

Employment Practices in the Modern Economy

**A Submission from David Coats, Director, Workmatters Consulting and
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About Workmatters Consulting

David Coats founded Workmatters Consulting in 2010. It provides advice and support to employers looking to improve relationships with their workforce and undertakes policy-focused research on the labour market. Recent clients have included the Management Consultancies Association, a major pharmaceutical business, a leading hospitality business and an employers' association in the creative industries.

David Coats was the Head of Economic and Social Affairs at the TUC from 1999-2004 and Policy Director at the Work Foundation from 2004-2010. He served on the Low Pay Commission from 2000-04 and has been a member of the Central Arbitration Committee (the industrial court for Great Britain) since 2005. In 2014 he was appointed as a visiting professor at the Centre for Sustainable Work and Employment Futures, University of Leicester. He is a research fellow at the Smith Institute, a member of the board of the Fabian Society's Changing Work Centre and a member of the board of the Involvement and Participation Association.

Executive Summary

Introduction

- There is a rising level of concern about the negative aspects of the UK's flexible labour market. Much of the popular commentary has focused on the rise of zero hours contracts (ZHCs), the burgeoning of insecure employment in the gig economy and the supposed boom in self-employment. Arguably, however, there are much bigger problems that fall largely outside this narrative, including the persistence of low pay, concerns about threats to the status of workers with apparently secure jobs and the widespread experience of unfair treatment affecting workers in the labour market mainstream. The middle classes can have a rotten time at work too, even though they are not low paid or subject to an insecure contract.
- Many of the difficulties in the labour market are a result of the growing imbalance of power between workers and their employer. Much of this can be explained by the decline of workplace institutions, the retreat of trade unions and the falling coverage of collective bargaining. If policymakers are serious about reducing reliance on exploitative ZHCs, eliminating bogus self-employment, tackling the UK's poor productivity performance, reconnecting wage growth and productivity growth and addressing the widespread experience of unreasonable treatment at work then rebuilding institutions that give employees voice and influence is an essential ingredient in the policy mix.

Today's Labour Market Realities

- It is often said that the labour market has been transformed in the last 30 years and to a degree that is true: fewer workers in manufacturing more workers in services; more women at work; more people working part-time; more older workers and more people in the labour market beyond the normal age of retirement. But most change has been evolutionary not revolutionary and there is just as much persistence as change. Four in every five people at work is an employee with a permanent contract. Temporary work remains at a low level by international standards. Self-employment is barely 3% higher as a percentage of total employment than it was in 1986. The percentage of people with second jobs has fallen in the last four years.
- So far as self-employment is concerned, **the best advice to policymakers is that they should keep a watchful eye on developments but only take decisive action once it is clear that something significant has changed in the pattern of self-employment and that these changes are permanent.** It would be premature to rush to judgment today.
- That is not to say that the self-employed experience no problems at work. They most certainly do. In particular the self-employed are much less likely to save for their retirement. **One possibility would be to extend compulsory saving to the self-employed workforce (subject to the same low pay threshold as employees), although this might prove electorally unpopular. Another possibility would be to offer specific tax incentives for pensions saving by the self-employed, although this would be a further distortion to the tax system.**

The Rise of Zero Hours Contracts?

- A good deal of policy attention and media commentary has focused on the supposed rise of ZHCs. There is no doubt that a large number of people with these contracts are

treated very badly by their employers. Almost half ZHC workers are low paid (less than 60% median earnings) and their risk of being low paid is more than twice as great as the general working population. But despite the flurry of interest around the phenomenon the numbers affected remain relatively small. More than 90% of those who are low paid do *not* have a zero hours contract.

- The ZHC phenomenon is not well documented and the official statistics still leave something to be desired. **If policymakers really want to understand the extent and implications of ZHCs then they need to refine the official measures and undertake a separate comprehensive study to identify where there is the greatest risk of exploitation.**
- The Inland Revenue, which enforces the National Minimum Wage, should adopt a risk based approach to rooting out bad practice, concentrating on those sectors with a high usage of ZHCs and a high risk of low wage employment.
- The two biggest problems faced by ZHC workers are low pay and an irregular pattern of earnings. This makes it difficult to plan financially or manage household budgets. **One possibility, mooted in advance of the 2015 general election, is to require employers to offer clearly specified hours after 12 weeks of employment. In addition, although this will require further consideration, it should be possible to give workers a right to request extra hours of work from their employer and to have this request reasonably considered** – in essence this is the obverse of the right already on the statute book to request reduce hours of work.

The Rise of the Gig Economy? Special Employment Status for Gig Workers?

- There is no generally accepted definition of the gig economy and most of the estimates of the size of the phenomenon are not entirely credible. One study, which suggests that there are five million “crowd workers” in the UK, sits uneasily with the official data about employment and self-employment. It also seems implausible that one in three employees (9 million people) is looking for work through a digital platform when four in every five people at work is an employee with a permanent contract. That study also sits uneasily with superior research conducted in the USA which find that barely 0.5% of workers find work through digital platforms. **We know a great deal less than we think to make secure judgments about the nature, extent and persistence of the gig economy.**
- Gig workers are most likely to be found as genuinely self-employed people in the top three occupational groups. There has been some growth of freelancing since 2010, but there is a high level of churn in this group, with almost a third entering and exiting this form of work each year. Freelancers are generally not low paid even though they may experience some income insecurity (they are uncertain about their next contract or commission).
- This phenomenon should be distinguished from the position of those working for Uber and Deliveroo, where the employer is abusing their market power to impose a bogus self-employed status on workers.
- As the recent tribunal decision in the Uber case has demonstrated, **the courts remain perfectly capable of distinguishing employee status from bogus self-employment. These tests have been developed over many years and remain robust, although there**

may be a case for tidying up the law in relation to the rights available to “employees” and the rights available to “workers”, with the Law Commission reviewing the position in the medium term.

Bad Practice in Mainstream Employment

- That bad practice can be found in apparently secure, mainstream employment rarely touches the public conversation or elicits a policy response. But the problems found in mainstream workplaces are more widespread than ZHCs, the gig economy and low pay. The data may be a little old, but there are few reasons to believe that there have been any significant improvements in the last five years.
- The Skills and Employment Survey conducted in 2012 produced the following findings:
 - A third of employees (31%) reported that they were concerned about unfair treatment at work.
 - Just over half of all employees (52%) reported anxiety over a loss of job status (less job influence, being moved to a less skilled job, being required to move to a lower paid job, being moved to a less interesting job)
 - Job related well-being, when measured on the dimensions of enthusiasm for the job and contentment with the job, fell significantly from 2006 to 2012. This is largely attributed to the rise in the percentage of people reporting high job stress (almost one in five employees (17%))
 - Three in every four employees (73%) reported that they had limited influence over the organisation of their work.
- The British Workplace Behaviour Survey is slightly older (2009). The most important results are as follows:
 - Half the British workforce (52%) had experienced some form of unreasonable treatment in the two years before the survey was conducted.
 - Nearly one in four workers experienced three or more different kinds of unreasonable treatment and one in ten workers had to put up with five or more kinds of unfair treatment.
 - Two in every five workers (40%) had been subjected to incivility and disrespect in the two years before the survey was conducted.
 - One in three workers had been given an unreasonable workload
 - One in five workers was employed in a “troubled workplace” where the experience of unfair treatment (on all dimensions) was persistent rather than intermittent.
- It is not that the UK has a cadre of particularly evil or toxic managers but that the expectations of capital markets for short-term returns are transmitted to the boardroom and the workplace. Managers are incentivised to behave badly to achieve the results demanded by investors. Unfortunately, the model does not really work, hence the UK’s poor productivity performance and the low levels of reported employee engagement. Cracking the conundrum demands more than a modest investment in management training. A more radical and comprehensive approach is required.

- Amongst the measures worthy of consideration are:
 - **Changes in taxation to create incentives for long-term shareholding.**
 - **Limiting the scope for those making speculative investments to participate in the governance of the company.**
 - **Ensuring that a wider ranges of voices, including workers' voices is represented in the boardroom.**
 - **Creating (or rebuilding) representative workplace institutions (trade unions or works councils) to ensure that there is an appropriate balance of power between workers and their employer.**

Voice

- If policymakers are serious about tackling the problems identified in this submission then they should recognise that real industrial citizenship for workers can only be guaranteed by effective institutions in the workplace. Trade unions may not be able to demonstrate their credibility rapidly enough to either employers or workers to fill this institutional gap. There is a strong case for introducing British works councils, elected on a universal franchise by all workers in an enterprise (except senior managers), to ensure that employers can have a structured collective dialogue with workers' representatives on a wide range of issues affecting the workplace. All the rights needed are already on the statute book, giving effect to the requirements of EU directives. Drawing all these rights together under the purview of a single representative body in the workplace would require employers to inform and consult workers (sometimes with a view to reaching an agreement) about the following:
 - **The employer's strategic plans for the business (information only)**
 - **The likely trajectory of staffing levels in the medium term, including any threats to employment and remedial action to be taken (information and consultation)**
 - **Significant changes to work organisation or contractual relations (I&C with a view to reaching an agreement)**
 - **Joint management of health and safety in the workplace**
 - **Vocational training policies and workplace learning (I&C with a view to reaching an agreement)**
 - **Consultation on redundancies (with a view to reaching an agreement)**
 - **Consultation on business transfers (changes of ownership covered by the EU's Transfers of Undertakings directive) (with a view to reaching an agreement)**
 - **Consultation on changes to occupational pensions (with a view to reaching an agreement)**
 - **The flexible implementation of the UK's Working Time Regulations 2004 – flexibilities around the length of the working week, breaks, rest periods (with a view to reaching an agreement).**
- The UK may be leaving the EU, but these rights provide a useful template for achieving a better balance of power in the labour market.

