000 in 1995 to 20,000 in 2014. There has also been a decline in the number of adults participating in learning[57] outside work.

Recent Government reforms, including Apprenticeships and those arising from the Sainsbury Review, have particularly focused on the higher intermediate level where the UK is weaker internationally. They have also aimed to ensure much stronger employer involvement in determining need.

Apprenticeship Levy

From April this year, all employers with a paybill of over £3m must pay 0.5% of this into the Apprenticeship Levy. The rationale of the levy is to give large employers a direct stake in driving up Apprenticeship numbers and quality, given the historical decline in 'off-the-job' training above. Levy payers will be able to access funds through the Apprenticeship Service; where the employer is not a levy payer they will make a 'co-investment' of 10% of the costs.

> **"To encourage employers to continue to upskill and invest in the training and progression of their employees we would ask the Government to build more flexibility into the current Apprenticeship Levy."**
>
> Business in the Community submission to Review

The apprenticeship levy was raised by almost every employer we spoke to during the Review. Sometimes (often in larger companies) it was to highlight the focus on training and Apprenticeships that the levy is engendering at senior decision-making levels in the company. We also heard reports of industries (such as finance) which have not traditionally had Apprenticeships, thinking hard about how best to make use of the new system. These accounts are positive, but we also heard concerns of competitor companies not taking training through Apprenticeships seriously or finding ways to avoid the levy if they can. Both points concerned the Review.

It is estimated that less than 2% of employers will meet the paybill threshold to pay the levy[58]. However, the levy is a substantial cost and is one element of the 'employment wedge' that has been raised with us in the Review.

Very specifically, the Review heard concerns about the inability of atypical workers to benefit from the apprenticeship levy, which is a key plank of the Government's skills policy. To be an apprentice you have to be employed and commit to the programme for a minimum of 12 months. Whilst there have been recent welcome changes to allow Apprenticeships to be completed part-time, substantial issues remain about how atypical workers access workplace training. Apprenticeships are prescriptive about how the 20% of 'off-the-job' training requirement training may be delivered.

> **"It is clear that the self-employed can find it difficult to access training and may be unable or unwilling to pay for training themselves. Currently the Apprenticeship Levy means that recruitment firms have to pay it even though they largely recruit PSC or self-employed workers… We think that reforms to the Apprenticeship Levy could help in the provision of training for the self-employed."**
>
> The Association of Professional Staffing Companies (APSCo) submission to Review

There is also evidence of clear disparities in access to Apprenticeships. People from BAME backgrounds and those with disabilities are less likely to be in an Apprenticeship; women are more likely to be in Apprenticeships in low paid sectors.

Concerns have been raised about ensuring sufficient public resources are available for Apprenticeships and workplace training in small and medium sized enterprises, and the impact the levy might have on this. SMEs are more likely to have workers in atypical employment arrangements, so it is important that there is sufficient focus on non-levy Apprenticeships.

CASE STUDY

The 5% Club is an industry led campaign to increase the proportion of the workforce made up from those on an Apprenticeship, sponsored student placement or graduates on recognised training schemes. Members aim to have 5% of their workforce on one of these schemes within 5 years of joining the club. Members report progress annually – in their annual report and accounts. For more information: www.5percentclub.org.uk

In-work learning is about more than Apprenticeships. Employers regularly report this in surveys and say that modules of learning can be more valuable and flexible than full qualifications. Although the number of Apprenticeships starts is important, we should consider the total amount of training that employers do and who gets what training.

We have also heard concerns about the incentives and opportunities on employers to use the money raised by the Levy. Employment agencies and umbrella companies have to pay the Apprenticeship Levy if their paybill is above the £3m threshold. Yet it is likely that they have substantially fewer employees who are eligible to be apprentices. Apprenticeship Training Agencies will employ apprentices for those who cannot commit to the length of time an apprenticeship requires. This allows individuals to experience different work places on a secure contract. However these agencies are not widespread: there are only 66 on the national register.

In the recruitment agency sector, we also heard instances of the cost of the Apprenticeship Levy being passed directly through to agency workers, thereby adding to the difference between the advertised rate for the job and what the individual receives in take-home pay. This is not illegal but it is another reason why clarity and transparency of pay for agency workers, including those who are paid through an umbrella company, is so important.

As the new apprenticeship system beds in, Government should examine how it could be made to work better for those working atypically, including through agencies. The Government should ask the Institute for Apprenticeships to work with sectors using high levels of lower-paying and atypical work to ensure that they are making best use of the current apprenticeship framework.

Following the delivery of the 3 million apprenticeships that it is committed to, Government should consider making the funding generated by the levy available for high-quality, off-the-job training other than Apprenticeships. The Institute for Apprenticeships should also be tasked with reporting on and addressing disparities in the take-up of apprenticeships for different groups.

Transferable Skills

Businesses need the right labour to succeed and individuals need to find and progress in quality work. That's why we believe every job should have the scope for fulfilment and development. To this end, employers need to think hard about how they are designing jobs that will complement increased automation. Schools, colleges and universities need to prepare young people for an increasingly diverse career, in roles that do not yet exist. With two thirds of the UK workforce of 2030 having already left full-time education[59], this is not just a challenge for those who are starting out in their working life, but also for those who have significant experience behind them.

As we have seen in Chapter 4, hundreds of thousands of people in the UK move each year into and out of employment, sometimes working for more than one employer, often combining work with study and caring for others. Over their working life, people will expect to obtain their income from more than one source, sometimes simultaneously. Employability therefore becomes less about securing a first job, but about being able to maintain employment and obtaining new employment where required. Hillage and Pollard[60] summarised employability as the capability to move self-sufficiently with the labour market to realise potential through sustainable employment.

"To deliver opportunities for all people throughout their lives it is important that there is a focus on ongoing skills development – this should include small business owners, their staff and the self-employed. We are particularly supportive of life-long learning and small businesses should be supported to up skill both themselves and their staff."

FSB submission to Review

With average earnings growth in the UK forecast at 2.6%[61] in 2017, which equates to 0.3% in real terms[62], switching jobs has become a way to progress further in the labour market and earn more. Analysis done by BIS[63] in 2013 showed that 34% of those in the lowest decile of the gross weekly pay distribution moved up to a higher decile over 5 quarters. Just under 30% of those that progressed up the distribution had moved jobs whereas only around 10% of those that stayed in the bottom decile of the distribution had moved jobs. However, it is worth noting that job moves were more likely to result in higher pay when they are voluntary, whereas those who lost their jobs were more likely to end up being paid less in their new role[64].

As we have found with many issues in the Review, in training and development it is not that traditional practices are no longer to be found. For many people, the opportunity to progress within the same company – or certainly sector – over a sustained period, still exists. The concept of starting at the bottom and working your way up, supported by employer-provided learning and development which may or may not include formal qualification, remains. Many good employers have performance management policies which give individuals feedback and recognition for work done, skills achieved and potential demonstrated.

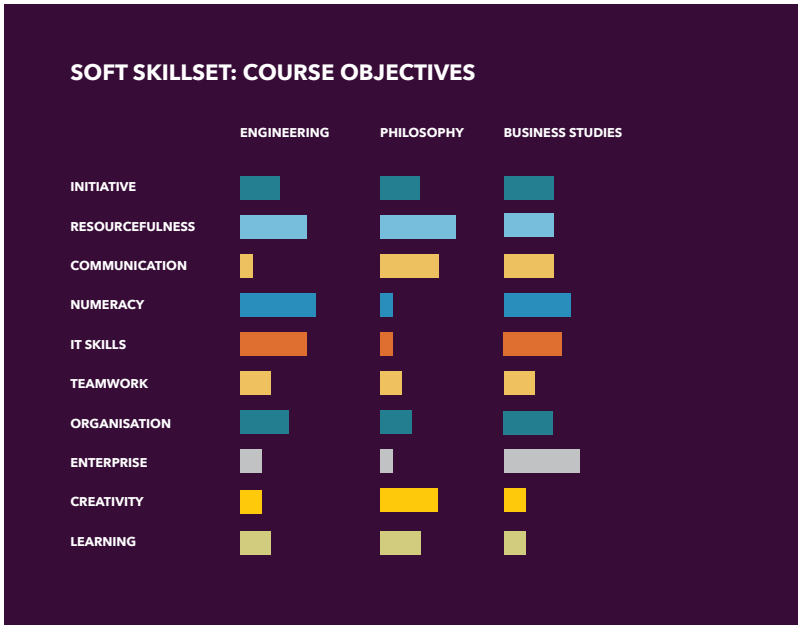
However, employer practice varies and for those who work atypically or who are self-employed, the picture may look very different. In some sectors with high rates of temporary contract working, such as IT, there is a strong culture of individual responsibility in developing and maintaining a set of skills that allow you to make the most of opportunities offered. These opportunities tend to be more accessible to those who already have a basic platform of skills (those already highly skilled are four times more likely to get training at work). The Review believes that we need to look again at ensuring all employees have the chance to work their way up the ladder – a responsibility to lead this themselves, and support to do so.

As set out above, in the context of the overall UK skills profile, employers place great emphasis on transferable skills as well as role-specific capability and knowledge. The Flux report found that 62% of the employers surveyed felt that leadership skills were the most important skills, followed by management skills and resilience[65]. In addition 80% of the line managers interviewed said they had to learn more and develop faster than they did five years ago in order to stay successful in their role. As technology reaches beyond basic automation and into higher-skilled occupations, these skills will become more crucial still.

