

A Response to the Taylor Review

J R Shackleton & Jamie Whyte

Summary

- The Taylor Review should be commended for recognising the success of the UK's flexible labour market and for refusing to endorse the outright bans on zero-hours contracts and app-based "gig" economy advocated by the Labour Party, trade unions and other pressure groups.
- However, its recommendations for further regulation of these types of work seem likely to inhibit their growth and reduce the benefits going to both consumers and workers.
- The Review's failure to address the likely costs of its proposals through reduced employment is a serious methodological error which undermines the case for their proposals.
- The Review fails to make a convincing argument that large numbers of workers are disadvantaged by working in different ways from the traditional model. It downplays the costs of forcing businesses to treat self-employed people as "dependent contractors".
- Taylor and his team pay insufficient attention to the variety of jobs available in these new forms of employment, falling back repeatedly on a stereotype of badly-paid work and vulnerable workers. They fail to stress that traditional forms of regular employment are not accessible, or are unattractive, to many of those working in this way.
- Giving gig workers and other self-employed people access to similar benefits as standard employees will add to costs, which will be passed on to consumers and workers themselves rather than ultimately borne by large businesses.
- The proposal to increase national insurance contributions by the self-employed will cut their net incomes and perpetuate the increasingly meaningless distinction between national insurance and income tax.
- Placing further restrictions on Agency Work goes beyond what is required by the Agency Workers Directive, which British governments opposed in the past. They will add to costs and reduce employment.
- Many of the Review's proposals for promoting "Good Work" are probably harmless, often because they are mere waffle. However, they underestimate the difficulties of assessing just what employees want from work, and of changing business behaviour. The proposed requirement to publish elaborate indicators of the "quality" of work will be an additional burden on firms and the taxpayer, and promote the mistaken notion that businesses exist to serve employees rather than consumers.

Introduction

The Taylor Review of Modern Working Practices, published on July 11th, was commissioned by the Prime Minister last year. It was a response to concerns that an increasing number of UK workers are engaged in work which is insecure, poorly paid, or denies them access to many government-mandated benefits (such as sick pay, paid holidays and parental leave) available to those in traditional full-time employment. This concern has focused on employees on zero-hours contracts (ZHC) and self-employed workers in the “gig economy”.

This Briefing sets out our response to key features of the Taylor Review.

The overall approach

The Review praises the flexibility of the UK labour market and what it calls “the British way”. It points out that the employment rate is at an historic high, unemployment is at a 40-year low and job creation compares favourably with many other countries. Moreover, most jobs – old and new – are full-time, permanent posts. Compared with many EU countries, we have relatively few people working on temporary contracts. Although we have a high proportion of workers on part-time contracts, this is overwhelmingly the arrangement preferred by the worker. By contrast, part-time work in many EU countries is frequently undertaken because preferred full-time work is unavailable.

Why then does the Review recommend further regulation of the British labour market? The answer is that Matthew Taylor and his co-authors, though content with the quantity of work in Britain, are unhappy about its quality. They claim (p9) that there should be a national strategy to promote “Good Work”, also described as “fair and decent” work. The various government interventions they go on to recommend (see below) are intended to be contributions to this national strategy for “Good Work”.

Since Taylor et al understand that the high rate of employment in the UK is a result of its flexible labour market, they surely also understand that their proposals to reduce that flexibility will result in reduced employment. Yet this effect is not addressed in the Review. This is a fundamental methodological flaw. Even supposing that the proposed interventions would improve the quality of work (which we often doubt), would these improvements be worth the reduced rate of employment they would cause? Taylor does not ask this question, let alone answer it. The Review concerns itself only with the supposed benefits of his proposed interventions.

It is impossible to make a reasonable case for a policy by pointing to its benefits while ignoring its costs. Yet that is precisely the approach taken by the Taylor Review.