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1. Introduction

- 1.1 For some time now and certainly since the financial crisis of 2007-2010, policymakers, analysts and commentators have begun to suspect that all is not well in the UK's labour market. Much popular commentary has focused on the rise in the number of people with zero hours contracts and the burgeoning of the so-called gig economy. Moreover, the extent of low pay, which remains at a higher level in the UK than in many other developed countries, (Gautt and Schmidt 2010) has appeared impervious to policy interventions like the national minimum wage.
- 1.2 The purpose of this submission is to respond to some of the themes identified by the Taylor review and offer an outline of possible responses. A useful starting point is to describe today's labour market realities, not least because that provides a solid foundation for the diagnosis of the problems experienced by many people at work. This may sound like a simple exercise but it is by no means straightforward, principally because the data available are less than adequate. For example, it is difficult to offer a comprehensive account of either the use of zero hours contracts in the UK, the growth of the phenomenon over the last five years or the extent of bad practice. Similarly, there are no good generally agreed measures of the extent of the gig economy¹. On the other hand, it is possible to offer an accurate description of the number of people at work, the employment rate, the nature of contractual status and the extent of under-employment (the percentage of part-time workers who say they would like to work longer hours).
- 1.3 There is good data available (although it is now slightly old) on the changing nature of job quality in the UK and the extent of unfair treatment at work (Felstead 2007, Fevre 2012, Inanc et al 2013). Most remarkable, perhaps, is that the phenomenon of persistent unfair treatment is just as widespread as low pay and appears to affect those in relatively well-paid mainstream jobs. The same might be said for concerns about *job status*, autonomy, control and other indicators of high quality employment like an appropriate balance between the efforts workers make and the rewards they receive or whether the employer observes the principles of procedural justice. If policymakers' attention is focused exclusively on the margins of the labour market they will miss a good deal of bad practice in the mainstream. Well paid workers with apparently secure jobs, where there is no imminent threat of redundancy, appear to be just as concerned about their futures as those who happen to be low paid, subject to a zero-hours contract or find work in the gig economy.
- 1.4 It is particularly welcome that one of the themes identified by the review is the role (and importance) of workplace representation. Amongst all the rhetoric about trade, globalisation and technology as driving forces of labour market change one

¹ One could argue that a more comprehensive analysis is available for the USA (Katz and Krueger 2016), but even this work is based on an "unofficial" dataset, which may not be directly comparable with the "official" data last collected in 2005.

² Of course, the Nordic countries have their own problems, not least a rising tide of anti-immigrant sentiment and an increase in

factor is often left out of the account: the role of trade unions and collective bargaining. To a large extent the labour market institutions that regulated the employment relationship for much of the twentieth century have been swept from the scene in the UK. While it could be argued that this is a *consequence* of industrial restructuring rather than a *cause* of labour market problems, the importance of public policy in influencing the balance of power between capital and labour should not be ignored. For a prolonged period and certainly from 1979-97 it was assumed by government that trade unions were an impediment to economic growth and the achievement of a full-employment economy with low inflation. Other countries have taken a different path. Trade unions and collective bargaining continue to play an important role in the labour market, income inequalities are generally lower, there is less low pay and job quality is generally higher than in the UK. This is particularly true for the Nordic countries, where labour markets are inclusive and the predominant organisational form is the high involvement workplace (Gallie 2007, Gallie and Zhou 2013). Workers have high levels of job control and extensive opportunities for participation in decision-making. Despite the widespread view that globalisation encourages a race to the bottom of pay and conditions of employment, the Nordic countries have amongst the most open economies in the world. This experience widens the field for political action. It means that policymakers have real choices about the design of labour market policy. In other words, it should be possible to ensure that quality employment, decent wages, voice and fair treatment are available to all people at work².

2. Today's Labour Market Realities

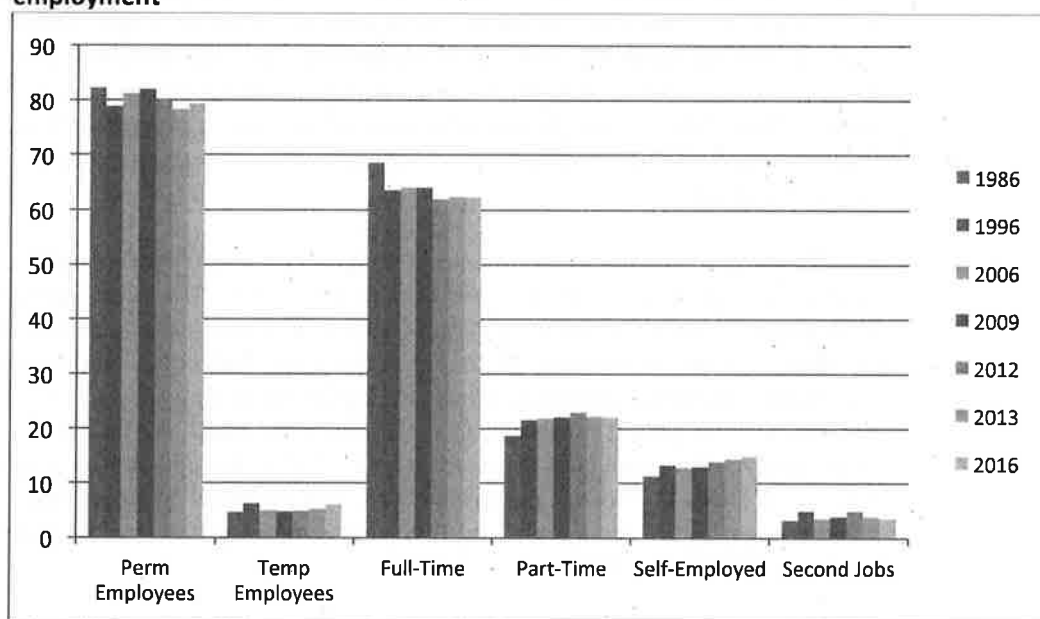
2.1 It is often argued that the labour market has been transformed in recent decades and to some extent that is true. There are far fewer men doing manual jobs in manufacturing and far more people working in private services. There are more women at work and employment rates for those over the normal age of retirement have risen significantly. On other dimensions, however, there is far more persistence than change. For example, almost four in every five people at work is an employee with a permanent contract - a figure that has fallen by less than 3% since 1986 (Figure 1). The level of temporary work remains relatively low and was slightly higher twenty years ago than it is today. Moreover, despite the extensive commentary about a boom in self-employment the number of people working for themselves is less than 2% higher than it was in 1996. One might legitimately wonder therefore whether the concern about "new forms of work" is a little overdone?

2.2 Nonetheless, it is clear from the official data that self-employment has been on a slow but steady upward trajectory since the global financial crisis. At this stage in the economic cycle it would be unwise to rush to judgement about whether the UK has witnessed a structural change or whether the labour market is experiencing the usual cyclical trends witnessed in the aftermath of a significant economic contraction. For example, there was a large rise in self-employment in the 1980s as people who had been made redundant from their normal employee jobs made a virtue of necessity and struck out on their own. Put another way, the cyclical

² Of course, the Nordic countries have their own problems, not least a rising tide of anti-immigrant sentiment and an increase in support for parties of the populist right. It is still possible to argue with some confidence, however, that it is better to be an office cleaner or shopworker in Copenhagen than in London, whatever this might mean for Danish workers who believe that they have been "left behind" (Gauttue and Schmidt 2010).

pattern is for self-employment to rise in the wake of a recession and fall as the economy returns to a more robust growth path. For the time being, **the best advice to policymakers is that they should keep a watchful eye on these developments but only take decisive action once it is clear that something significant has changed in the pattern of self-employment and that these changes are permanent.**

Figure 1: Labour market structure by employment status 1986-2016 (% all in employment)



Source: Labour Force Survey

2.3 There is also evidence to suggest the “making a virtue of necessity” story continues to have real explanatory power. More than one in four (27%) of those who became self-employed after the global crisis did so because there were no other alternatives available to them (Darcy and Gardiner 2014). The same study also found that weekly earnings for the self-employed were 20% lower than in 2006-07 and the typical self-employed person was earning 40% less than the typical employed person. Only 30% of the self-employed were contributing to a pension. This establishes a strong foundation for the argument that self-employment for many people is characterised by low earnings and a degree of insecurity. Such findings run contrary to the case for either rising levels of entrepreneurship or the belief that a flexible labour market allows working arrangements to be matched accurately to people’s preferences. It suggests too that policymakers should consider how the self-employed might be encouraged to save for retirement. It is already relatively easy to join the National Employment Savings Trust (NEST) as a self-employed person but this is a *voluntary* arrangement whereas both employees and their employers are compelled to contribute to a pension scheme. **One possibility would be to extend compulsory saving to the self-employed workforce (subject to the same low pay threshold as employees), although this might prove electorally unpopular.** Another possibility would be to offer specific tax incentives to the self-employed, although this would be a further distortion to the tax system. It is not clear that an incentive of this kind would work in any event. Before the introduction of compulsory contributions a large number of employees were

under-pensioned, despite the generous tax breaks for pensions saving. Sometimes citizens fail to follow the requirements of the economist's notion of rationality.