Questions around employability or transferable skills have been the subject of substantial academic research. A range of frameworks have been developed by academics, educators and industry, for example by Johnny Rich of PUSH[66] and STEMNET[67]. These attempt to set out what the components of concepts such as 'communication' might be and how they might be taught, learnt or developed to different levels. In this way, educators can match their courses to the framework, employers can match their job vacancies to the skills they require and individuals are more easily able to have greater direction in planning their career. A commonly understood spine of employability skills could also form the basis for conversations between employers and employees about job design, on the job training and appraisal, all with the aim in mind that every job enables people to develop their future employment potential. But different employers and institutions are approaching this task differently, using different criteria. This makes overall comparison more difficult than it need be for the individual and makes it less likely that there will be public awareness and buy-in to employability as an important part of work and personal development.

While work has become more flexible, too often learning and skills does not match this flexibility. For example, Advanced Learned loans, which require some people to take out university-style loans for training, are only open to full qualifications.

In his publication 'Employability: Degrees of Value'[68] Johnny Rich of PUSH sets out the soft skills University courses might aim to provide and compared these to those employers are seeking for various roles.



Since their introduction, learning covered by these loans has fallen by one third and the budget has been consistently underspent. In addition, funding rules mean that someone who has worked for much of their working life but now needs to retrain is unlikely to get much help or support.

> Learning from the failings of Individual Learning Accounts the Government should explore a new approach to learning accounts, perhaps with an initial focus on those with a long working record, but who need to retrain and those in receipt of Universal Credit. The new £40 million Lifelong Learning Fund is a starting point for this and should be developed by bringing together employers, civic society and the education sector.

There is currently a large programme of work underway in Government to develop the new 'T Level' technical routes. These are part of the Sainsbury reforms and will include substantial 'real-world' work placements. As the overall framework is tested with groups of employers, accrediting bodies and ultimately passed through to education providers to deliver, we will learn more about the true demand for transferable skills, but also how students develop them. There should be easy reference from this into other forms of learning, including Apprenticeships and degree courses, as well as 'on the job' experience. This should include existing publicly funded employability provisions as well as how employability applies to other formal and non-formal provision.

The Review considers that, especially for those who are already in the labour market and who are looking for routes to progress into better paid or more secure work, there would be value in a standard approach and language around employability skills. The type of conversation about development and potential which good employers already provide should be more accessible to everyone. Nobody is advocating a plethora of poorly-accredited 'soft' qualifications which are of dubious value to individuals or employers. However, the Review believes it is time to take a standard approach to the concept of transferable skills and widen it across the economy as a whole.

> Government should use its convening power to bring together employers and the education sector to develop a consistent strategic approach to employability and lifelong learning. This should cover formal vocational training, 'on the job' learning and development, lifelong learning and informal learning outside work. It could be linked to the longer-term development of life-time digital individual learning records. As part of this, the Government should seek to develop a unified framework of employability skills and encourage stakeholders to use this framework.

Digital badges

The Review is very supportive of work that is going on in schools and via third-sector organisations to develop non-cognitive life skills such as character and resilience. It is very obvious to us that many of the skills that employers are demanding are cross-cutting and will not be developed in full in a purely academic setting. This is even more true for those who have been in the labour market some time and are perhaps balancing atypical work with other responsibilities.

As people move between jobs and through life it should be easier for them to talk about the skills they have developed along the way. This should be true for those working in the gig economy, where approval ratings are widely used by platforms and can provide useful evidence of experience and success.

> Government should strongly encourage gig platforms to enable individuals to be able to carry their verified approval ratings with them when they move from the platform and to share them with third parties.

Another way of enabling individuals to easily demonstrate their skills and experience could be through the use of digital badges, a form of flexible online accreditation, which employers and education providers can award to individuals.

CASE STUDY

City of Learning'69 is a project which utilises these digital badges as well as the many resources within cities such as museums, libraries, workplaces and colleges. The first City of Learning was in Chicago, where they helped young people follow their desires and develop their interests, by showing what they could learn and become. The Royal Society for Arts has taken this initiative and has been working with City and Guilds to implement this within the UK. They plan to launch the first City of Learning in the UK this year.

CASE STUDY

'World Chefs' have worked with DigitalMe and City & Guilds to create digital badges that cover a range of levels and different specialisms within the culinary sector. These badges allow people to follow a schedule and submit their evidence to the awarding company, for example around dishes created or support given to others in the workplace. If their evidence meets the criteria they are then awarded the badge which contains all the information about what exactly they did to achieve the badge and they can take it with them through their working lives. World Chefs would like these badges to become the global industry benchmark.

Lifetime Learning

The Review heard from workers in industries that did not exist before smartphones or where the skills required were fundamentally different to a generation ago. We also heard examples where the local labour market was imbalanced, with dependency on certain sectors or individual employers. Not only does this affect the power that workers in such an area have currently to determine their pay and conditions, it also leaves them vulnerable to structural shifts which might occur in the future.

Whilst the Review is optimistic about the jobs that automation will create, it is clear that in some sectors and to some groups of individuals, the effect will be profound. For example, McKinsey estimate that over 20m people worldwide are heavy tractor-trailer truck drivers for a living[70]. Supporting them to adapt to the transition to driverless vehicles will be a significant challenge over the next decade.

It's clear therefore that individuals will expect to carry on learning throughout their working life, whether continuously or periodically. We know also that there are significant barriers to them doing this and that this disproportionately affects those at the bottom of the labour market. Over half of those in the lowest socio-economic group have not participated in any training since leaving education[71].

The Review is therefore supportive of Government efforts to increase participation in 'lifelong learning.' In this regard, the Review notes the commitment in the Industrial Strategy Green Paper to test new approaches. It notes the Budget announcement of funding of up to £40 million to fund trials into the use of 'contact moments' people have with Government to promote opportunities to retrain. Properly evaluated, these trials will be an important part of understanding better 'what works' in supporting progression to better quality work, which we discuss more in the next Chapter.

Positive Interaction with Employers

We heard during the Review of excellent work that is going on in schools and colleges in partnership with local employers, often facilitated by organisations such as the Careers & Enterprise Company[72] or local Chambers of Commerce, to highlight to young people the careers that they might pursue and to develop in them the skills that they will need to succeed at work.

Engagement between employers and schools and colleges can clearly take many forms, including input into course design, 'Speakers in Schools' initiatives, workplace mentoring or formal work experience. Different interaction will be appropriate for different localities and stages of education, but taken in sum, this type of activity should provide an up-to-date picture of the labour market for those who are about to enter it.

In 2012 the then Government introduced a new statutory duty on secondary schools in England to provide independent careers guidance to students. Colleges have an equivalent duty written into their funding agreements. There is statutory guidance on how to meet these duties but the requirement to provide a period of pre-16 work experience was removed.

Fewer than half of UK students complete a work placement, compared with 87% of those in France[73]. For those over 16, involvement in part-time work, training at workplaces or Apprenticeships can all help to increase employability and reduce the risk of becoming NEET (not in education, employment or training). Those combining full-time education and part-time work at age 16-17 have a lower probability of becoming NEET in the following five years, compared with those who are in full-time education without any sort of work[74].

The Review is fully supportive of the type of interaction that we have seen between local employers, schools and colleges in shaping young people's decisions about their future. It is very positive that the new 'T Level' qualifications will contain substantial work placements.

Based on research in six countries, the Gatsby Foundation[75] has set out eight benchmarks for a well-rounded careers programme. Only a very small number of schools in England are currently achieving more than a couple of the benchmarks yet estimates of the economic returns on improved labour market outcomes are sizeable. The Foundation is currently piloting the benchmarks with the North East Local Enterprise Partnership.

Gatsby Benchmarks: Good Careers Guidance

1) A Stable Careers Programmes	Every school and college should have an embedded programme of career education and guidance that is known and understood by students, parents, teachers, governors and employers.
2) Learning From Career And Labour Market Information	Every student, and their parents, should have access to good quality information about future study options and labour market opportunities. They will need the support of an informed adviser to make best use of available information.
3) Addressing The Needs Of Each Student	Students have different career guidance needs at different stages. Opportunities for advice and support need to be tailored to the needs of each student. A school's careers programme should embed equality and diversity considerations throughout.
4) Linking Curriculum Learning To Careers	All teachers should link curriculum learning with careers. STEM subject teachers should highlight the relevance of STEM subjects for a wide range of future career paths.
5) Encounters With Employers And Employees	Every student should have multiple opportunities to learn from employers about work, employment and the skills that are valued in the workplace. This can be through a range of enrichment activities including visiting speakers, mentoring and enterprise schemes.
6) Experiences Of Workplaces	Every student should have first-hand experiences of the workplace through work visits, work shadowing and/or work experience to help their exploration of career opportunities, and expand their networks.
7) Encounters With Future And Higher Education	All students should understand the full range of learning opportunities that are available to them. This includes both academic and vocational routes and learning in schools, colleges, universities and in the workplace.
8) Personal Guidance	Every student should have opportunities for guidance interviews with a career adviser, who could be internal (a member of school) or external, provided they are trained to an appropriate level. These should be available whenever significant study or career choices are being made. They should be expected for all students but should be timed to meet their individual needs.