Zero-hours contracts

The Review accepts the Office of National Statistics view that the growth of zero-hours contracts may be less significant than is often claimed.¹ Where ZHC are used, they perform a useful role in matching supply to fluctuating demand, and offer employment opportunities to those, such as full-time students, who cannot commit to fixed employment hours, semi-retired workers who do not want regular work, or people moonlighting on top of another job. It does not, therefore, recommend banning this type of contract outright.

¹ The ONS prefers to call them ‘contracts with no guaranteed hours’ <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/contractswithnoguaranteedhours/2015-09-02>

Nevertheless, the Review proposes several extra restrictions on ZHC.² It recommends (p48) that the government should create a right after twelve months of employment to request a contract that guarantees hours reflecting those usually worked under ZHC (and should require firms to publish data on how many such requests are agreed to).

This is an apparently peculiar proposal, because workers already have the right to request anything they want. The substance of the proposal is really in the legal obligation on employers “to consider the request in a reasonable manner”, as they are now required to do with requests for flexible working hours. As throughout the Review, no attempt is made to explain why the gains from this policy will exceed the costs. Nor does the Review explain why employers with a commercial interest in making decisions in a reasonable manner must nevertheless be coerced to do so by regulation. No evidence of widespread unreasonableness is provided.

The Review also recommends a new basis for calculating continuity of service and holiday pay entitlements. Most significantly, it recommends that the Low Pay Commission be asked to consider setting a higher national minimum wage rate for any hours worked which are not guaranteed – which for people on a fixed-hours contract would be any extra hours worked, and for ZHC workers would presumably be all their hours.

This would be quite a task. The government, acting on Low Pay Commission advice, already sets five national minima, and presumably a higher ‘non-contracted’ rate would have to be set for each of them. In addition there are related formulae for calculating piece-rate minima and accommodation offsets, which would probably also require adjustment. The Review (p44) sees the new higher minimum wage rate(s) as incentivising employers to offer guaranteed hours contracts. It would probably have this effect, but at a cost: fewer hours of employment would be offered in total. Employers’ flexibility would be reduced, and so would employees’ flexibility.

The Review claims these interventions are needed to protect “the most vulnerable workers (those on low wages)”.³ But minimum wage workers are by no means all vulnerable or in poverty. As the report points out, many are young people: around one in five are full-time students. Other analysis suggests that over 40% of low earners are in households in the top half of the income distribution.⁴ Increasing the hourly rate of all minimum-wage workers is a badly-targeted anti-poverty policy. There may also be grounds to suggest that, as with minimum wage interventions in general, that “the most vulnerable workers” from disadvantaged backgrounds, including some minority ethnic groups, are those most likely to lose job opportunities from artificially pushing up hourly pay rates.

Self-employment, the Gig Economy and “dependent contractor” status

Self-employment has increased considerably in recent years, up from 3.8 million in 2008 to 4.8 million (around 15% of all those employed). Concern has been expressed that many of the newly self-employed are in reality workers in the gig economy, most of whose work is linked to platforms such as Uber or Deliveroo. Such workers are alleged to be in a disguised form of employment, with their ultimate employers avoiding tax, employers’ national insurance, pension contributions and other obligations. Such work is, like that of zero-hours employees, insecure and poorly rewarded.

Official data don’t support the view that the rise in self-employment is substantially caused

2 The Small Business, Enterprise and Employment Act 2015 already prevents employers using exclusivity clauses in zero-hours contracts.

3 Incidentally, the Review does not acknowledge that large numbers of zero-hours contract workers are well-paid professionals (including doctors, nurses, accountants and academics) who are not in need of any protection.

4 Institute for Fiscal Studies Green Budget 2014.

by gig employment.⁵ The largest sectors for self-employment are, as they have been for many years, joinery, plumbing and construction, while the fastest-growing area of self-employment has been in business and financial services, and amongst older professionals approaching retirement. A sample survey conducted for the Chartered Institute of Personnel and Development suggests that 58% of gig workers are permanent employees elsewhere, doing gig work on top of another job.⁶ Other gig workers may be already self-employed people, for instance mini-cab drivers, who now drive for Uber.