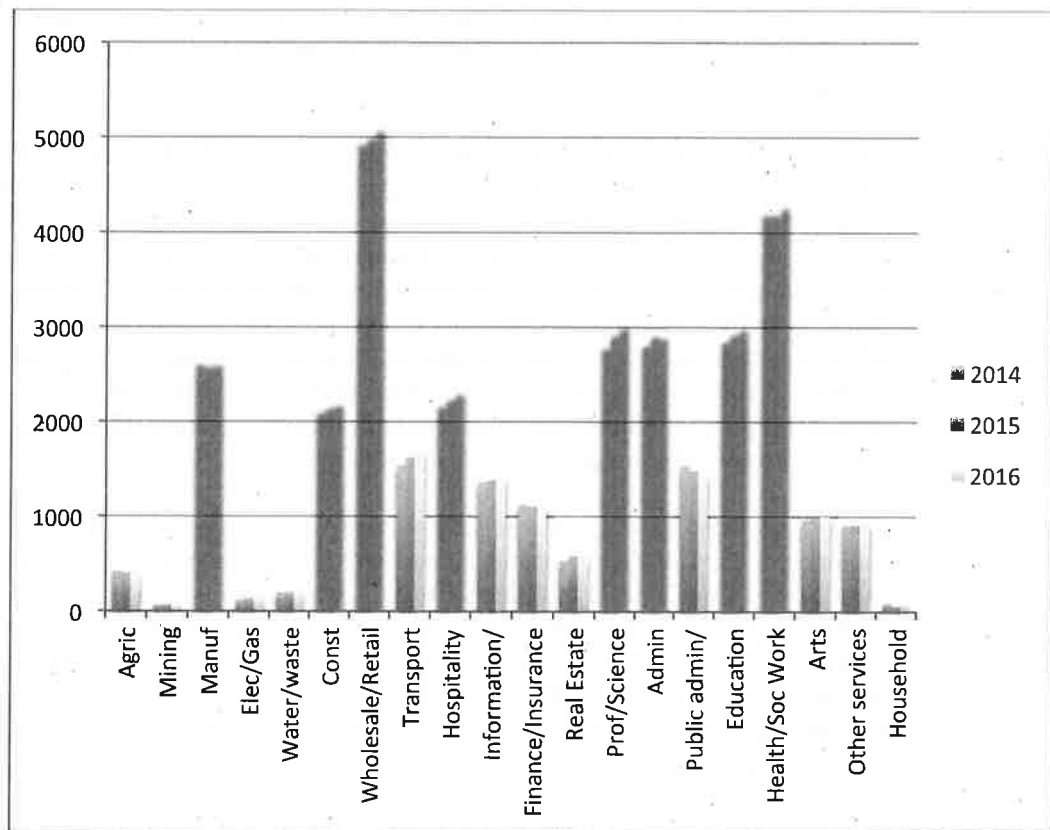
- 2.4 Similar questions about choice in contractual arrangements arise in relation to some people working part-time or subject to temporary contracts. According to the Labour Force Survey almost one in three (30.5%) of those undertaking temporary work today report that they are doing so because they cannot find a permanent job. The data on part-time work shows a somewhat less troubling mismatch between preferences and hours of work – more than one in eight (13.8%) of those working part time say that they would like to work more hours. In both cases, however, the mismatch between actual and desired hours has fallen in the last three years, suggesting that there has been a modest recovery in the labour market. Nonetheless, these figures offer some support for the view that there is a significant level of underemployment, which inevitably has a negative impact on household incomes.
- 2.5 A swift glance at the structure of employment by sector shows that the UK is now a largely post-industrial, service oriented economy (Figure 2). The two largest areas of employment are the retail and health sectors. Manufacturing employment has declined in the last three years, while sectors like education, professional services and hospitality (hotels and restaurants) have continued to grow. The UK's employment rate (adults of working age) now stands at 74.6%, the highest recorded level since comparable records began in 1971. A crude analysis suggests that the UK's labour market is performing well, that the match between labour market opportunities and people's preferences is improving and that the outlook for the next year is set fair³.
- 2.6 This rather optimistic narrative sits uneasily alongside the high-volume rhetoric about the rise of the robots, the end of work and the destructive power of information and communication technologies. It would be wrong to argue that technological change is having no impact on the labour market, but while the robots may be rising they have yet to make a significant impact on either the level of unemployment, the distribution of incomes or the structure of jobs across the economy. It would be unwise, therefore, for policymakers to reshape labour market regulation, training policies, the education system or the welfare state in anticipation of problems that may never arise. Once again, it is essential to monitor developments closely. Bold action may be needed if disruptive change begins to take place.
- 2.7 While an optimistic narrative is always congenial, the headline figures can still obscure some major difficulties. The principal problems might be summarised as follows:

- The UK labour market is characterised by a high incidence of low pay – higher than in other comparable countries

³ Brexit may still have a negative effect on the economy. At the time of writing the data suggests that the impact of the referendum decision on 23 June is at best muted. This is principally because very little has changed. Article 50 has not yet been activated, the UK remains in the single market and the customs union and free movement rights continue to operate. Businesses may be delaying investment and relocation options (moving activities to other countries in the EU) may be under active consideration rather than matters of clear decision.

- Productivity growth remains subdued and output per hour worked is lower than in major competitor economies
- There is a good deal of uncertainty amongst workers with apparently secure, permanent, salaried jobs.
- Unfair treatment and poor management are widespread (Fevre 2012)

Figure 2: Employment by sector 2014-2016 (000)



Source: Labour Force Survey, Workforce Jobs

2.8 Conspicuously absent from this list are the problems that supposedly arise from new forms of work: the rise of zero-hours contracts and the well-rehearsed arguments about the increase in insecure self-employment (the Uber and Deliveroo examples are cases in point) or the growth of the gig economy. It would be quite wrong to argue that workers with these contracts experience no problems, they most assuredly do. But it would be equally wrong to argue that the *predominant* trend is a rise in precarious, marginal employment or that the entire labour market is experiencing some process of Uberisation. It is to these issues that we now turn.

3. The rise of zero-hours contracts?

3.1 Much of the media commentary on zero-hours contracts has charted the apparently inexorable rise of the phenomenon. According to the *Guardian* in March 2016, the 15% increase over the previous year confirmed that the balance of power in the labour market was decisively tilted in favour of employers and that

these contracts were nothing more than an advanced form of exploitation⁴. Observations of this nature are characteristic of the popular narrative.

- 3.2 A central element of the argument presented in this paper is that the balance of power has shifted too far in employers' favour but it is stretching the point a little to say that zero-hours contracts (ZHCs) are the *most important* challenge facing policymakers. To begin with, the numbers affected are still relatively small. According to the official Labour Force Survey, (LFS) fewer than three in every hundred people at work have a ZHC (2.9%), which should be contrasted with the one in five workers who are low paid and the one in five (often salaried) workers who experience persistent unfair treatment (Fevre 2012, discussed in section 8 below).
- 3.3 There is also a degree of uncertainty about the accuracy of these figures. As the Office for National Statistics (ONS) report, some of the increase is almost certainly accounted for by the fact that more people at work are aware of the notion of a ZHC and are more inclined to categorise themselves in this way when responding to the LFS questionnaire (ONS 2016a). While the headline number of 903,000 people with these contracts is certainly eye catching, that conceals the true figure, which may lie anywhere between 835,000 (2.6% of all in employment) and 972,000 (3.06%). **If policymakers want to really understand the problem there is an imperative both to refine these measures and undertake a separate study to identify where there are genuine risks of exploitation.**
- 3.4 We have already referred to the 30% of temporary workers who would like a permanent job. The level of mismatch between preferences and actual hours of work runs at a similar level for those with ZHCs, around one in three people with zero-hours contracts would like to work more hours, generally for their current employer (ONS 2016a). This suggests in turn that, to some extent (being precise is difficult given the quality of the data), the majority of ZHC workers appear content with their contractual status, although they may be dissatisfied with their pay and hours.
- 3.5 That conclusion may be surprising, but a closer look at the characteristics of ZHC workers explains why the level of satisfaction is higher than one might anticipate. To begin with, ZHC workers are more likely to be young. More than a third are in the 16-24 year old age range and one in five is in full-time education. The notion that many ZHC workers are students supplementing their earnings during term-time is not too far from the truth.
- 3.6 Similarly, most ZHC workers are part-time (over 60%) and the majority are women (55%). This may reflect the fact that it is easier to balance caring responsibilities with a "flexible" pattern of hours, although the more widespread availability of affordable childcare would almost certainly lead to an increase in the preferred number of hours for this group. Put simply, the flexibility offered by ZHCs is not a one-way street offering significant advantages to employers (they can turn their labour supply on and off according to need) and nothing but disadvantages for workers.

⁴ Elliott, "A zero-hours contract is not flexibility but exploitation and it's rising", the *Guardian* 9/4/16

- 3.7 Three further points are worthy of note. First, not *all* ZHC workers will be low paid. Agency nurses in the NHS fall into the ZHC category. Second, the use of ZHC's is a large firm phenomenon. Over 40% of firms with more than 250 workers make some use of ZHCs, compared with fewer than one in five micro-businesses (those with fewer than 20 employees). Third, the hospitality sector is the heaviest user of ZHCs; more than one in ten workers in hotels and restaurants (12.5%) has a ZHC.
- 3.8 Some commentators have made reference to the ONS survey of businesses that has been used to supplement the data in the LFS, suggesting that the official figures underestimate the extent of the phenomenon. According to the business survey there are 1.7 million contracts in operation that offer workers no fixed hours. But as the ONS correctly point out, contracts are not people, workers can have more than one contract and it would be wrong to conclude from the business survey data that more than 5% of people in employment have a ZHC.
- 3.9 It should be recalled too that the coalition government took some action to tackle the more egregious abuses of ZHCs. The law now prevents the enforcement of exclusivity clauses in ZHCs, which are designed to stop a worker accepting work from another employer. Dismissals relating to an exclusivity clause are automatically unfair. It is also unlawful to subject a worker to any detriment if they fail to comply with an exclusivity clause. One might think therefore that the problems have been solved and there is no reason for policymakers to be concerned. That conclusion might be a little premature, not least because those with ZHCs are at serious risk of being low paid (especially women working part-time), obviously have irregular patterns of hours and earnings, which makes it difficult to manage household budgets and have little hope that their level of hours and earnings will increase unless they find work with another employer.
- 3.10 The TUC's research suggests that median wages for workers with ZHCs, at £7.25 an hour are around 66% of the median pay for all employees at £11.05 an hour (TUC 2017). It is also suggested that the pay penalty associated with ZHCs has increased in the last three years, falling from 74% of all employee median pay to 66% of median pay last year. At first glance, it might appear that there has been severe downward pressure on the pay of ZHC workers but it could equally be the case that some low paid workers who previously described themselves as having some other contractual status now say they have a ZHC, essentially concentrating low pay in the ZHC category.
- 3.11 It is also worth recalling that 60% of the median is the generally recognised international threshold for the measurement of low pay. In other words, close to half of all ZHC workers are below the low pay threshold, which means that their *risk* of low pay is more than twice the level for the working population as a whole. Nonetheless, the number of workers affected is small; around 450,000 ZHC workers are low paid compared with 6.2 million workers in total. Expressed differently, around 6.9% of those who are low paid are employed under a ZHC. This finding leads us to a more precise description of the ZHC "problem": income insecurity and low pay must be the focus, which suggests that ZHCs are a subset (albeit a relatively small one) of the UK's low pay challenge (of which more is said below).