The Review supports the view that good quality work experience can be part of a well-rounded careers education in schools and colleges. Organisations such as Fairtrain and CIPD provide useful advice and accreditation to employers, schools and young people looking to participate in work experience to ensure all parties get the most out of it.

> In developing a national careers strategy, the Government should pay particular attention to how those in low paid and atypical work are supported to progress. It should take a well-rounded approach, promoting the role of high-quality work experience and encounters at different education stages.

Interns

There has been significant media interest in the issue of internships, which are particularly prevalent in certain industries and sectors. Whilst the Review is fully supportive of ongoing engagement between employers and training providers, including periods of work experience where appropriate, it is clear to us that unpaid internships are an abuse of power by employers and extremely damaging to social mobility.

This view is supported by the Social Mobility Commission "State of the Nation" report from 2016 which found that that work experience was becoming crucial to securing a graduate job, but work experience opportunities were not fairly distributed across the country. A 2015 survey showed that 62 per cent of businesses in London had employed an intern, compared to 28 per cent of businesses in the Midlands, 39 per cent in the East and 33 per cent in the North.

With around a third of graduate internships being unpaid, graduates from outside London who were unable to stay with their parents while working in the capital often faced significant cost barriers to participating in unpaid internships (and even paid internships) given the higher accommodation and living costs.

There have been calls for a separate 'intern' status in employment law but we believe this is unnecessary. We believe that the law is clear as it currently stands. If a person is obtaining something of value from an internship, they are most likely to be a worker and entitled to the National Minimum or Living Wage.

> The Government should ensure that exploitative unpaid internships, which damage social mobility in the UK, are stamped out. The Government should do this by clarifying the interpretation of the law and encouraging enforcement action taken by HMRC in this area

12. Opportunity to progress

Summary

The Review believes that genuine flexibility, whereby individuals and employers are able to agree terms and conditions that suit them both, above a statutory basic minimum, is both the key strength of the UK labour market and also a core component of fair and decent work.

As a society we should be bolder in designing flexible jobs that allow people to remain and progress in the labour market as their personal circumstances change. This is good for health as well as the economy. Public agencies need to work more closely together at a local level to understand how to keep people in work and to support them to progress.

Flexible Working

The Review has heard repeatedly about the benefits of the UK's flexible labour market. Employment rates and levels have never been higher. Although substantial challenges remain, for example around the disparity of labour market outcomes for those with a disability or from certain BME groups, this is true even for groups which have traditionally been under-represented in the labour market.

CASE STUDY

Over the next twelve months Tesco's staff will be able to take control of their work schedules by using an app to manage their hours, overtime, shifts, holidays and leave. The new technology will enable them to select overtime across a number of stores and departments, giving them more opportunities to work additional hours at a time and location that suits them. This will be underpinned by two new approaches:

- Tesco is investing in training people so they can do a greater number of roles in the store, increasing skills, variety and earnings potential while enabling a more flexible response to the needs of customers. People will have the freedom to work in new departments and roles across the store and gain more experience.
- Tesco is also introducing new contracts that offer two way flexibility, with the ambition to improve guaranteed hours. People will be able to select from a range of new working options, including term-time only, seasonal and job shares. When vacancies arise Tesco is trialling first offering the additional hours to existing staff.

Taken from evidence to the Review provided by Tesco

The UK approach of 'light and even' regulation is generally thought to have protected employment during the recession and facilitated job growth since then. The fact, for example, that we do not set out in law the number of hours that constitutes a full-time job helps us to have one of the widest variation in hours worked in Europe.

Notwithstanding the instances of one-sided flexibility which we have discussed in Chapter 6, this approach means that individuals generally have more opportunity to agree working patterns which enable them to balance other commitments in their life, such as around family or other caring responsibilities. In conjunction with active labour market policies around welfare to work, this has led to very positive increases in employment for groups such as lone parents.

It is the view of the Review that technology has the potential to drive the shift to quality flexible work further.

As we have said throughout, it is important that Government and others focus on the quality of work, as well as the quantity or number of people participating in the labour market. Use of the word 'flexible' in this context has strong cultural significance. Some of our European neighbours consider that the UK goes too far in allowing individuals to make trade-offs between the different aspects of a job that might be important to them. There are undoubtedly some challenges here, particularly looking at real earnings growth towards the bottom of the income scale but above the rate of the National Minimum/Living Wage. We should not be complacent, but as set out in previous chapters, the Review believes that the general approach to labour market regulation in this country, the British way, is right. We do not propose wholescale change, for example through adoption of mandatory sectoral collective bargaining, but we do believe that Government and employers could do more to enable people to find and remain in quality flexible work with the opportunity for progression.

Who are atypical workers?

The Review was specifically asked in its terms of reference to look at the opportunities that new ways of working and technology could offer those currently under-represented in the UK labour market. We set out the characteristics of these groups are and their levels of participation below.

Women

The female employment rate is at a record high (70.2%),[78] but still remains below that of men (79.5%). Women disproportionately work part-time (41.4%) compared to men (13.3%) and part-time self-employment is growing, driven largely by an increase in self-employed women. Together with occupational segregation, lower median hourly earnings for part-time workers are one of the root causes of the gender pay gap.

Women make up the majority of workers on a zero hours contract (52%).[84] Women make up the majority of temporary employees. Women account for 54.7% of casual workers and 57.0% of those on fixed period contracts. The majorities held by women are even stronger for part-time temporary work, where women account for 58.0% of casual workers, 70.1% of fixed-term contracts, and 52.1% of seasonal work. Agency workers are more likely to be men (54%). However, whilst temporary working overall amongst men has declined between 2011 and 2017, temporary working by women has continued to grow.[87]

Older and Younger Workers

Self-employment is more prevalent amongst older people; around 40% of those aged 65 and over who work are self-employed.[88] People on zero hours are more likely to be younger (33% are in the 16-24 age category),[89] and 18% of people on "zero-hours contracts" are in full-time education compared with 3% of other people in employment.[90] Agency workers are significantly over-represented among younger groups, with close to half (47.9%) being aged under-35 compared with closer to one-third (38.0%) of the workforce more generally.[91]

> **"As an economy, we currently miss out on the skills, flexibility and willingness to work of carers, retirees and people with disabilities. Tapping into this talent pool would benefit companies and the wider economy as much as the workers themselves."**
>
> Adecco Group submission to Review

Gig workers

According to research by CIPD[79], a higher proportion of gig workers are aged 18–29, with nearly four in ten falling into this category, compared with just 21% of 'other workers' (workers that do not work in the gig economy). However, just 30% of respondents that work in the gig economy are aged 40 or above, compared with 56% of other workers. Gig economy workers are marginally more likely to be male (56%) than the other worker survey average (53%).

Those respondents that work in the gig economy have a broader range of ethnic backgrounds than those in the other worker sample. Less than seven in ten gig economy respondents (68%) describe themselves as white British compared with 85% of the other worker sample. There are also a significantly higher proportion of gig workers who describe themselves as either Indian or black African compared with the sample of other workers.

Flexible Quality Work

With more people participating in the labour market than ever before and as the nature of work and society changes, most people will at some point need to make different trade-offs between work and home commitments.

The desire to be able to make, often small and sometimes temporary, adjustments to working patterns to accommodate other commitments outside work is common to most under-represented groups. The Right to Request Flexible Working was extended in 2014 to all employees with 26 weeks' continuous service. With this, Government sought to take a pragmatic or 'nudge' approach, seeking to encourage rather than impose cultural change in the workplace.

There has clearly been a significant move towards this type of working over the last 10 years: 92% of employers say that they have at least one form of flexible working practice available in their workplace; 60% of employees have said they have done some form of flexible working in the last 12 months.[80]

Crucially, flexible working can also enable people to remain in the labour market who would otherwise be forced to stop work. We know that any period of involuntary separation from the labour market significantly affects future labour market outcomes. This scarring effect is greater for longer periods of absence.

It is also much more marked for certain groups, for example disabled people and women. Disabled people are twice as likely to be unemployed, after an absence of a year[81], than those without a disability. For women the impact of maternity leave is evidenced through the gender pay gap[82].

CASE STUDY

Lambeth Elfrida Rathbone Society is a community support provider in south-east London.

Timewise worked with Rathbone managers to create a pilot team of ten support workers who worked with the 22 service users in a particular geographical area of Lambeth. They devised a team-based approach to scheduling, agreeing parameters around service user support quality, and protocols around how swapping and sharing calls could be done, while maintaining continuity of care and appropriate safeguarding and manager oversight.

Feedback from team members at the end of the pilot showed that they felt they had more input into the schedule, and that the schedule was now fairer across the team. They also reported that the pilot had reduced their isolation and travel time, improved teamwork, increased their knowledge about service users and their needs, and improved the support provided to service users. The pilot improved commitment to working at Rathbone, and reduced intention to leave. Compared with non-pilot team staff, the pilot team spent 30% less time travelling, and had one hour per week extra contact time with service users.

Timewise, Caring By Design. How care providers can improve recruitment and retention by redesigning care jobs to be more compatible with carers'non-work lives (2017)

The Review heard good examples of how thinking creatively about scheduling had enabled employers and working people to agree a solution that worked for them both. A typical work is and should be a positive part of this consideration. 75% of the self-employed say that they are satisfied with the flexibility to set their own schedule around other commitments in their life.[96]

While the Review has heard about some of the challenges that 'gig working' brings, especially around insecurity of income, we do not see flexibility as incompatible with ensuring that more atypical workers have access to employment and social security protections. When gig workers have extolled the virtues of their flexible schedule to the Review, they also do not see this as contradictory with access to basic protections such as the National Minimum Wage, for example. As set out in Chapter 6, the challenge is in achieving both.