Although there are reasons to believe that the gig economy will grow,⁷ it does not currently seem to be an area where there are large numbers of workers who are being exploited by tax-avoiding businesses. Nevertheless, Taylor recommends (pp.32-40) that the employment status of app-based workers be clarified by the development of a new legal status of a “dependent contractor” intermediate between employee status and fully-independent self-employment. Such a status, considered but rejected two years ago by a government report,⁸ would give workers a number of additional employment rights, including yet another new calculation of minimum wage rates for gig workers, based on an analogy with the existing rules on piece rates, to reflect some of the time spent waiting for gig work.⁹ This status would be accorded to workers whose main income comes from working for a particular business but who are not directly employed. The Review claims it would bring greater clarity for workers and employers. It would also mean, of course, that such work would involve higher national insurance and tax obligations.

The Review also envisages “a new offer to the self-employed” (pp.74-81) which could potentially embrace all self-employed workers, whether working through an app platform or not. Taylor is concerned that many self-employed people are low earners who may have entered self-employment as the only way to make a living. They may not be saving sufficiently for the future, when they could be a charge on the state. Taylor is also concerned that much self-employment income is “cash in hand” and contributes to a hidden economy of tax avoidance.

The “new offer” envisaged involves giving self-employed workers access to some additional benefits, possibly through “portable benefit” platforms, in exchange for higher national insurance contributions. The Taylor Review team wants to see national insurance and tax arrangements for employed and self-employed workers move towards harmonisation. They do not, however, propose the merging of national insurance and tax contributions, a long-overdue reform at which successive Chancellors of the Exchequer have balked. In the medium term there is also a proposal that cash transactions be phased out, with all self-employment work having an audit trail through government-approved payment apps.

The “dependent contractor” proposal would substantially raise the cost of the Uber/Deliveroo business models, possibly even making them unsustainable. These models have greatly benefited customers, creating entirely new or greatly improved services. Much of the opposition to them

5 <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/trendsinselfemploymentintheuk/2001to2015#trends-in-full-time-self-employment>

6 <https://www.cipd.co.uk/knowledge/work/trends/gig-economy-report>

7 [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/558777/EPRS_STU\(2016\)558777_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/558777/EPRS_STU(2016)558777_EN.pdf)

8 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/585383/employment-status-review-2015.pdf

9 The existing rules on piece work (<https://www.gov.uk/minimum-wage-different-types-work/paid-per-task-or-piece-of-work-done>) have arguably produced considerable difficulties which have contributed to the decline of this type of work, once very common in certain sectors. Taylor and his colleagues gloss over the difficulties of applying this approach to time spent waiting for work in an app-based environment.

has been from incumbent businesses such as licensed taxi and mini-cab firms.¹⁰ They have also offered new opportunities for a wide range of workers, most of whom seem to report favourably on the experience. The cost of the extra rights made available through the creation of dependent contractor status would almost inevitably fall on the workers themselves in the medium term. Faced with reduced profits, the platform suppliers would try to pass the costs on, either to consumers (who would react by buying less, and thus reducing employment) or directly to the workers, by increasing the payment for using the platform.

The Review fails to demonstrate that the wider constituency of the self-employed is in need of significant new intervention. The ONS report cited earlier suggests that self-employed workers are broadly content with their labour market status. Relatively few give negative reasons for becoming self-employed; few indicate that they are looking for alternative employment; and, among the part-timers, many respondents report that they would prefer not to work full-time. As for tax evasion, the estimated £6 billion revenue loss through cash-in-hand payments (p80) is unlikely to be collected even with the proposed changes. Much of this work (which may not be liable to VAT or income tax in any case), would not be worth doing if it was liable to tax. And effectively abolishing cash payments is unlikely in the foreseeable future.