3.12 For policymakers the principal question in relation to ZHC's is whether more needs to be done to ensure that workers have access to a regular pattern of hours and earnings? **One possibility, mooted in advance of the 2015 general election, is to require employers to offer clearly specified hours after 12 weeks of employment. In addition, although this will require further consideration, it should be possible to give workers a right to request extra hours of work from their employer and to have this request reasonably considered** – in essence this is the obverse of the right already on the statute book to request reduce hours of work. A bolder option would simply be to require employers to guarantee specified hours of work from day one of employment, outlawing the ZHC arrangement completely. Whether this can be achieved effectively is a moot point, since an employer could presumably comply with the law by guaranteeing only one or two hours of work each week, with the remainder to be determined according to the employer's needs.

3.13 What has to be remembered throughout this discussion, however, is that the ZHC phenomenon is not well documented. The official data leave much to be desired and, while accuracy seems to have improved, it is still difficult to identify exactly *who* is being exploited and the extent of exploitation. It is not unreasonable to assume that the hospitality is the sector where bad practice is concentrated, but further research is needed to confirm this hypothesis. **Policymakers should therefore make a determined effort to improve the quality of the data recording the extent of the ZHC phenomenon and sponsor a programme of focused research to identify the workers most at risk of bad practice.** Perhaps the best response, however, is to treat the ZHC "problem" as another dimension of the UK's low pay problem. Determined action to raise wages for the most disadvantaged could have a decisive effect on the earnings of ZHC workers, significantly reducing the risk of low pay. **The Inland Revenue, which enforces the National Minimum Wage, should also adopt a risk based approach to rooting out bad practice, concentrating on those sectors with a high usage of ZHCs and a high risk of low wage employment.**

4. The rise of the gig economy?

4.1 We have already observed that the official statistics report far more persistence than change in the structure of the UK's labour market. These findings are hard to reconcile with the increasing interest in the growth of the so-called gig economy, where individuals are either freelancing or are using digital platforms to find work, generally defined as discrete tasks rather than "jobs" or even "temporary work" as conventionally conceived. **For policymakers the important first step is to develop an accurate picture of today's realities.** As with the story about ZHCs, a great deal seems to depend upon anecdote, the quest for a compelling narrative about what is going wrong in the world of work, an obsession with technological progress as an explanation for the disappearance of decent work and a potentially pessimistic assessment of the course of labour market developments.

4.2 There are no generally accepted definitions of what constitutes the gig economy; surveys have been conducted using different methodologies often with small sample sizes. Extrapolations derived from the data seem to stretch the quality of the information beyond breaking point. Moreover, the concern with the gig economy is often confused with a worry about bogus self-employment, most notably in the context of the employment status of Uber drivers and Deliveroo

couriers. Dispersing the fog of confusion is essential but in the short-term may prove problematic. **We know a great deal less than is necessary to make secure judgements about the nature, extent and persistence of the gig economy.**

4.3 A study published last year included a headline figure that there are now five million crowd workers in the UK, with nine million people reporting that they have tried to find work through digital platforms like Uber, Upwork, Handy and TaskRabbit (Huws et al 2016). These figures are undeniably striking but a moment's reflection suggests that they may not be entirely credible. The LFS shows that almost four in every five people at work has a permanent contract. If that figure is correct (and it almost certainly is) then it seems surprising to say the least that almost one in three people is trying to find work through a digital platform. What the more detailed analysis also shows, however, is that only one in ten of those responding to the survey found *any* work through an app and only one in twenty (5%) derived all their income from these arrangements. Even that figure looks somewhat excessive when compared with research in the USA which suggests that between 0.4% or 0.5% of the workforce are finding employment through digital platforms (Harris and Krueger 2015, Katz and Krueger 2016).

4.4 It is generally assumed that those working in the gig economy are self-employed. If the five million figure is correct then one would have expected an *even more significant* increase in the level of self-employment. Unfortunately, the official data tells a different story. Most of the increase in self-employment since 2010 is accounted for by a reduced outflow rather than increasing inflow of people who describe themselves as self-employed (ONS 2016b). The ONS attribute this to the rise in part-time self-employment as people reduce their hours to prepare for retirement or continue working part-time after what had been considered normal retirement age:

[S]elf-employment has grown over the long-term because the net-inflows from unemployment and other forms of employment have exceeded a net outflow to inactivity (ONS 2016b).

In other words, more people are staying self-employed for longer but the number of "new entrants" is not growing significantly. This suggests that the larger estimates of the size of the gig economy should be given a thorough washing in cynical acid before they are taken too seriously.

4.5 Some of the US literature either suggests much higher figures for employment in the gig economy or endorses the argument that most new jobs are in non-standard forms of employment. This is certainly true for the estimates produced by Katz and Krueger, which are often prayed in aid to support the second thesis (Katz and Krueger 2016). According to their analysis, employment on non-standard contracts has risen from one in ten to one in six of the US workforce since 2010. But the authors only achieve their troubling results by including all temporary forms of employment (especially agency work) in the non-standard category. It may therefore be unwise, on the evidence of this study, to reach a definitive conclusion about the pattern of job growth in the USA. There may be cyclical factors at work, most obviously the continuing effects from the global crisis which, as we have already observed, led to an increase in both temporary work and self-employment following the reduction in the number of permanent employee jobs.

- 4.6 It is also worth noting that most of the increase in self-employment in the UK since 2010 can be found in the top three occupational groups (managers, professionals and associate professionals) (Brinkley 2016). This also helps to explain the flurry of policy interest in the growth of “freelancing” which, for these purposes is defined as own account self-employment in those top three groups. According to the most recent study around 6% of all those in employment were working as freelancers in 2015 (Kitching 2016). There is also a high level of churn in this population, with almost one in three entering and exiting the freelance workforce every year.
- 4.7 If we are really in search of the gig economy then this is where it is most likely to be found: amongst those working as professionals in, for example, the creative industries, engineering/construction and management consulting. It is self-evident that this group is not low paid, although they may be uncertain about the precise projects on which they may be working in six months time. Life is characterised by a degree of uncertainty and potentially a high level of income insecurity (if contracts dry up). Skilled, professional people are, however, unlikely to be out of the labour market and without work for long.
- 4.8 “Freelancing” as defined here is not a new phenomenon (ask any musician) and, although there is evidence that the numbers have increased since 2010, it should be clearly distinguished from the concern that those finding work through digital platforms are suffering from low pay and an abuse of employment rights. There are well-documented cases of bad practice in the latter group. This is where the media has focused its attention and where trade unions have directed their criticisms. But much of what passes for data in this context is nothing more than good investigative journalism, exposing abuses of power by employers. A series of disturbing anecdotes does not make a trend and offers a poor foundation for radical new departures in labour market policy.
- 4.9 Most of the media commentary in the last year has focused on two companies: Uber and Deliveroo. In both cases the businesses define those working for them as self-employed, but Uber claims to be nothing more than a digital platform, connecting drivers and passengers whereas Deliveroo is, self-evidently, organising a delivery service, offering uniforms and equipment to workers.
- 4.10 The GMB trade union, acting on behalf of a group of Uber drivers, sponsored a claim to an employment tribunal arguing that the drivers were employees and therefore entitled to full employment rights. In other words, despite their protests to the contrary, Uber was running a transport business. The tribunal applied a set of standard tests that have been developed by the courts over time to determine whether an individual is an employee or self-employed. Important factors include:
- The individual must have a contract with the employer
 - The individual must undertake the work personally
 - There has to be mutuality of obligation between the two parties (the employer offers the work and the employee has to do the work)
 - The employer must have control over the work that the employee is doing

- 4.11 What the tribunal found in this case was that Uber had control of the whole operation, allocating tasks, fixing prices for journeys, determining levels of wages and requiring drivers to do a job once it had been accepted. In practice, therefore, Uber had abused their market power, misclassifying employees as self-employed as a device to avoid the requirement to observe employment rights. The business had apparently made the calculation that a dispersed group of workers who had little connection with each other would lack the wherewithal to act collectively. This proved not to be the case.
- 4.12 The position of Deliveroo couriers has yet to be tested in the courts and, while there is always a degree of uncertainty about the outcome of legal processes, it seems likely that these riders will be recognised as employees.
- 4.13 The tribunal's judgment in the Uber case demonstrates that the standard contractual tests are still adequate to distinguish between genuine and bogus self-employment. It is better, perhaps, to take action and remedy the imbalance of bargaining power between workers and their employer rather than reopen the technical question of defining employment status more precisely in law (of which more is said below). Allowing workers to organise, challenge employers and argue for better conditions of employment could be more effective than some statutory changes to the law of contract.
- 4.14 As with ZHCs, our knowledge of the gig economy is less comprehensive than much of the commentary would suggest. **There is a compelling need for better data and the collection process should be prioritised by the Office for National Statistics.** What can be said with some confidence, however, is that the gig economy is relatively small, has grown from a relatively low base and is mostly populated by workers from the top three occupational groups. To suggest that Uber drivers or Deliveroo couriers are gig workers is to accept the propaganda produced by both those businesses – that the individuals concerned are self-employed entrepreneurs rather than employees.
- 4.15 It is particularly, noteworthy, perhaps, that both Uber and Deliveroo were launched in the wake of the global crisis. Uber's business model in the USA is predicated on the belief that people are driving for the company because they want to supplement the earnings derived from permanent employee jobs. This is a hallmark of labour market weakness rather than strength. Wage growth in the USA for workers below median earnings has been disconnected from productivity growth since the 1970s (Bailey et al 2011). If wage growth strengthened and real earnings from regular employment increased then Uber might experience a labour shortage because people would no longer feel the need to take a second job to secure some additional income.
- 4.16 Moreover, David Plouffe, who left the Obama Administration to become a vice-president of Uber, is on record as saying that he can detect no significant rise in the gig economy from the US data⁵. If Uber drivers were genuinely gig workers then they would be receiving work from more than one digital platform and this appears not to be the case.