Quality work that is flexible and allows for fulfilment and development requires careful thought around the interaction of consumer demand, technology and societal norms.

Technology should allow employers to examine closely which activities need to be done at a set time and which can be done on an output basis, but some sectors and organisations have seemed culturally more open to this change than others. For example, the gender pay gap in the US pharmacy sector[83] is much lower than it was in 1973 and also than in comparably skilled professions. Over this period, in response to consumer demand for 24/7 services, the sector has moved to much more explicit shift work (rather than corporate business hours) which is thought to have enabled women especially to balance the demands of work and family.

It is the view of the Review that there is further to go in encouraging this kind of thinking at an early stage. It is still the case that too few jobs are advertised as being available to people who may wish to work flexibly. Work between employers and Government led to the creation in 2014 of the "happy to talk flexible working" strapline but more could be done to address the practical and cultural issues around flexible working.

As part of the statutory evaluation of the Right to Request Flexible Working in 2019, Government should consider how further to promote genuine flexibility in the workplace. For example it should consider whether temporary changes to contracts might be allowed, to accommodate flexibility needed for a particular caring requirement. Government should work closely with organisations like Timewise and Working Families to encourage flexible working and initiatives like "happy to talk flexible working" to a wider range of employers.

Pregnancy and maternity

Many of this review's recommendations on quality work will directly benefit women but tackling the issue of maternity and pregnancy discrimination needs more action. Currently the legislation is complex and the protections against pregnancy and maternity discrimination are contained in separate pieces of legislation:

- The Equality Act 2010 lists pregnancy and maternity as a protected characteristic making it unlawful to discriminate against women in this category.
- The Employment Rights Act, and Regulations made under it (e.g. the Maternal and Parental Leave etc. Regulations), protect pregnant women and women on maternity leave from detriment and dismissal and provide additional protections for women made redundant whilst on maternity leave.

There is an argument that the legislation under-pinning these rights should be reviewed and, in any event, consolidated in one place to bring clarity to both workers and employers. The same approach should be adopted with guidance on the legislation.

There is evidence of pregnancy and maternity discrimination which is supported by the research undertaken jointly by the then Department for Business, Innovation and Skills and the Equality and Human Rights Commission (EHRC) in March 2016[84]. This research found that the majority of employers expressed a willingness to support pregnant women and new mothers and more than 80% felt it was in their interests to do so. However, over 60% had not sought information or guidance relating to pregnancy and maternity and over half were unaware of Acas guidance on the subject.

From the employee perspective, the research found that 77% of mothers who were surveyed said they had a negative or possibly discriminatory experience during pregnancy, maternity leave or on their return from maternity and 50% of mothers described a negative impact on their opportunity, status or job security. The survey research suggests that redundancy rate among mothers at some point during pregnancy, maternity leave or on return from maternity leave is considerably greater than the redundancy rate among female employees as a whole with 11% saying they felt forced to leave their job.

Following this research, in August 2016, the Women and Equalities Select Committee made a series of recommendations to Government to tackle pregnancy discrimination. In its response to the Women and Equalities Select Committee inquiry into pregnancy and maternity discrimination, the Government said it would consider the issue of strengthening protections for pregnant women and new mothers at work.

There is clearly potential to work with Acas to update and promote guidance, targeting the sectors, occupations and types of employers where research suggests there are particular issues. There is also the potential to work with existing initiatives – such as the Working Forward Campaign – to encourage both employers and female employees to make the most of existing provisions such as "Keeping in Touch" days or Acas online training for managers in relation to pregnancy, maternity leave and those returning from maternity leave.

CASE STUDY

Mandy had worked for a bank on a zero-hours contract for several months without any indication from her employer of dissatisfaction with her work. However, when Mandy informed her employer she was pregnant, her manager stated there had been complaints about her work. When she challenged this, the manager changed the story to "you haven't been working hard enough". Mandy's hours were then reduced to zero. In effect, she was summarily dismissed.

Taken from written evidence supplied to the Review from Working Families.

Access to clear and accurate information would enable women more easily to spot unlawful discrimination and challenge it, as well as helping to raise employers' awareness of their obligations. BEIS is working with Acas and EHRC to improve this information which goes some way to addressing the issue and starts to tackle key areas of weakness. This approach can also focus efforts on sectors, occupations and types of employers where research suggests there are particular issues, rather than imposing a further burden on employers who are generally "doing the right thing".

It is clearly unacceptable that so many mothers say they have had a negative or possibly discriminatory experience during pregnancy, maternity leave and on their return from maternity leave. We also received written representations to the Review team on this issue, which bring this issue starkly to life.

As 4 in 5 of employers felt it was in the interests of their business to support pregnant women and those on maternity leave, there is clearly potential to make meaningful progress by focussing on a range of interventions around leadership, information and access to quality advice: to show employers what they need to do to live up to their own ambitions. But as the evidence of discrimination in this area is so concerning, the Review team feel that Government should go further.

Government should review and, in any event, consolidate in one place guidance on the legislation which protects those who are pregnant or on maternity leave to bring clarity to both employers and employees. In parallel with the range of non-legislative options and the consolidation set out above, the Government should consider further options for legislative intervention. If improvements around leadership, information and advice do not drive the culture change we are seeking, the Government will need to move quickly to more directive measures to prevent pregnancy and maternity discrimination.

Work & Health

Quality work is strongly linked to better health outcomes for individuals[85]. Good work not only enables people to support themselves and their families financially but with the right kind of support, from employers and others, work has a positive impact on health and well-being. Just as it has become conventional for both parents of small children to work, in an ageing society, we must get better at supporting those with caring responsibilities and health conditions to remain active contributors over longer working lives.

In the context of focussing on the quality of work as well as the numbers of people participating, the Review believes that there should be a greater emphasis on supporting individuals to remain and progress in the labour market. In an ageing workforce, more people will be affected by temporary or intermittent health conditions or time-limited caring responsibilities. It makes strong social and economic sense to make sure they are able to stay in rewarding and fulfilling work.

There have been a number of studies making the business case for employers to improve workplace health and wellbeing. A February 2016 publication by CIPD[86] reported that UK employees' job satisfaction was positively associated with workplace financial performance, labour productivity and the quality of output and service based on analysis of data from the Workplace Employment Relations Survey.

A 2016 report from Social Science Research Unit, UCL Institute of Education, commissioned by the Department of Health, sought to understand whether workplace health programmes are effective for improving health and business outcomes, and to identify characteristics that influence their success. The report concluded that there are benefits, for the business and employees' health, from establishing workplace health programmes. Effective interventions are supported by organisational policy, focus on specific health issues, and engaging employees.

CASE STUDY

TRAC is a small independent regulatory affairs consultancy employing around 30 people and serving the global pharmaceutical industry. TRAC's good practices and wellbeing initiatives in the workplace have been recognised in the NHS Cornwall & Isles of Scilly Workplace Health Award Programme. As a result of their efforts, TRAC have a happier, healthier more productive team – they have sickness levels of 1.6 days per employee per year, compared to 6.8 days average for the private sector.

The National Institute for Health and Clinical Excellence (NICE) issued guidance in 2015 on organisational commitment to make health and wellbeing a core priority for top management in the NHS. This places a clear emphasis on the strategic importance and benefits of healthy workplaces, encouraging a consistent, positive approach for all. The guidance is clear that top managers with remit for workplace health should address the issues of:

- physical work environment
- mental wellbeing at work
- fairness, justice, participation, and trust
- senior leadership
- line managers' role, leadership style, and training
- Job design.

There is a great deal of overlap between the analysis above and the discussion of 'quality work' in Chapter 3. Better quality work is also healthier work.

Remaining in Quality Work

The Work, Health & Disability Green Paper[87] sets out some of the barriers faced by those with a disability or health condition who are seeking to find, remain or progress in work. These barriers are multi-faceted and complex, but recurrent themes include not getting the right support from employers, as well as variations in waiting times and models of provision for certain health services from the NHS. To this end, the Review is supportive of Government efforts to view quality work as a health outcome in the NHS and elsewhere, whilst recognising the structural shift that this will require.

There is substantial public support available to individuals and employers to enable those with a long-term health condition to work. This includes Access to Work which provides financial support for the costs associated with employment for disabled people who require help beyond reasonable adjustments required by the Equality Act 2010. There is also the Fit for Work service, which provides work and health advice and occupational health assessments, and which is particularly aimed at SMEs. However, during the Review we found very little awareness of these schemes, suggesting that more could be done to ensure they, or similar support, are reaching the people they could help, including those working atypically and the self-employed.

Making progress on promoting health and wellbeing at work, and in particular addressing the issue of people falling out of work due to changes in health needs, requires effective joined up working between various agencies – employers and their organisations, Jobcentre Plus, the NHS and local authorities. The Review sees this is a challenge particularly suited to local leadership, and we note with approval the number of local authorities which have already adopted commitments to promote health and wellbeing at work.

We recommend that the relevant Government Departments – BEIS, DCLG, DWP and DH – explore ways of supporting and incentivising local authorities, particularly City Regions and combined authorities, to develop integrated approaches to improving health and wellbeing at work.

