

16th May 2018

CWU response to BEIS on 'Good Work: The Taylor Review of Modern Working Practices, Consultation on enforcement of employment rights recommendations'

Introduction

1. The Communication Workers Union (CWU) is the largest union in the communications sector in the UK, representing approximately 192,000 members in the postal, telecoms, financial services and related industries.
2. The CWU is unable to respond to each individual question in the consultation due to time constraints. However, we wish to make some general points, as set out below.
3. Overall, we do not believe the Taylor Review proposals or the Government's response to those go anywhere near what is required to enable workers to enforce their rights when things go wrong at work. Making labour law enforcement more effective will rely at the very least on stronger trade union rights; better rights for Employment Tribunal claimants; and a substantial improvement in the funding and effectiveness of state led enforcement activity.

Trade Union Rights

4. The role of trade unions is largely absent from the Taylor Review proposals. This is a serious and glaring oversight given that a key function of trade unions is to promote awareness of rights at work and to ensure these are properly enforced.
5. Trade union rights in the UK are among the most restrictive in the world and have come under attack most recently through the Trade Union Act 2016. The CWU is calling for a repeal of the Trade Union Act and we want to see a set of positive rights to advance collective bargaining and redress the imbalance of power between workers and employers.
6. In particular, we believe there should be a lowering of the bar for statutory union recognition and stronger protections to maintain recognition agreements. We also want to see a right of access by trade unions to the workplace and a clear duty on the employer to facilitate this.

Employment Tribunal Rights

7. In a sign of its lack of ambition for real change, the Taylor review failed to call for a repeal of Employment Tribunal Fees, although it did express 'regret' that the Government was unlikely to abolish the fees. Instead it was a trade union – Unison – that tackled this issue and won a landmark victory last year in the Supreme Court which ruled ET fees unlawful and unconstitutional. The Court's decision shames the

Government for its failure to comply with human rights and equality law, and it shames the Taylor review team for the timidity of its approach.

8. The Taylor Review did however make two recommendations in relation to Employment Tribunals that were welcome. First, to ensure that claimants get an authoritative determination of employment status without paying a fee; and second, to reverse the burden of proof at Employment Tribunal hearings where status is in dispute. It is therefore extremely regrettable that the Government has decided not to take these forward. This decision appears to be based on minimising costs for the Government and business, rather than seeking to strengthen labour market enforcement. This typifies the Government's approach of claiming to care about the lives of working people but not being prepared to support its words with any effective action.
9. We also note that the Government's response completely overlooks the Taylor Review proposal that the Government should take responsibility for enforcing unpaid tribunal awards.¹ The CWU joins the TUC in calling for the Government to accept the Taylor Review's recommendation and to take responsibility for ensuring that a successful claimant receives their tribunal award.²
10. Affordable access to justice is one of the most basic requirements to enable effective labour market enforcement. Without this, the majority of workers will simply not have the means to assert their rights, making statutory employment protections meaningless for them. That is why we urge the Government not to reintroduce employment tribunal fees, which at the present time it has not ruled out.³

False self-employment

11. The CWU has serious concerns about false self-employment as an area of labour market non-compliance. This is a growing problem right across the economy which predominantly affects workers in low paid sectors, including in the unregulated parcel delivery sector.
12. There are over 30,000 self-employed couriers in Hermes, Yodel and Amazon alone, with thousands more engaged by other operators. These workers have all the characteristics of employees, working long and regular hours for the same company with little or no control over their work. They therefore enjoy none of the benefits of self-employment, but they are being asked to take on all the risk including responsibility for National Insurance, tax, van hire, fuel, travel time, vehicle maintenance and insurance. Numerous investigative reports have found that after expenses, couriers often take home significantly less than the statutory minimum wage.