⁵ Plouffe made this point at an IPPR seminar in London in the autumn of 2015 and confirmed the point at an OECD conference on the future of work in January 2016 (Source: author's notes from both events).

5. Redefining Employment Status?

- 5.1 The case made so far in this submission is that securing a balance of power between workers and employers is essential to achieve good labour market outcomes for all. As the previous section explained, much of the concern about so-called gig workers is really about the abuse of power by employers who demand that workers act as if they are self-employed even though the reality is rather different. This should be distinguished from the position of self-employed professionals who are genuinely running their own businesses and are much less likely to be either low paid or exploited.
- 5.2 The Review has asked a specific question about whether current definitions of employment status need to be updated to reflect new forms of working created by current business models, including the use of on-demand platforms. It would be easy to answer this with a resounding “no” but perhaps a little more explanation is required.
- 5.3 It is sometimes suggested that employment law is a little confusing because some employment rights are only available to “employees” whereas others are available to “workers” (Box 1). At first glance the choice of which rights extend to which group appears to have no clear rationale, leading some commentators to suggest that more than a modest tidying up is needed. In their view it would make sense to apply all employment rights to everybody at work, except presumably the genuinely self-employed who are running their own businesses⁶.

Box 1: Statutory Rights Guaranteed to “Employees and “Workers”

Statutory Right	Employee	Worker
Protection against unfair dismissal	✓	
Right to a redundancy payment	✓	
Notice periods	✓	
Maternity Leave	✓	
Parental Leave	✓	
Fixed-term employment	✓	
Dismissal and disciplinary/grievance procedure	✓	

⁶ See, for example, <http://www.thompsons.law.co.uk/itext/l1520004.htm>. Some commentators in the USA have suggested that a new employment status is needed for gig workers, see Harris and Krueger 2015. The argument is not entirely convincing, given the very small number of workers concerned.

Statutory Right	Employee	Worker
National Minimum Wage	✓	✓
Rights guaranteed by the Working Time Regulations	✓	✓
Right to be accompanied in grievance and disciplinary proceedings	✓	✓
Unlawful deductions from wages	✓	✓

- 5.4 Until the introduction of the National Minimum Wage (NMW) in 1999 and the Working Time Regulations in 1998, employment rights had been exclusively reserved for “employees”. A “worker” is defined in the same way for the purposes of both the NMW and the Working Time Regulations as someone who:

...works under a contract of employment or any other contract, whether express or implied,...whereby the individual undertakes to perform personally any work or services to another party to the contract.

- 5.5 The rationale for widening the scope of these rights was to prevent the use of bogus self-employment by unscrupulous employers seeking to avoid the payment of the NMW. In addition, drafting the legislation in these terms ensured that self-employed workers who charged by the hour received the NMW. The Working Time Regulations were essentially treated as a health and safety measure. Extending the rights to workers meant that all those involved in the delivery of work or services to another party had the right to breaks, daily and weekly rest periods and holiday pay. The policy intention in 1998-99 was to ensure that those in lower paid and more vulnerable self-employment were properly protected against exploitation. There was no desire to undertake a wider review of employment status or devise new contractual arrangements for the future.
- 5.6 The process of developing the NMW and Working Time regulations was carefully considered and those who were in government at the time may recall that the introduction of the category of worker was not without controversy – some ministerial advisers believed that it would compromise labour market flexibility and employment growth. What can be said with some confidence, however, is that the late 1990s settlement has worked relatively well. The difficulty is with the hard cases or those instances where employers are abusing their power (as was discussed in the previous section). For the time being, **policymakers should monitor developments closely to identify where rights are being abused and ensure that workers are properly informed about the protections available to them. There may be a case for the Law Commission to review employment status in the medium term, consistent with their objective that the law should be fair, modern, simple and cost effective.** What recent case law demonstrates, however, is that the courts are perfectly capable of applying the usual contractual tests to

determine the genuine nature of the relationship between an employer and a worker. **It is difficult to sustain the case (at least at present) that radical reform is required to take account of the changing labour market.** The notions of employment and self-employment have been developed over the course of more than a century. Policymakers would need very good reasons to make significant changes to this settled position. All the evidence to-date shows that it is not at all difficult to ensure that the contractual arrangements available to workers match the well-established categories, even if legal action may be necessary to vindicate employees' rights.

6. Low Pay and Wage Stagnation

Low Pay

6.1 It has already been observed that the UK has a relatively high level of low pay and that the best way to view the ZHC problem is as a sub-set of the UK's low pay challenge. The Review's terms of reference do not include the question of low pay and it is not intended to deal with the issue here in more than summary form.

6.2 While the NMW has succeeded in eliminating extreme low pay from the UK economy (those earning less than half median earnings) the level of low pay more generally (those earning less than 60% of the median) has scarcely fallen at all and remains at close to one in five people at work. It was apparently for this reason that George Osborne, while Chancellor of the Exchequer, announced the introduction of the National Living Wage (NLW), which is essentially a higher NMW rate for those over the age of 25. The Low Pay Commission, which makes recommendations to government on the level of the NMW, has been given a remit that by 2020 the level of the NLW should have reached 60% of the median. This is a major departure in policy, particularly for a Conservative government, because it is seeking to use a statutory wage floor to eliminate low pay from the UK economy.

6.3 In the past, governments of all political hues have avoided making a policy choice of this kind, simply because they were concerned that a significantly higher minimum wage could lead to much higher unemployment. Even the more sympathetic analysis of minimum wages produced in recent years has recognised that at some level minimum wages will have a negative impact on jobs (Card and Krueger 1995). As the Low Pay Commission has noted, if the 2020 target is to be met then the UK will have the highest minimum wage in the world, which is described as a "stretching goal".

6.4 We should not allow the diplomatic language to deflect our attention from the seriousness of the LPC's observation. There could be some very significant negative employment effects⁷. Moreover, the government's choice of 2020 as the target date for the elimination of low pay took place before the decision that the UK should leave the European Union. The LPC's road to 2020 could be bumpy not least because the UK labour market will move from a position where just over a

⁷ HM Treasury accepts that there will be some disemployment effects – although they say that the numbers will be small. In their view this is a price worth paying. Up to 110,000 jobs could be lost set against projected employment growth of 1.1 million up to 2021. Readers with long memories will recall that in the early 1990s HM Treasury and the Department of Employment suggested any minimum wage could lead to the loss of up to 2.5 million jobs. Obviously that figure was not credible and proved quite false. It is legitimate to wonder therefore whether the 110,000 forecast is likely to prove any more accurate – although in this case the number of job losses could be greater.

million workers are covered by the NMW to a position where almost five million workers have their wages fixed at the level of the NLW.

- 6.5 It would be quite wrong to conclude that the NLW has therefore solved the UK's low pay problem. There is no guarantee that the target will be met by 2020, Brexit related turbulence may blow the government and the LPC off course and employers may begin to balk at the level of the NLW. Similarly, while Mr Osborne heralded the NLW as the "solution" to low pay, the impact on household incomes may be more muted because in-work benefits, including support for housing costs, may be withdrawn at the same time as the wage increase begins to bite. On one reading the NLW is a welcome transfer of responsibility from the public purse (tax credits to low income families) to employers (higher wages). Nonetheless, it is a real concern that *wages* may rise but *household incomes* may not.
- 6.6 For those aged 25 and under the low pay problem is likely to be persistent. One way in which the LPC can make the NLW more affordable for employers is to allow youth wages to drift slowly downwards. This is not necessarily a desirable development, even if it does have the beneficial consequence of protecting jobs for young workers.
- 6.7 Nonetheless, if the strategy works as the government intends (or intended during Mr Osborne's tenure as Chancellor) then some of the difficulties we have identified in the context of ZHC's will begin to disappear, at least for those over the age of 25. It should be remembered, however, that more than one in three of those with a ZHC is aged 16-24 and that their risk of being low paid is significantly higher than for the general working population. It is possible, therefore, that a significant minority of young people find themselves stuck with both low wages and a ZHC until they reach the age of 25⁸.

Wage Stagnation

- 6.8 Much has been made of the absence of significant wage growth in the period since the global financial crisis. This is another significant issue affecting the nature of work in the modern economy but is once again beyond the Review's terms of reference. The essential proposition can be summarised as follows: in the nine years since 2008, per capita incomes have grown by 2% in total. Wages have taken nine years to grow as much as they would have in one "normal" year before the crisis. Some of the phenomenon might be attributed to the structural weaknesses of the UK economy (productivity growth has been subdued too as the next section describes) but much of it is explained by the changing balance of power between workers and their employer. In a world where trade unions are disempowered or absent it is very difficult for workers to secure their fair share of the fruits of growth.
- 6.9 Even before the global crisis the UK had a wages problem. In economic theory wages are supposed to rise in line with productivity, yet for all workers at the median and below in the UK wage growth and productivity growth became disconnected in the early 1990s (Commission on Living Standards 2012). One might attribute this phenomenon either to globalisation or technology, but if that were

⁸ And of course the employment prospects of those over 25 may be diminished by a substitution effect. Young workers will be significantly cheaper for employers in low wage sectors. Workers approaching their 25th birthday may suddenly find themselves out of a job.

the case the decoupling would be a universal phenomenon affecting all countries at the same time. In fact the data tells a more complex story. The decoupling effect appeared in the USA in the early 1970s (continuing without respite subsequently), began to bite in the UK in the early 1990s, affected Germany in the early 2000s immediately after a major programme of labour market liberalisation and has only latterly appeared in a muted form in the Nordic countries (Bailey et al 2011). This suggests that the principal reasons for decoupling lie in changes made to labour market institutions. To some extent policymakers are choosing to allow this to happen. Labour market deregulation was a matter of deliberate decision in Germany, the UK and the USA. In the latter two countries atavistic hostility to trade unions has been an article of faith on the mainstream right for a generation.