Statutory Sick Pay

There are regulatory changes that Government can make to support people with long-term health conditions remaining in quality work. In Chapter 5 we set out our view that there is a basic set of employment rights which should apply to all those who are not genuinely self-employed. We believe access to a basic level of income replacement when you are unable to work through illness is part of this fundamental employment protection. However, we believe that the current system of Statutory Sick Pay should be reformed.

> **"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."**
>
> TUC submission to Review

Statutory Sick Pay is payable by the employer to 'employees' (as defined in social security rather than employment law) at a rate of £89.35 a week from the 4th consecutive day of absence up to 28 weeks. Approximately half of employers pay more than this through contractual Occupational Sick Pay[88]. Individuals who are not eligible for Statutory Sick Pay may be eligible to claim Employment & Support Allowance from the state.

The origins of Statutory Sick Pay are as a Social Security benefit that was paid by the employer and reimbursed by the state. However, that link was broken in 2014 and the entitlement now straddles awkwardly across employment and social security protection. The policy is inflexible – it does not allow easily for a phased return to work – and it excludes those who do not meet the income threshold for National Insurance.

It is our view that access to lower level of income replacement when you are unable to work through illness is a basic employment protection, comparable to the National Minimum Wage or paid holiday, and therefore should be available to all 'workers.' Press coverage of the issues faced by people working in the gig economy has highlighted sickness protection as one of the key issues.

However, it also seems perverse to us that an employer should be liable for up to 6 months of Sick Pay for an individual who has only worked for them for a very short period of time. There is a danger that this acts as a disincentive to taking on those with long-term health conditions.

> Government should reform Statutory Sick Pay so that it is explicitly a basic employment right, comparable to the National Minimum Wage, for which all workers are eligible regardless of income from day 1. It should be payable by the employer and should be accrued on length of service, in a similar way to paid holiday currently. Government should ensure that there is good awareness of the right amongst workers and businesses.

In this way, employers will no longer face the liability for long periods of paid sick absence for those who have only worked for them for a short period of time. In conjunction with the reforms set out in Chapter 5, the individual will have much greater clarity about their entitlement to basic employment protections.

HMRC currently adjudicate on eligibility for Statutory Sick Pay and, for those on the National Minimum Wage, HMRC should continue to enforce the payment of the reformed entitlement.

Alongside this, more also needs to be done to improve the way in which the return to work is managed. For many who find themselves in a position of being out of the workplace due to sickness for a prolonged period of time, the thought of return can be part of the barrier. Employers should do more to support those able to return to work to do so, above and beyond any legal requirements to make reasonable adjustments. What is more, those who are sick should not see their job lost or long-term career damaged.

> Those individuals with the relevant qualifying period are already entitled to have their job protected for a period of time when they are away from work for perfectly reasonable reasons, for instance, having a child. A similar approach should be adopted for sick leave with individuals having the right to return to the same or a similar job after a period of prolonged ill health. This right to return should be conditional on engagement with the Fit for Work Service when an assessment has been recommended.

When developing thinking on this, policy makers will need to be mindful of some of the negative experiences of women taking, or returning from, maternity leave referred to earlier in this chapter.

Progression

As we have seen, the over-arching tenet of the Review is that there should be a greater public policy commitment to improve the quality of work, as well as the quantity of jobs created. Quality work takes different forms for different people at different stages in their lives – we know, for example, returning new mothers tend to "trade" work below their capability level for flexibility. But the ability to progress and improve whichever aspect is important is clearly fundamental to job satisfaction and overall well-being.

There should be a greater focus in national and local policy on supporting people not just to enter the labour market but to remain in work and to progress to better quality employment.

The changes to the benefit system underway through the move to Universal Credit are complex and outside the remit of the Review. However, we support the basic principle of a more dynamic, responsive welfare system, without the cliff-edges and disincentives present currently. The Review wants more people to be participating in better quality work. Ensuring that they are always better off accepting more hours or getting a better-paid job is clearly in line with that.

Indeed, the move to Universal Credit is also an opportunity. For the first time, Government, through Jobcentre Plus and other partners, will have a tangible financial incentive in proactively supporting people to progress at work. The relationship between earning more and a reduction in reliance on benefits will be much more direct. As people progress, they will become less reliant on the state and therefore the state should get much better at helping them.

But there is currently a lack of understanding about what progression really is, let alone what works best in supporting people to achieve it. There is a particular challenge here as the National Living Wage rises to take in more adults over 25 in low paid work. It is possible that we may see more 'bunching' of those receiving the statutory minimum, particularly in certain sectors or locations, with fewer opportunities to progress to a higher pay level as the differential, for example with a supervisor, becomes eroded.

Through Jobcentre Plus Government is currently undertaking trials to support 'in-work progression', encouraging individuals to earn more within what is reasonable given their personal circumstances. These trials take the form of more frequent intervention to prompt people in receipt of in-work benefits to increase their hours at work. This is clearly a welcome first step. However we believe Government should seek to go much further in understanding what truly works in enabling people to progress to better, as well as more hours of, work.

The Review acknowledges the potential and actual role of self-employment and other atypical work in enabling people for whom a traditional full-time, employed role might not be suitable, to work. Through the New Enterprise Allowance and other initiatives, Government supports those out of work to consider whether self-employment is a viable work choice for them. This could go further in promoting the benefits of gig working and self-employment. For some people, starting a small business at home in their 'spare' time may prove to be the best route to a better paid more fulfilling job.

Government should seek to develop a better understanding of what progression at work is and public policy levers influence it. Building on the trials to date, Government should work with external providers to determine what really works in supporting individuals to obtain better quality – and not just more – work. This should not be limited to increasing earnings to a level of self-sufficiency in Universal Credit and should take particular account of the effect of increases in the National Living Wage. It should reflect the opportunities offered by atypical and gig working.

The issue of the Minimum Income Floor in Universal Credit, whereby after a year a self-employed individual will be assumed to be generating earnings at least equal to the National Minimum or Living Wage multiplied by the hours they might reasonably be expected to work (typically 35 hours/week), has been raised several times with the Review. Whilst we understand the point that an individual might take longer than this to get his or her business off the ground, we think the current assumption of a year is reasonable, although it should be kept under review as the evidence emerges. More generally, Government should ensure consistent messages on the value of self- employment in enabling people to be economically self-sufficient.

13. Embedding lasting change

Summary

The recommendations we have made in this report aim to address barriers to quality work in the current labour market. We believe this will help to give all Employers the opportunity to provide fair and decent work with realistic scope for development and fulfilment. However, this addresses current barriers and not future ones. Making the UK a good work economy will only happen if Government makes a long term, strategic commitment to this goal, embeds it across public policy and is accountable for progress:

- **There must be ministerial responsibility for quality work** in addition to responsibility for the quantity of work;
- **More effort has to be placed on measuring quality of work** through agreed metrics and better data, with a focus on particular sectors;
- Government has to remain vigilant and **proactively engage where market conditions could lead to a greater risk of exploitation**;
- Government needs to **ensure the forthcoming modern Industrial Strategy makes the most of the opportunities a more productive workforce can deliver**, especially in lower paid, and lower skilled sectors;
- **Automation and Artificial Intelligence (AI) have the potential to support the development of quality work.**

Taking ownership

The world of work is changing. While traditional, full-time roles continue to represent the majority of employment in the UK, the proportion of people opting for more flexible arrangements or becoming their own boss is growing with many people choosing to mix and match their earnings through different employers during their career. The recent growth of opportunities created by digital platforms has simply made this easier.

However, the pace of change is not homogenous across the UK labour market. Nor is the impact of change in London the same as Rochdale or Exeter. In this report we have developed recommendations to help equip future generations with the ability to adapt to the changing markets we believe might materialise – but our assumptions about the future may be wrong. After all, until recently few experts accurately predicted the rise in platform work. Against this rapidly evolving backdrop, Government needs to take a more active role to ensure that greater flexibility does not come at the cost of quality. The Secretary of State for Business on behalf of the Government must be held to account for the quality of work in the UK in the same way as the Secretary of State for Work and Pensions is generally held to account for the quantity of work.

The Industrial Strategy comprises a key aspect of this new responsibility and Government should use it as the vehicle to deliver greater productivity across all sectors, creating an economy that truly works for all. To do this may require a shift in focus: given the importance of work to most people's lives, we think there should be a greater emphasis in the Industrial Strategy on those sectors which employ (directly or indirectly) most people. We are much less likely to improve productivity in this country if we fail to improve the work of those on low pay.

More can and must be done to support the aims of the Industrial Strategy by ensuring the underlying framework that supports the UK labour market continues to adapt to a changing landscape. Whether this is law itself, guidance for particular sectors or making full use of technology, all those with a stake in a successful labour market must play their role. For this reason, the Business Secretary should engage business, worker representatives and others to ensure that the principles of quality work become the foundation on which our economy is built.

> The Government must place equal importance on the quality of work as it does on the quantity by making the Secretary of State for Business, Energy and Industrial Strategy responsible for the quality of work in the British economy.

Working with business groups, unions and other experts, the Secretary of State must ensure that the frameworks supporting quality work evolve when necessary, promoting best practice and rewarding success. The Review has outlined suggested key ways to embed this change and making fair and decent work with scope for fulfilment and development a reality.