¹ Good Work, the Taylor Review of Modern Working Practices, page 63, recommendation

² Enforcement of employment rights, TUC response to the consultation on enforcement of rights recommendations, May 2018

³ Government does not rule out the reintroduction of employment tribunal fees, employment law solicitors, 29 January 2018, accessed at: <http://www.theemploymentlawsolicitors.co.uk/reintroduction-of-employment-tribunal-fees/>

13. This is a scandal which needs to be urgently tackled. Regrettably, there seems to be a distinct lack of political will to do so and a woefully inadequate level of resource. More than 18 months after the Government instructed HMRC to investigate the treatment of workers at Hermes following a high profile and damning report by Frank Field MP, there is still no news of progress or any outcome of this.⁴
14. Meanwhile, falsely self-employed workers in all sectors continue to be exploited and struggle to make ends meet. Work should pay a living wage at the very least, but low paid insecure employment in Britain today means that working families are being forced to visit food banks, and parents are skipping meals so that they can afford to feed their children.⁵ There are now 8 million people, including 2.7 million children, living in poverty despite being in a working family.⁶

Agency workers

15. The CWU has campaigned over more than a decade for fair and equal treatment for agency workers. Effective enforcement of the law through an adequately funded Employment Standards Agency Inspectorate (EAS) is crucial to this objective. However, as we said in our response to the Government's consultation on agency workers, there is a serious problem of pay inequality for agency workers which cannot be addressed without first repealing the Swedish derogation in the Agency Workers Regulations.⁷

State led enforcement activity

16. A major part of the solution to effective enforcement has to be a substantial improvement in the effectiveness of state led enforcement activity, by making sure that enforcement agencies are properly funded and resourced. It is not adequate or acceptable that for every 100,000 workers the UK has 0.9 labour market inspectors compared with 12.5 in Belgium and 18.9 in France.⁸
17. The Gangmasters Labour Abuse Authority (GLAA), the HMRC National Minimum Wage Team and the Employment Agencies Standard Inspectorate all need substantially more resources to carry out their roles effectively. The GLAA has a hugely expanded remit without a commensurate increase in funding.⁹ The increase in the HMRC NMW enforcement team budget is far from enough to achieve its aim of enforcing the new

⁴ Wild West Workplace, Self-employment in Britain's 'gig economy', Frank Field and Andrew Forsey, September 2016

⁵ Children at food banks: the reality of Britain's food poverty crisis, Independent, 11th December 2017, accessed at: <https://www.independent.co.uk/helpahungrychild/children-food-banks-poverty-uk-british-poor-families-child-christmas-felix-project-a8103086.html>

⁶ UK Poverty 2017, Joseph Rowntree Foundation, December 2017

⁷ CWU response to BEIS consultation on agency workers recommendations, 8th May 2018

⁸ UK falling behind on labour inspection to combat modern slavery – New FLEX policy blueprint, 12 October 2015, accessed at: <http://www.labourexploitation.org/news/uk-falling-behind-labour-inspection-combat-modern-slavery-new-flex-policy-blueprint>

⁹ In 2017/18, the GLAA is responsible for enforcing labour market offences for roughly 10 million working people, compared with 500,000 workers previously. However, its resources have not increased sufficiently in line with this, employing 107 staff in 2017/18 compared with 72 staff in 2016/17. See Parliamentary question, 18th July 2017, asked by Baroness Jolly, at: <http://www.glaa.gov.uk/media/3213/jolly-180717-glaa-budget-and-staffing-levels.pdf>

National Living Wage.¹⁰ And in the current year (2017/18) the EAS only has a budget of £725,000¹¹ and 12 full time staff to ensure that 23,980¹² recruitment agencies comply with the Conduct Regulations. This makes it impossible for the EAS to stamp out abuse in the agency sector.

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¹⁰ The HMRC NMW team budget increased from £13.2m in 2015/16 to £25.3 million in 2017/18 to assist with policing the NLW, but this is not sufficient to cover the estimated 305,000 to 580,000 people who are currently being paid below statutory minimum wage levels (See the Low Pay Commission report on non compliance with the minimum wage, 17 September 2017).

¹¹ EAS written question, asked by Tulip Siddiq, 2nd February 2018, accessed at:
<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-02-02/126332>

¹² Recruitment industry trends 2015/16, REC, December 2016, accessed at:
<https://siteassets.pagecloud.com/adelectus/downloads/Recruitment-Industry-Trends-2015-2016-ID-1cb824a2-b37c-4ead-a78c-b9f74f792d99.pdf>