6.10 It is important to understand too that this disconnection of pay and productivity is bad both for living standards *and* economic stability. As an IMF research paper published shortly after the financial crisis confirmed an imbalance of bargaining power leads to rising income inequality, rising income inequality leads to rising levels of debt and rising levels of debt beget extreme economic turbulence when the tower of exotic debt instruments crumbles (Kumhof and Ranciere 2010). Their recommendations remain as valid today as they were seven years ago: **policymakers must make a deliberate effort to encourage strong labour market institutions (including trade unions) that can reconnect wage growth and productivity growth.**

6.11 One cannot really make sense of today's labour market without understanding the realities of power, authority and control. It is the absence of worker bargaining power that explains the persistence of low pay, the growth of bogus self-employment, the more widespread use of ZHCs *and* the disconnection of pay and productivity. Workers are rarely treated as citizens at work, with the same rights that we cherish in wider society. As the Harvard labour economist Richard Freeman has observed, today's workplaces are characterised by a new feudalism where workers must do as they are told and employers behave with baronial authority (Freeman 2015). As we shall see in section 8, it is not just workers at the margins who have these experiences, there is a good deal of uncertainty and bad practice in mainstream workplaces where jobs are notionally secure and relatively well rewarded. The middle classes can have a bad time at work too.

7. Productivity

7.1 Achieving high quality, secure employment and decent earnings for all depends on the rate of productivity growth in the economy and the UK's relative productivity performance. As Paul Krugman has famously observed, *productivity isn't everything, but it's almost everything*. Once again, the productivity question and the UK's productivity gap with other major economies are excluded from the scope of the Review. Nonetheless, ensuring that British businesses are run efficiently and effectively depends on how well the workforce is managed.

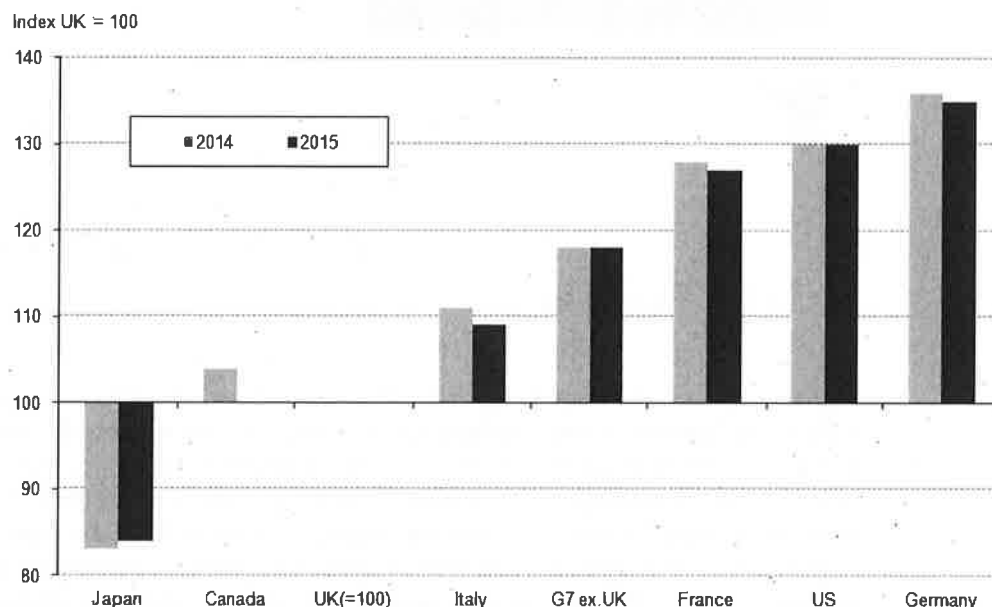
7.2 The gap between UK productivity and other major economies has been well documented elsewhere and it is not intended to repeat those arguments in this submission. That there is a productivity gap is undeniable (see Figure 3) and if it is not closed then living standards in the UK will fail to keep up with those achieved by comparable economies. Successive governments have sought to offer an

account of the drivers of productivity , which can be usefully summarised as follows (BIS 2008):

- Investment
- Innovation
- Skills
- Enterprise
- Competition

This framework was developed by the Labour government from 1997-2010 and the Conservative government published its own productivity strategy in 2015 which, while slightly different in the terms used and the range of policy prescriptions, bears striking similarities to the previous prospectus. (HM Treasury 2015).

Figure 3: UK Productivity compared with other major economies (output per hour worked)



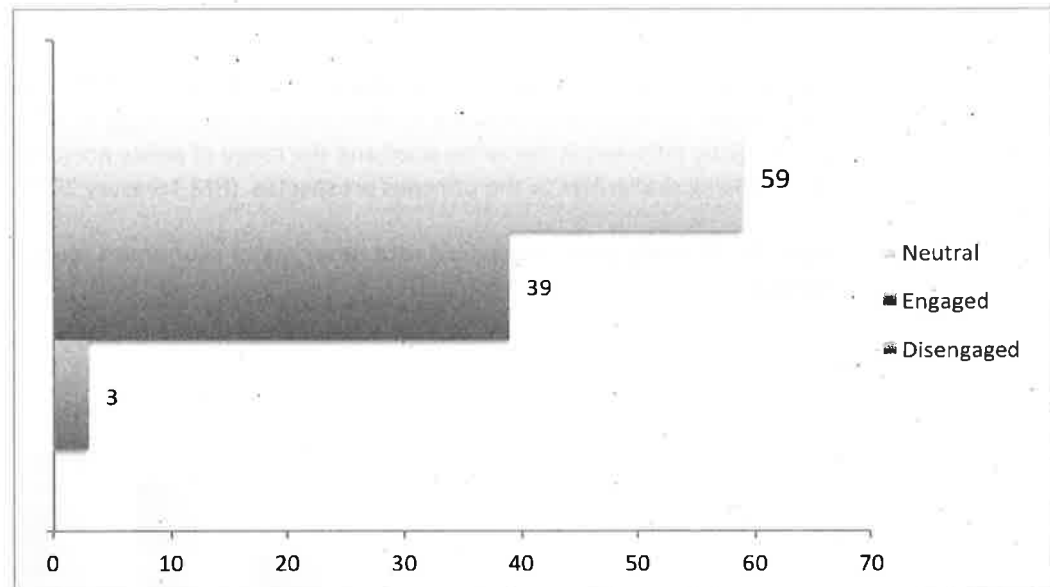
Source: ONS

7.3 In both cases, however, very little is said about what happens *inside* the workplace. The management of the workforce, the organisation of work and the design of jobs are all conspicuous by their absence. This is more than a little surprising for two reasons. First, one of the strengths of the German economy (with a more than 30% productivity advantage over the UK) is the extent of incremental innovation in the workplace (Hall and Soskice 2001). Some of this can be attributed to the extensive arrangements in place for worker involvement in decision-making (co-determination), which creates a strong foundation of trust encouraging workers to give active consideration to ways of doing their jobs more efficiently and effectively. Second, the HR profession has spent much of the last decade making the case for employee engagement as a driver of productivity. Engaged workers, committed to their employer's business are more likely to do their jobs well.

7.4 If these arguments are correct (and they probably are) then how do we explain the UK's productivity gap and recent disappointing performance? Some of this can be

attributed to the UK's weaker investment record and some of it might be explained by the patchy skills performance. But the UK's competition regime is strong, both product markets and labour markets are lightly regulated; corporation taxes are low and it is relatively easy to start a business. On most of the OECD's structural indicators the UK performs well⁹.

Employee engagement in the UK, Spring 2015



Source: CIPD Employee Outlook, Spring 2015

7.5 If what happens in the workplace really matters and if the HR profession were fulfilling the promise of employee engagement then one ought to expect rather better productivity outcomes. Perhaps the best explanation lies in the fact that the reported level of employee engagement in the UK is relatively low (Figure 4). Less than two in every five workers (39%) are “engaged” in a way that meets the theoretical definition; three in five are “neutral” about the organisation for which they work and the remainder are disengaged¹⁰. In other words, the employment practices that presently characterise the UK economy are not as productivity enhancing as they can or should be. Questions of participation and organisational citizenship, the balance of power between workers and their employer and management style are rarely discussed in most workplaces. This may also explain the dissatisfaction and unfair treatment reported by workers with apparently secure, standard, mainstream jobs. It is to those issues that we now turn.

8. Bad practice in mainstream employment

8.1 Before we embark on a discussion of bad practice in the mainstream it is useful to have some idea of what constitutes good practice. More than a decade ago The Work Foundation began to develop the notion of “good work”, drawing on a range of research findings to identify the workplace factors that produced good social

⁹ Expressed another way, one might say that the UK economy is under-regulated, labour markets are too flexible and the absence of employee voice is a significant disadvantage.

¹⁰ The CIPD have not compiled an employee engagement index since 2015, possibly because the previous results were disappointing, suggesting that the HR profession was failing to deliver the promise of engagement.

and economic outcomes (Coats with Lehti 2008). The critical elements of the workplace are

- Employment security
- An absence of monotony and repetition
- The extent of employees' autonomy, control and task discretion (more autonomy leads to better outcomes)
- An appropriate balance between effort and reward
- Possessing the skills needed to cope with periods of pressure
- Respect for the principles of procedural justice – is the workplace seen as fair?
- The strength of workplace relationships. Do workers trust their employer and each other?

8.2 There are no comprehensive measures of the extent of either good work or bad work in the UK. There are, however, some slightly old datasets (the earliest is from 2008) that at least give us some indication of the quality of employment¹¹. Given the general trajectory of labour market developments revealed in the official statistics, it is unlikely that the situation will have been improved since the job quality data presented here was collected.