Measuring success

Governments have generally measured work in terms of quantity and the headline metrics on success or failure reflect this. High employment rates are rightly considered a success and at the moment, employment rates have never been higher. This is a very good thing; the UK is not facing some of the challenges of structural unemployment that are present in other countries. However, as we have seen, behind this headline there are problems that threaten to trap millions of people in work that is neither fulfilling nor offers routes to progress. On the basis that 'what gets measured gets done' greater efforts should be made to measure the quality of work in the labour market.

> The Government should identify a set of metrics against which it will measure success in improving work, reporting annually on the quality of work on offer in the UK.

These metrics should include all aspects of quality including pay (both absolute and relative), voice, investment in skills, employee engagement and satisfaction and other important aspects that make work truly fulfilling. Measurement of success could come in the form of more regular running of the Workplace Employment Relations Study (WERS) as well as other qualitative and quantitative measures both at a national level and across regions or specific sectors.

“Discussion of the quality of jobs or work usually relates to extrinsic aspects of work that can be standardised and compared. The minimum standard provided for by employment regulation defines the basic foundation from which work and job quality can be improved. As a minimum standard this must be mandated for, but it should not act as an aspiration. Instead a clear articulation of modern high quality work should be considered… There are a number of concepts which already exist, such as the ILO Decent Work construct for emerging economies, or similar ideas of Good Work and Meaningful Work. These concepts should be critiqued before implementation given their overlap and complexity, a task which the CIPD is currently undertaking in partnership with the Warwick Institute for Employment Research. There are many areas in which the construct overlap, such as employment security, pay and pensions, education and training, working hours, health and safety, forced labour and employee representation.”

CIPD submission to Review

Horizon scanning

The labour market is competitive and works best where there is a relative equilibrium between supply and demand. Labour is supplied by individuals and demand comes from those employers or businesses that require work to be done. In some sectors and regions, this works well, but market failures do exist and unsurprisingly, these tend to fall in lower skilled occupations. A number of factors can increase the likelihood of a market failure. For instance, the characteristics of those looking for work, from skill set to their availability. Where a single employer has a large market share in a particular area or sector, this can also result in less favourable outcomes for individuals.

There are bodies and organisations that try and address this power imbalance and prevent it turning into exploitation. This includes trade unions, business groups and specific enforcement bodies such as the Gangmasters and Labour Abuse Authority. However, union membership is on the decline and not all businesses are members of a trade body. State enforcement also has to rely on limited resources and tends to focus on transgressions of the law once they have taken place. In some situations, technology and forms of WorkerTech may hold the key to addressing imbalances, but in some sectors this may not be appropriate.

More needs to be done to horizon scan and identify potential issues before they develop into environments that reduce the quality of work. For instance, where a single employer is responsible for providing the livelihoods for a disproportionate proportion of a local community, the Government should be in a position to act, ensuring that workers do not lose out unnecessarily. The same is true of particular sectors where a lack of competition can result in individuals with particular skills becoming more vulnerable to a power imbalance than other sectors.

> The Department for Business, Energy and Industrial Strategy should take the lead for Government in identifying emerging issues and be the custodian for ensuring market conditions allow for the creation of quality work.

This kind of horizon scanning forms a major part of policy development in other social policy areas and should help shape how the Government prepares itself for challenges ahead. Likewise, enforcement bodies in the UK regularly use intelligence and risk-led approaches to intervention and ensuring the successful functioning of the UK labour market should be no different. The government must become more proactive in its response to strategic shifts in employment to ensure it is not left playing catch-up.

In many cases, the key issues will not be national in scale, but local anomalies that need to be addressed. Government should seize the opportunity of city deals and local devolution to support newly elected mayors to identify potential labour market vulnerabilities and develop proactive responses engaging other agencies and businesses.

The role of technology in productivity

Productivity is one of the central challenges for the UK and is key to improving living standards and retaining competitiveness. We know that the UK has a long standing weakness in this area, which presents a fundamental threat to our ability to grow and create jobs in the future. A key part of tackling this challenge will be the adoption of innovation and technologies aimed at boosting output. However, this process will inevitably create winners and losers. Government should look at the impact policies aimed at improving productivity are likely to have on living standards and the UK labour market. In particular, this should include regular assessments of the impact that automation is having and is likely to have on UK jobs and which sectors and areas this is likely to affect the greatest.

Human Factors in Technological Innovation

Technology is changing the way we live and work at a rate not seen since the Industrial Revolution, and the question of how to optimise the interface between devices and human operators is becoming increasingly significant as such development advances. If technology and automation are to enhance human capabilities to maximum effect, they must be created with human factors, tendencies and limitations in mind. It is far easier and more efficient to adapt man-made systems to people's ways of working than to do the reverse, and centralising human factors in systems design has been shown to improve human well-being as well as overall system performance.

Innovate UK, the UK's innovation agency funded by BEIS, emphasises the value of innovative design that balances human, social, environmental, technical and commercial factors, arguing that effective take-up of human-centred design represents a significant opportunity for accelerated economic growth. Ergonomic and fit-for-purpose design can contribute to the development of more sustainable and resilient business strategy, reduction of innovation costs and risk, and identification of new opportunities and markets. Evidence shows that for every £1 invested in human-centred design, businesses can obtain more than £20 in increased revenues, an increase of more than £4 in net operating profit, and a return of over £5 in increased exports.[89]

In PwC's 2017 Digital IQ survey of senior executives worldwide, 54% of respondents said they were making substantial investments in AI today, but only 20% said their organisations had the skills necessary to succeed with this technology.[90] Technological developments such as AI have huge potential to optimise productivity, but will inevitably fail unless people have the skills, training and knowledge to use them effectively, made more attainable by user-centred design. As Innovate UK identifies, the type of user experience that will encourage effective take-up:

- appeals to user aspirations
- delivers a tangible benefit or serves a valued purpose
- accounts for existing behaviour patterns
- is relevant and appropriate to real-world scenarios
- offers ease of use so that benefits can easily be exploited

Ergonomics has traditionally carried connotations of physical design features, but it is increasingly more widely acknowledged that effective interface design requires a comprehensive appreciation of human capabilities with regard to perceptual as well as physical characteristics (i.e. concerning displays and transfer of information as well as controls).[91] Related to this is Don Norman's conception of 'cognitive engineering', a discipline at the intersection between psychology and computer science, whose objective is "good interactions between people and devices".[92] It is important to account for the ways people receive and process information, and to design for information extraction rather than merely for data availability. Designs that consider only data availability often impose excessive burdens on the user (to identify relevant data, to maintain these data in memory, and to integrate data mentally to arrive at a decision) and require extensive knowledge and cognitive resources (attention, short-term memory), increasing the probability of error and poor judgement.[93] Modern cockpit dashboards often display less information at any one time than older versions, using AI to discern relevant data to display in a given situation, taking account of the amount of information a pilot is likely to be able to process so as to maximise the efficiency of their decision-making and reduce error due to information overload.[94]

Automation and Artificial Intelligence continue to develop at an unprecedented rate, enhancing progress across multiple sectors and industries, but such developments can only function as effective enablers of human productivity if their design takes full account of human aspirations, autonomy, behaviour and limitations. This is a real opportunity to ensure automation enhances the working experience rather than rendering it redundant.

The emphasis in industrial strategy and sector deals on technology and innovation should be linked to the importance of human factors in driving productivity and enabling more rewarding working lives.

A partnership approach

Everyone with an interest in a resilient and productive labour market has a role in ensuring better quality work. Government must play its role, but so must employers, business groups, trade unions, sector experts and others with particular knowledge and experience to deliver an economy based on a foundation of quality work. The UK Commission for Employment and Skills (UKCES) was created in 2008 in part, with this in mind, as a publicly funded, industry-led organisation, offering guidance on skills and employment issues in the UK. However, the UKCES was abolished earlier this year with various functions either discontinued or passed over to other bodies.

If the Government is genuinely committed to fair and decent work, it must find a way to bring relevant groups together, supporting both Government and business to deliver a labour market that works for everyone. A number of public bodies already work with these groups but one must take the lead in supporting Government and employers, promoting best practice. It should:

- Ensure the legal framework that underpins employment law adapts to changing business models;
- Work with sectors to develop approaches to delivering fair and decent work;
- Promote the new universal employability skills framework with employers and educational establishments; and
- Become a centre for identifying, accrediting and spreading what works.

Enhancing the remit of the Low Pay Commission

The Low Pay Commission (LPC) is an advisory body providing expert advice to the government about the National Minimum Wage and National Living Wage. It draws on economic, labour market and pay analysis, independent research and stakeholder evidence to inform its recommendations. The LPC is made up of nine Low Pay Commissioners who are drawn from a range of employee, employer and academic backgrounds. The scope of the LPC's work is matters relating to the national minimum wage. Specifically, the LPC is asked to recommend the highest possible increase in the National Minimum Wage rates without damaging the employment prospects of low-paid workers; and to recommend the rate of the National Living Wage such that it reaches 60 per cent of median earnings by 2020. The LPC's in-depth knowledge of a range of low paying sectors means it is well placed to identify specific labour market trends that may be of interest to policy makers.

The Review believes that it is time for the focus of the LPC to expand. As we know, pay is not the only determinant of quality work and the LPC should be

tasked with the broader function of working with sectors to improve the quality of low paid work. In the first instance, the LPC should undertake sectoral reviews on those sectors where a significant proportion of the workforce are on, or close to, the minimum wage such as retail, social care and hospitality.

The LPC should have its remit widened so that it can both make recommendations to Government on what needs to change (including NMW rates) to improve quality of work in the UK as well as work with employers, employees and stakeholders to promote quality work across all regions and sectors.

This cannot be done in isolation, and the LPC must build on its current tripartite structure to harness the expertise and experience of others. A number of organisations both within Government and beyond are well placed, or even tasked with, identifying anomalies, exploitation or emerging trends. Acas could play a role in this through analysis and recording of their helpline calls and the survey work they undertake with employers and workers. Many of these organisations already work with Government to ensure they are aware of issues as they arise. The LPC will be able to consider representations from all these bodies and make clear recommendations for Government on a range of issues.

There are a number of arm's length governmental bodies who already have a role in supporting individuals and employers, identifying exploitation and examining sectors where low pay can leave individuals more open to vulnerability and exploitation. These include the Director of Labour Market Enforcement, Acas and the Equality and Human Rights Commission. All of these bodies have statutory roles and report to Government regularly. In addition, there is a range of enforcement bodies who while dealing with complaints will be gathering a wider view on emerging issues.

There are also a number of expert bodies who have a great deal of experience and expertise in particular areas. Organisations like Citizens' Advice, the Chartered Institute of Personnel and Development, the Institute of Employment, the Employment Lawyers Association and the Institute of Apprenticeships. This is in addition to national representative bodies like the CBI, TUC and the Recruitment and Employment Confederation. Through strong, open relationships with these organisations and others, the LPC, with its expanded remit, will be able to support the delivery of a future labour market built on fair and decent work.

The legal framework

The principles that underpin the employment law framework we use today have developed over decades – a combination of domestic policy intervention, European legislation and a plethora of case law. Twenty years ago, efforts were made to bring this up to date and consolidate much of the legislation and relevant case law into the Employment Rights Act 1996. This is outlined in one place many of the key terms that we have been considering as part of this review, from the statutory definitions of employee and worker to rules around continuous employment and what constitutes a week's pay. In addition, a number of employment protections were codified, from the newly introduced right to written particulars to maternity leave and the rules surrounding termination of employment.

Since 1996, a number of changes have been made to employment legislation. From the introduction of the National Minimum Wage to Shared Parental Leave (SPL), the range of protections provided to workers and employees have changed regularly. Some of these changes have sought to influence societal behaviours, such as SPL, while others have been designed to deal with exploitation, such as the ban on exclusivity clauses in zero hours contracts. However, how 'worker' and 'employee' are defined has not changed.

Greater clarity in legislation and guidance is essential to improve clarity for individuals and employers and will deal with many of the issues faced by some atypical workers today. The new approach we have recommended in Chapter 5 seeks to address this. However, as many have identified over the course of this review, the risk with this approach is that a more rigid legal framework is less able to adapt to new business models creating additional issues for some groups. For this reason, it is essential that the framework is regularly examined to understand whether changes are needed.

The LPC should work with experts, from the new Director of Labour Market Enforcement to the Chartered Institute of Personnel and Development, as well as business groups and trade unions and make recommendations to Government if changes to the legal framework are needed to ensure fair and decent work is delivered.

This will ensure that the framework that underpins basic employment protections remain dynamic enough to adapt to a changing labour market, whatever the future has in store.

CASE STUDY

The British Retail Consortium (BRC) launched its Retail 2020 campaign, setting out a vision for the future retail workforce. Specifically recognising the role of technology and financial pressures on retailers, the campaign accepts there may be fewer retail jobs in the future but sets out an aspiration to make the jobs that remain better jobs.

As part of this, the Retail 2020 Dashboard was developed to track progress across the industry on the journey to better jobs. This dashboard covers the level of employment, productivity, hourly pay, and engagement. The engagement index tracks progress against the objective for 'better jobs'. The engagement index is a composite assessment of job satisfaction, motivation and empowerment amongst retail colleagues derived from an annual survey of retail workers.

This index compliments work to better understand retail workers, what motivates them and why they work in retail. In particular, this research highlights the variation amongst workers of different ages.

Sectoral approaches

Whether it is a prevalence of low paid work or the emergence of automation, each sector will require a tailored approach if it is to deliver work that is fair and decent, with realistic scope for development and fulfilment. There will always be sectors that have a heavy reliance of atypical work. Whether this be zero hours contracts in parts of the hospitality sector where demand is difficult to predict, self-employment in the construction sector where particular skills are needed at particular points or agency work in agriculture where gangmasters have been part of the supply chain for decades, atypical work can be quality work. This is because it is important to recognise the personal drivers for people working in particular sectors. For instance, a sector heavily reliant on students or those seeking part-time work to fit around other commitments, such as caring responsibilities, will need to provide flexible working opportunities to attract the right people and deliver quality jobs. There is a balance to be struck.

The LPC should work with employers and worker representatives to ensure sector-specific codes of practice and guidance are developed that support the provision of quality work.

This could include advice on when it is appropriate to use certain types of contract as well as how to invest in the development of a workforce and which skills to promote. It could also deal with specific issues faced by particular sectors such as how to ensure social care workers are paid between calls to how to most effectively manage supply chains in the construction sector. The focus should be on making a difference; achieving change in sectors dominated by a small number of large employers or conversely in one dominated by SMEs requires different strategies.

CASE STUDY

Every year, the Association of Labour Providers (ALP) compiles information for the Gangmasters and Labour Abuse Authority (GLAA) on the minimum charge rate for a labour provider to charge a labour user. This takes into account all statutory requirements for an employer.

They publish tables setting out for each applicable minimum wage rate, the additional wage costs of National Insurance contributions, holiday pay, automatic enrolment, and sick and maternity pay. They include a minimum overhead and service charge cost for a labour provider, which they describe as the minimum unavoidable costs that flow from observing the law on basic employment matters. No margin is added in for management costs or profits

These rates are indicative and are not a legal minimum. They are used to facilitate discussions between providers and users on fair and legal charge rates. Offering labour at a lower rate than the minimum charge rates would raise concerns as it indicates either workers are not receiving their full employment rights, or tax evasion. The GLAA closely scrutinises charges that are less than their indicative rates.

Promoting best practice

The UK labour market is far from broken and most employers already provide fair and decent work. The fact that there are more young people, women and older people in work than ever before also suggests the types of flexible arrangements desired by those who do not want full-time, permanent roles do exist.

If a vibrant market in digital support platforms is created as a result of the Government investment in sandbox

facilities for technology companies, this could create additional confusion as to what products best support these people and so there is a role for the Low Pay Commission in promoting what works and potentially accrediting the best products.

> The LPC should promote what works in sectors and encourage greater collaboration to improve quality work in low-paying areas.

This could operate in a similar way to a "kite mark" or simply form part of the discussion with sectors on the most appropriate approach for them. If this approach is adopted, the LPC has the potential to become a world renowned centre of excellence for the promotion of quality work for all. It also ensures that industry and worker representatives play their role in supporting Government in creating an economy that works for all.s

CASE STUDY

All Timpson employees are referred to as colleagues. The Company has an 'upside down management' approach giving colleagues the authority to make decisions. The company is clear that "we trust Branch Colleagues to serve customers in their own way".

The 'happy index' is used to understand colleague's satisfaction, and can lead to changes in the business. There is a strong emphasis on training, learning and development, with all new starters attending a one day induction and being assigned a personal mentor. This is followed by a weekly training plan, covering the full range of skills required to work in a Timpson branch, including customer service and Health & Safety. Colleagues also attend a two day residential course, in Manchester, which includes a getting to know you session with either John Timpson (Chairman) or James Timpson (Chief Exec).

Progression is supported through management training, for prospective Branch Managers, and colleagues have become successful Branch Managers within a year of joining the business.

The Company produces a weekly business newsletter for all colleagues, which communicates the latest business updates, including conversations with Colleagues, Area Team/ Excellence Centre Focus, weekly performance figures and importantly it celebrates successes.

CASE STUDY

Mates in Mind was set up as a charity by the Health in Construction Leadership Group (HCLG) and British Safety Council after a HCLG event, where leaders across the construction industry voted to improve mental well-being in the workforce. It launched in early 2017 to support positive mental health across the construction sector.

The charity provides support to employers through training, promotional material and campaigns. Individuals can become a 'Mates in Mind Champions' once they have completed training (bespoke to the construction sector), proactively promoting positive mental health in their workplaces and developing their own approaches to ensuring that their workmates are supported.

Next steps

Ensuring all work is fair and decent with realistic scope for development and fulfilment is not a one-off task. Making the changes we have outlined in this report will be complex but necessary. We need the frameworks and mechanisms to ensure lasting change is embedded in the system. Over the coming year, Government should:

- **Publicly commit to delivering quality work, making the Secretary of State for Business, Energy and Industrial Strategy responsible for reporting success against a set of metrics on an annual basis, with the first report in 2018 acting as a baseline for measuring future success.**
- **Ensure the forthcoming Industrial Strategy makes the most of the opportunities a more productive workforce can deliver, especially in lower-paid, and lower-skilled sectors, identifying ways in which automation and AI can enhance the quality of work.**
- **The LPC should have its remit widened so that it can both make recommendations to Government on what needs to change (including NMW rates) to improve quality of work in the UK. It should also work with employers, employees and stakeholders to promote quality work across all regions and sectors, focusing to begin with, on driving productivity in the retail, care and hospitality sectors.**

14. Seven steps towards fair and decent work with realistic scope for development and fulfilment

1. **Our national strategy for work – the British way – should be explicitly directed toward the goal of good work for all**, recognising that good work and plentiful work can and should go together. Good work is something for which Government needs to be held accountable but for which we all need to take responsibility.

    a) **The same basic principles should apply to all forms of employment in the British economy** – there should be a fair balance of rights and responsibilities, everyone should have a baseline of protection and there should be routes to enable progression at work.

    b) Over the long term, in the interests of innovation, fair competition and sound public finances we need to **make the taxation of labour more consistent across employment forms** while at the same time improving the rights and entitlements of self-employed people.

    c) Technological change will impact work and types of employment and we need to be able to adapt, but **technology can also offer new opportunities** for smarter regulation, more flexible entitlements and new ways for people to organise.