8.3 Much of the conventional thinking about good jobs and bad jobs struggles to incorporate a sophisticated understanding of job quality. A cleaner or a refuse collector has a bad job whereas a management consultant or an investment banker self-evidently has a good job. But a cleaner or a refuse collector can have a job that offers a degree of control and discretion, a proper balance between effort and reward, strong workplace relationships and a guarantee of procedural justice. Equally, a management consultant or a banker can be burdened with excessive workloads (limiting the extent of control), find themselves subject to intrusive performance management systems and may be the subject of unreasonable demands from more senior colleagues at the same time as the competitive environment in the workplace damages relationships with peers. Supposedly bad jobs can deliver good work and good jobs can deliver bad work. Job quality is a matter of concern across the occupational hierarchy.

8.4 The Workplace Employment Relations Study (WERS) reports that there was a significant increase in the intensity of work between 2004-11, with more than four in every five employees (83%) reporting that "my job requires me to work very hard" (van Wanrooy et al 2013). That finding is confirmed by the 2012 Skills and Employment Survey, which recorded that the intensity of work had remained stable in the early to middle 2000s following a significant increase in the 1990s but that work intensification had gathered pace after the global crisis (Felstead et al 2013). Moreover, almost one in four workers (23%) reported that they had to work at very high speeds most of the time. Far from being an instrument of liberation for workers, the introduction of digital technologies was often associated with the intensification of work. One possible explanation is that technology

¹¹ The three principal datasets are the British Workplace Behaviour Survey 2008, the Workplace Employment Relations Study 2011 (WERS) and the Skills and Employment Survey 2012. A new Skills and Employment Survey is about to go in to the field and will produce findings in 2018. It is unclear whether the other two surveys will be repeated. WERS is part of a series of studies that have been conducted intermittently since 1980. If the government is serious about labour market reform then it ought to recognize that good social science is a necessary condition of good policy making.

allows for much closer monitoring of performance and, when operated in conjunction with comprehensive performance management systems reduces employees' control over their work. Consistent with these findings, WERS confirms that almost one in five employees (17%) reported they felt "tense" all or most of the time.

8.5 Other important findings from the Skills and Employment Survey include:

- A third of employees (31%) reported that they were concerned about unfair treatment at work.
- Just over half of all employees (52%) reported anxiety over a loss of job status (less job influence, being moved to a less skilled job, being required to move to a lower paid job, being moved to a less interesting job) (Gallie et al 2013).
- Job related well-being, when measured on the dimensions of enthusiasm for the job and contentment with the job, fell significantly from 2006 to 2012. This is largely attributed to the rise in the percentage of people reporting high job stress (almost one in five employees (17%).
- Three in every four employees (73%) reported that they had limited influence over the organisation of their work
- Just over one in three workers (34%) reported that they had received more than ten days training in the previous year – a fall from 38% in 2006.

8.6 While it would be wrong to use these results to suggest that work in the UK is relentlessly awful, they do suggest that some of the policy focus on the margins of the labour market should be switched to mainstream, secure, employment. A labour market in which people report working harder, with less control, less influence and higher levels of tension and anxiety is hardly a cause for complacency. When combined with the problems discussed above like the UK's productivity deficit and the disconnection of wage growth from productivity growth one has a much clearer picture of the real problems afflicting the economy. It is even possible to go so far as to say that the increasing policy interest in ZHCs the gig economy and the baleful influence of the robots is a distraction from these more pressing problems, which require more complex policy solutions.

8.7 That all is not well is explored in more detail in the British Workplace Behaviour Survey (Fevre 2012). This sought to identify the extent of unfair treatment across the labour market. It was inspired by the rising level of concern with bullying in the workplace but adopted a more sophisticated approach examining unreasonable treatment, incivility and disrespect and violence. Not surprisingly, workplace violence was relatively rare, but the other phenomena were very widespread indeed. Unreasonable treatment included such elements as having one's views and opinions ignored or being given an unreasonable workload. Incivility and disrespect included rudeness, persistent criticism and feeling threatened in the workplace (but not the threat of physical violence). Unreasonable treatment was reported by most workers as more of a concern than incivility or disrespect. The most important findings are as follows:

- Half the British workforce (52%) had experienced some form of unreasonable treatment in the two years before the survey was conducted.
- Nearly one in four workers experienced three or more different kinds of unreasonable treatment and one in ten workers had to put up with five or more kinds of unfair treatment.
- Two in every five workers (40%) had been subjected to incivility and disrespect in the two years before the survey was conducted.
- One in three workers had been given an unreasonable workload
- One in five workers was employed in a "troubled workplace" where the experience of unfair treatment (on all dimensions) was persistent rather than intermittent.

8.8 No equally comprehensive study has been completed since that time but there are few reasons to believe that the situation has improved – the findings of WERS and the Skills Survey are generally consistent with these results. There are two further points worth recording. First, some managers obviously believe that behaving unreasonably is a reasonable price to be paid for getting things done. These managers will have their own targets and may believe that *their* workloads are unreasonable too. They will be subject to the same performance management systems as their staff and it is not too fanciful to suggest that some organisations are incentivising these behaviours. It would be quite wrong to conclude that the UK is somehow unique in having a cadre of evil or toxic individuals in management roles. The reasons for the bad behaviour are more likely to be structural than attributable to individuals. Second, while groups who experience labour market disadvantage (black and ethnic minority workers, people with disabilities) are at apparently higher *risk* of unreasonable treatment or incivility the phenomenon extends to those in permanent, professional and associate professional roles too. The middle classes are the victims of these bad practices just as much as those in low paid insecure employment – perhaps even more so. Yet these problems rarely get reported in the media, rarely register with politicians and rarely provoke a policy response. Nonetheless, they are just as real and much more widespread than either ZHCs or insecure work in the gig economy. Unreasonable treatment affects more than twice as many workers as low pay.

8.9 If British managers are not uniquely evil then how might these disturbing results be explained? One possibility lies in the mechanism through which the pressures from capital markets (investors) are transmitted to boardrooms and to workplaces. If the principal goal desired by investors is the maximisation of shareholder value then this is what senior managers will seek to deliver. This leads to two linked phenomena. First, senior executives often measure their success through their skill in completing a merger or acquisition, which leads initially to a boost in the share price but may also lead to a degree of organisational turbulence and eventually to a destruction of value¹². Second, the instruction to extract value can lead to a permanent revolution of corporate reorganisation in the quest for reduced costs. This makes it difficult (if not impossible) for employers to make long-term commitments to workers. Trust may be undermined and worker commitment diminished. Viewed from this standpoint it is hardly surprising that the UK has a productivity problem.

¹² The tenure of many senior executives is often too short for them to deal with the consequences of their actions. The destructive effects of M&A activity is a well documented phenomenon in the British context, see for example Morris in Buxton et al (ed) 1994.

8.10 John Kay described these difficulties in his work for the coalition government on short-termism in British capital markets and in his earlier writing (Kay 2002, Kay 2012). Resolving the problems demands rather more than a modest investment in management training to discourage unreasonable treatment. The policy measures are once again beyond the scope of this review, but employment practices in today's economy are a consequence of the transmission of incentives from capital markets to the boardroom to the workplace. Amongst the measures worthy of consideration are:

- **Changes in taxation to create incentives for long-term shareholding.**
- **Limiting the scope for those making speculative investments to participate in the governance of the company.**
- **Ensuring that wider ranges of voices, including workers' voices are represented in the boardroom.**
- **Creating (or rebuilding) representative workplace institutions (trade unions or works councils) to ensure that there is an appropriate balance of power between workers and their employer (discussed further in the next section).**

9. Voice

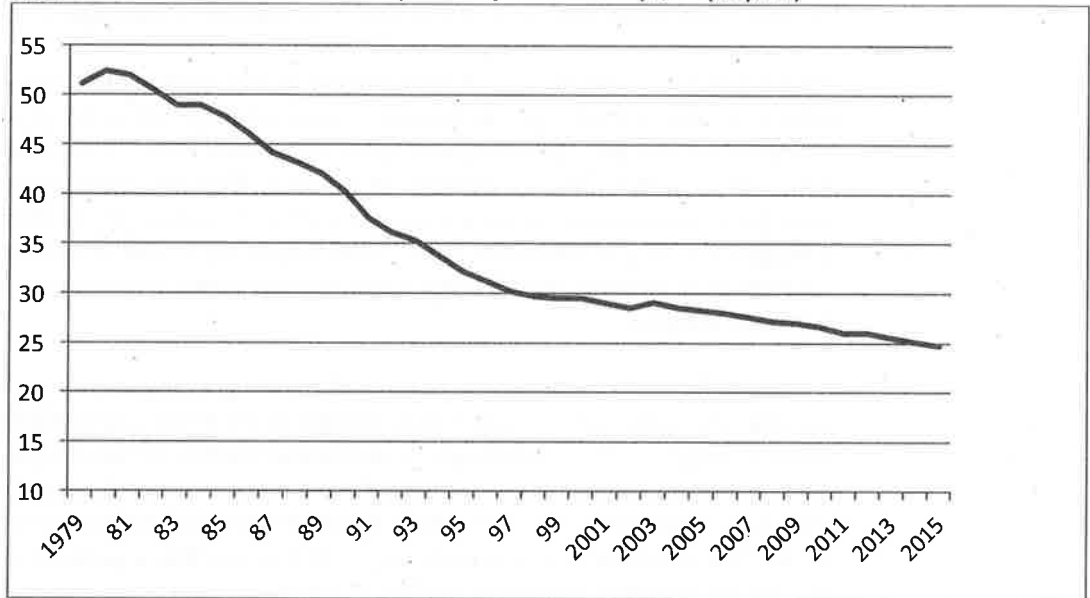
9.1 The golden thread running through this paper is that the balance of power between workers and their employer affects the quality of employment, the distribution of wages and the productivity of the enterprise. Representative institutions matter. This argument finds support in the Nordic countries where open liberal economies also have strong trade unions, proper guarantees of workplace citizenship and extensive welfare states delivering the most egalitarian social outcomes in the developed world. As Duncan Gallie has demonstrated, these countries also have inclusive labour markets where specific action is taken to root out injustice or bad practice (Gallie 2007). Those countries with weak labour market institutions (like the USA and the UK) generally achieve inferior social outcomes.