2. Platform based working offers welcome opportunities for genuine two way flexibility and can provide opportunities for those who may not be able to work in more conventional ways. These should be protected while **ensuring fairness for those who work through these platforms and those who compete with them**. Worker (or 'Dependent Contractor' as we suggest renaming it) status should be maintained but we should be **clearer about how to distinguish workers from those who are legitimately self-employed**.

3. The law and the way it is promulgated and enforced should **help firms make the right choices and individuals to know and exercise their rights**. Although there are some things that can be done to improve working practices for employees, the 'employment wedge' (the additional, largely non-wage, costs associated with taking someone on as an employee) is already high and we should avoid increasing it further. 'Dependent contractors' are the group most likely to suffer from unfair one-sided flexibility and therefore we need **to provide additional protections for this group and stronger incentives for firms to treat them fairly**.

4. The best way to achieve better work is not national regulation but responsible corporate governance, **good management and strong employment relations within the organisation**, which is why it is important that companies are seen to take good work seriously and are open about their practices and that all workers are able to be engaged and heard.

5. It is vital to individuals and the health of our economy that everyone feels they have **realistically attainable ways to strengthen their future work prospects** and that they can, from the beginning to the end of their working life, record and enhance the capabilities developed in formal and informal learning and in on the job and off the job activities.

6. The shape and content of work and individual health and well-being are strongly related. For the benefit for firms, workers and the public interest we need to develop **a more proactive approach to workplace health**.

7. The National Living Wage is a powerful tool to raise the financial base line of low paid workers. It needs to be accompanied by **sectoral strategies engaging employers, employees and stakeholders to ensure that people – particularly in low paid sectors** – are not stuck at the living wage minimum or facing insecurity but can progress in their current and future work.

References

1 http://www.bsa.natcen.ac.uk/media/39061/bsa33_work.pdf and http://www.natcen.ac.uk/our-research/research/british-social-attitudes/

2 ONS Labour Force survey data – sickness absence.

3 QuInnE is an interdisciplinary project investigating how job quality and innovation mutually impact each other, and the effects this has on job creation and the quality of these job. QuInnE project brings together a multidisciplinary team of experts from nine partner institutions across seven European countries.

4 Fourth Work-life balance survey

5 The Fourth Work-Life Balance Employee Survey (found at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/398557/bis-14-1027-fourth-work-life-balance-employer-survey-2013.pdf) request flexible working Impact assessment (found at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/82794/12-1270-modern-workplaces-response-flexible-working-impact.pdf)

6 The Fourth Work-Life Balance Employee Survey

7 It should be noted that this overview is presented at a national level – but it is important to bear in mind that while there are greater variations within regions that between regions, there are regional variations across the board in performance, with the South East and London generally performing more strongly across most major indicators, including employment rate, skills and wages. The North East and Northern Ireland tend to perform more poorly on average. Knowing that regional labour markets can be very different was one of the reasons that the Review decided to hold evidence sessions across the UK. A summary of what the Review heard at those evidence sessions, and of what the Review understands to be the key regional issues, are provided later in this report.

8 All data is taken from the Labour Force Survey, ONS, for February – April 2017,unless otherwise stated

9 The inactivity rate includes working age people (16-64) who are neither in employment, nor seeking employment. This can be because they are in full-time education, long-term incapacity or simply do not need/want to work.

10 This is likely linked to looser fiscal and monetary policies that support increased demand, whilst low inflation makes it easier to limit wage growth

11 Whilst its basis is limited to protection of permanent workers against dismissal; specific requirements governing collective dismissals (redundancies); and the regulation of temporary contracts, it provides a means for considering the UK's labour market regulation in context

12 A useful CIPD analysis of the index can be found here https://www2.cipd.co.uk/binaries/employment-regulation-and-the-labour-market_2015.pdf

13 OECD data https://data.oecd.org/emp/labour-force-participation-rate.htm#indicator-chart

14 Economic activity and employment has more than doubled amongst the over 65s, with strong increases in the 50-64 age range also

15 The number of people aged 16-17 in employment has declined by almost half since 1997. Economic activity amongst this age group has also decreased by around 45%.

16 BEIS analysis of Labour Force Survey micro data for Quarter 1 (January - March) 2017

17 Equivalent to around 380,000 people based on the current workforce

18 BEIS analysis of LFS microdata for Q1 2017

19 OECD (2017), Part-time employment rate (indicator). doi: 10.1787/f2ad596c-en (Accessed on 26 May 2017) https://data.oecd.org/emp/part-time-employment-rate.htm#indicator-chart

20 Labour Force Survey estimates

21 Recruitment and Employment Confederation (REC), 2015/16 Recruitment Industry Trends publication, published December 2016

22 LFS data for quarter 4 (October to December) 2016, this is the most recently available data on zero hours contracts

23 http://www.mckinsey.com/global-themes/employment-and-growth/independent-work-choice-necessity-and-the-gig-economy

[24] https://www.cipd.co.uk/knowledge/work/trends/gig-economy-report

[25] Adjusted for Consumer Price Inflation (CPI)

[26] Low Pay Britain report, 2015 http://www.resolutionfoundation.org/app/uploads/2016/10/Low-Pay-Britain-2016.pdf

[27] The Resolution Foundation's core low pay definition captures those with gross hourly earnings (excluding overtime) below two-thirds of the median

[28] https://www.thersa.org/globalassets/pdfs/reports/rsa_good-gigs-fairer-gig-economy-report.pdf

[29] Research by Deloitte suggests that, between 2001 and 2015, automation has created approximately four times as many jobs as it has lost.

[30] 'The Future of Employment: How susceptible are jobs to computerisation?' Frey and Osborne, 2013 http://www.oxfordmartin.ox.ac.uk/downloads/academic/The_Future_of_Employment.pdf

[31] Ibid

[32] 'Labour's Share' Haldane, 2015 http://www.bankofengland.co.uk/publications/Documents/speeches/2015/speech864.pdf

[33] 'The Future of Employment: How susceptible are jobs to computerisation?' Frey and Osborne, 2013 http://www.oxfordmartin.ox.ac.uk/downloads/academic/The_Future_of_Employment.pdf

[34] 'Labour's Share' Haldane, 2015 http://www.bankofengland.co.uk/publications/Documents/speeches/2015/speech864.pdf

[35] There are of course a range of other employment statuses including constables, mariners and the soon to be abolished 'employee shareholder'. While we have focused on the main two in this report, Government should consider all statuses in the process of examining the legislative response to our recommendations. It is also the case that 'employee' and 'worker' are defined slightly differently in some other pieces of legislation and so Government should be careful when legislating to ensure this does not have unintended consequences on other legislation.

[36] "Limb (b)" refers to the part of section 230(3) of the Employment Rights Act 1996 which describes this group of people.

[37] Fourth Work Life Balance Survey, 2012

[38] BIS Research Paper Number 211 - Leadership and Management Skills in SMEs: Measuring Associations with Management Practices and Performance, 2015, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/407624/BIS-15-95_Leadership_and_Management_Skills_in_SMEs.pdf

[39] RSA – Found at: https://medium.com/@thersa/why-we-need-to-talk-about-good-work-728d7d82877c

[40] Ibid

[41] CIPD – Found at:https://www.cipd.co.uk/Images/to-gig-or-not-to-gig_2017-stories-from-the-modern-economy_tcm18-18955.pdf

[42] OBR Economic and Fiscal Outlook (2016 http://cdn.budgetresponsibility.org.uk/Nov2016EFO.pdf)

[43] https://www.ifs.org.uk/publications/mirrleesreview/

[44] SEIS is designed to help small, early-stage companies raise equity finance by offering tax reliefs to individual investors who purchase new shares in those companies.

[45] This will be true for all self-employed people from April 2018 assuming the previously announced abolition of Class 2 National Insurance contributions takes effect. At present, the flat rate of Class 2 NICs means that on some salaries, the amount of NICs paid by a self-employed person is higher than an employee on the same salary,

[46] Main rates for employees and self-employed people is charged between £8,164 and £45,000, and then 2% thereafter. The employer rate of 13.8% is charged above threshold of £8,164 (rates and thresholds for 2017-18).

[47] Budget 2013 announced the abolition of Class 2 NICs from April 2018.

[48] Budget 2013 announced the abolition of Class 2 NICs from April 2018.

[49] The latest annual survey of hours and earnings carried out by the ONS found that the median gross weekly earnings for full time employees were £539 for 2016. Multiplying weekly earnings by the 52 weeks in a year gives median gross yearly earnings of £28,028.

[50] The Office for Budget Responsibility's November 2016 Economic and fiscal outlook showed that since 2006 there has been a marked increase in the number of single or two director companies.

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