9.2 The results from the WERS 2011 study are very clear. Joint consultation in the UK is in decline. Fewer than one in ten workplaces had any joint consultation arrangements in place. Almost two-thirds of employees were dissatisfied with their level of involvement in workplace decision-making and there was evidence to show that increased participation led to higher levels of satisfaction with workplace outcomes (van Wanrooy 2013 p74-75). The Skills and Employment Survey records declines in voice and influence, particularly over the organisation of work. There is a representation gap in the UK. This again should be contrasted with the position in the Nordic countries where the predominant organisational form is the high involvement workplace, characterised by high levels of task discretion, high levels of job control and high levels of organisational participation (Gallie and Zhou 2013). This should be taken as a guide for the workplace model that needs to be developed in the UK.

9.3 The decline of trade union membership and collective bargaining coverage has been well documented over the last thirty years and it is not intended to offer a comprehensive account here (Figure 5). What can be said with confidence,

however, is that today's trade unions are struggling to rebuild their membership using conventional means. Moreover, Labour's Employment Relations Act remains on the statute book, including the mechanism through which trade unions can establish collective bargaining rights if they can demonstrate sufficient support in the workplace. The procedure is under the jurisdiction of the Central Arbitration Committee (CAC) but trade unions make very few applications, generally in relation to relatively small groups of workers. There is no effort being made to organise whole industries, which is how trade union membership grew in the past.

Figure 5: Trade union membership density 1979-2015 (% employees)



Source: ONS, Trade Union Membership Statistics

9.4 Trade union membership now stands at 24.7% of employees. In 1979 more than half the workforce were union members. Collective agreements between unions and employers now determine the wages of slightly more than one in four employees (27.9%). Again this should be contrasted with the position in 1979 when four in five workers had their pay determined by a collective agreement. Of all the labour market reforms implemented in the 1980s the decline in union membership and collective bargaining is the most momentous and may have had unforeseen consequences. The balance of power has now shifted so far in employers' favour that those with few scruples are able to offer ZHCs or exploit their market power to create bogus self-employment. In more mainstream workplaces, most employees have no vehicle through which they can raise concerns collectively or participate in the governance of the workplace. Nor are they able to influence the level of their pay (because there is no collective bargaining). Employers determine wages and salaries according to their whim – or on the advice of highly paid remuneration consultants. It is hardly surprising, therefore, that pay and productivity have become disconnected.

9.5 That still leaves an open question about how best to fill the institutional gap. The present author published an extensive menu of policy proposals in 2013 and

suggested that waiting for trade unions to demonstrate their relevance to both employers and workers would leave many people without effective representation for the foreseeable future (Coats 2013). Attention was drawn to the arrangements in place across much of continental Europe, where universal rights to collective consultation in the workplace are enshrined in law. In most countries the threshold of support for the establishment of a works council is low – certainly much lower than for the establishment of an information and consultation committee in the UK¹³. It is not entirely surprising therefore that a study conducted in 2010 found that the UK had the lowest level of worker participation in workplace governance of any EU member state with the exception of Lithuania (Vitols 2010). The Republic of Ireland, which shares many common characteristics with the UK's industrial relations culture, achieved much better results, principally because trade union membership and collective bargaining coverage were higher.

9.6 It is paradoxical, however, that in formal terms, British workers have more extensive rights today to be informed and consulted about workplace change than at any time in the past. Most of these rights are derived from EU directives and are honoured more in the breach than the observance. They are not well known amongst employees and are poorly understood by employers. None of these rights is designed to be a substitute for trade union bargaining on pay, which is kept separate from information and consultation arrangements in most continental European systems.

9.7 It would be possible, nonetheless, to bring all these rights together under the purview of a single representative body elected by the entire workforce (except for senior managers). This would begin to lay the foundations for meaningful participation and industrial citizenship, allowing workers to speak up, be heard and receive a reasoned response from their employer. Establishing strong voice institutions in statute may lead trade unions to discover that organising works councils as a route to organising workers is their best route to revival. If trade unions fail to rise to the challenge, however, the task of supporting newly elected workplace representatives will fall to others, including those perhaps who have campaigned so successfully for living wages, well beyond the conventional confines of the trade union movement.

9.8 The central proposition is that a distinctively British works council model should be developed on the foundations of the following established rights to collective information and consultation about:

- **The employer's strategic plans for the business (information only)**
- **The likely trajectory of staffing levels in the medium term, including any threats to employment and remedial action to be taken (information and consultation)**
- **Significant changes to work organisation or contractual relations (I&C with a view to reaching an agreement)**
- **Joint management of health and safety in the workplace**
- **Vocational training policies and workplace learning (I&C with a view to reaching an agreement)**

¹³ Under the Information and Consultation of Employees regulations 2004, generally known as ICE. Ten per cent of the workforce in an undertaking have to sign a petition to initiate the process of establishing an information and consultation committee.

- Consultation on redundancies (with a view to reaching an agreement)
- Consultation on business transfers (changes of ownership covered by the EU's Transfers of Undertakings directive) (with a view to reaching an agreement)
- Consultation on changes to occupational pensions (with a view to reaching an agreement)
- The flexible implementation of the UK's Working Time Regulations 2004 – flexibilities around the length of the working week, breaks, rest periods (with a view to reaching an agreement).

9.9 No doubt there are some in the business community who would resist this proposal, but they have to answer the charge sheet adumbrated in this paper and explain what they plan to do to restore a degree of balance to the labour market. There is a real risk that if public policy does not change then many employers will do nothing. The British scholars Mark Hall and John Purcell, in their examination of the implementation of the ICE regulations in the UK, reviewed the experience elsewhere in the EU and concluded that the strongest predictor of de facto, practical participation was the level of mandatory worker participation prescribed by law (Hall and Purcell 2012). Public policy can create the context in which strong institutions can grow. To date, most of the rights derived from EU directives have been implemented *sotto voce* by successive governments, with a combination of embarrassment and a distinct lack of enthusiasm. The UK may well be leaving the EU, but protecting, enhancing and properly implementing these rights would constitute a major step towards restoring some balance in the labour market.

9.10 An obvious objection is that none of these rights do anything to extend the reach of collective bargaining, which means that the impact on the pay-productivity disconnection is likely to be muted. To a degree that is true, but the objective of public policy is to make it plain that collective participation is important because it gives force and value to the rights we treasure outside the workplace. In other words, the goal is to change the context. If workers are equipped with the wherewithal to talk about the workplace issues described in paragraph 9.8 it is inevitable that they will, in due course, turn their minds to pay, as will their employers. Making the system work well will depend either on the enthusiastic participation of the trade unions or the activities of other organisations looking to fill the gap left by the retreat of organised labour.

10. Conclusion

10.1 There is a strong sense in the UK today that the labour market has serious flaws and leaves many people either adrift in a sea of uncertainty or left miles behind the Galacticos, languishing on low wages or a ZHC. That was certainly the theme of the prime minister's remarks on the steps of 10 Downing Street when she took office. The central argument made in this submission is that people are right to be worried, but sometimes they worry about the wrong things.

10.2 Some people working under a ZHC may be having a rotten time, but not all ZHCs are exploitative. The risks of being low paid are much higher if you work under a ZHC, but more than 90% of workers who are low paid are *not* working under a ZHC. Similarly, there may be some people working in the gig economy who are low paid, but the official data suggests that most "gig" work is to be found in

the top 3 occupational groups. Certainly there are concerns about people who find work through digital platforms like Uber, but that is far more a result of the employer abusing their market power to impose a bogus self-employed entrepreneur status on workers who are subsequently categorised as employees once the courts have applied the standard tests. This is essentially a question of authority, power, control and the enforcement of employment rights. The supposed rise of gig work does not demand some fundamental review of employment status even though there may be a case for tidying up the existing law in the medium term.

10.3 Perhaps the bigger problem with the construction of the labour market discussion today is that a focus on the margins (the gig economy, ZHCs, the supposed boom in self-employment) will mean that bigger problems get missed. The most obvious labour market challenge is the persistence of low wage employment across the UK. As we have seen, the government may believe that the problem will be solved by 2020, but there is no guarantee, given the uncertainty about the UK's economic trajectory outside the EU, that the goal of eliminating low pay through the instrument of the NLW will be realised.

10.4 Moreover, there is also strong evidence to show that there are real problems for workers with apparently secure, standard jobs. The evidence of work intensification, declining job control, persistent unreasonable treatment, the absence of voice and the imposition of impossible workloads is compelling and demands a response. These phenomena are linked to two further important features of the UK's labour market: first, the low level of employee engagement (despite the efforts of the HR profession); second, poor productivity performance. It would be wrong to suggest that an effort to create opportunities for real industrial citizenship will be a panacea (investment and skills amongst other factors are important too) but the absence of genuine participation is a barrier to progress. Giving workers an effective voice in workplace governance is an essential element in a new labour market model.

10.5 The Anglo-German labour lawyer, Otto Kahn-Freund, captured the realities of the world of work more than 40 years ago:

Any approach to the relationship between management and labour is fruitless unless the divergency of their interests is plainly recognised and articulated. This is true of any type of society one can think of and certainly of a communist as much as of a capitalist society. There must always be someone who seeks to increase the rate of consumption and some who seek to increase the rate of investment. The distribution of the social product between consumption and investment can only be determined by a constant and unending dialogue of powers, whether this takes place at the bargaining table, in parliament, or in the recesses (more or less dark) of government offices (Kahn-Freund 1972)

We would do well to heed his words today.

14 March 2017

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