Agency work

Another type of indirect employment which the Review discusses is that conducted through Agencies. Employment agencies have for many years provided a range of services for UK employees and employers, including the provision of temporary employment (for example, providing people to fill in for permanent staff who are ill or on leave). Workers are screened by agencies and thus save employers time in the short run, and in the slightly longer term avoid employers having to take workers on permanently when they might be unsatisfactory or when the demand for services is so variable that permanent posts cannot be justified. Agency workers get the benefit of employment more quickly than they could find it otherwise, and the temporary nature of the work avoids long-term commitment which they might perhaps find difficult to offer because of personal circumstances. Agencies have long had an important role in areas of the UK labour market such as hotels and catering, nursing, acting and modelling, reception and secretarial work and security services.

As a result of the EU's Agency Workers Directive, opposed in the past by both Labour and Conservative governments, agency workers now have the right after twelve weeks to the same conditions (including pay and other benefits) as those directly employed by businesses. However, using the "Swedish derogation" clause, agencies have been able to avoid this if they directly employ workers themselves and guarantee to pay them for at least four weeks during times when work is unavailable. The TUC has campaigned for some time about this. The Taylor Review proposes to go beyond the Agency Workers Directive and abolish the Swedish derogation exemption. This will reduce options for both employers and workers, and may increase job insecurity for some agency workers.

The Review also proposes a right for agency workers to request a direct employment contract after twelve months working for an employer under an agency contract. This "right to request" is no less bizarre than the proposed right to request for ZHC workers, and for the same reasons (see above).

Other proposals

The Review makes other recommendations. One is to abolish unpaid internships, which are held to be exploitative (for which no hard evidence is produced) and to reduce social mobility because they are effectively only available to better-off young people. The spread of internships reflects effective restrictions on recruiting untried young workers created by minimum wage rules and limitations on at-will dismissal. An outright ban may close off opportunities that

¹⁰ <https://iea.org.uk/publications/hire-authority/>

would otherwise be unavailable to labour market entrants.

Some proposals make sense: for example, making it possible for determination of employment status to occur without going to an employment tribunal, and allowing the apprenticeship levy (if we must have one) to pay for other forms of work training. Others are pernicious, such as reversing the burden of proof in a wider range of Employment Tribunal cases. Yet others are perverse, such as making an already greatly-overburdened Low Pay Commission take on a new role of “working with sectors to improve the quality of low-paid work” (p.107). This may be little more than empty verbiage. But if it means anything serious, it is a good example of the disregard for economic thinking that pervades the Review.

Suppose there are opportunities for improving the quality of low paid work. Taking these opportunities is a good idea only if the aggregated costs and benefits to workers and employers are positive: only, that is, if they would produce a net benefit. But if such opportunities exist, why would they not have already been taken? If there is a net gain, then some arrangement can be found by which both parties will benefit. Only “transaction costs” (the cost of negotiating and bringing about the change) in excess of the benefit would stop it from being realised. But there is no reason to believe involving a state agency would lower any such transaction costs. And Taylor certainly provides none, since he is apparently oblivious to the issue. The implicit assumption of Taylor’s proposal is that the LPC has better information about how such gains could be realised than employers and employers do, or more motivated to find such gains – both of which ideas are obviously false.

Conclusion

The Review’s headline recommendations for further restrictions on zero-hours contracts and a new “dependent contractor” status for gig economy workers are likely to raise costs to employers and consumers, and reduce employment flexibility and choice. The benefits to workers of greater access to employment rights and benefit entitlements have a downside: as with most employment mandates, they will largely be passed on to workers in lower pay and reduced job opportunities. The range of options open to workers will be reduced. Some people with non-work commitments such as study and care obligations will find it increasingly difficult to obtain work, while others, such as older workers or those with another job, will no longer find casual employment worthwhile.

Many of the Review’s other non-legislative proposals for promoting “Good Work” are probably harmless, though likely to be ineffective. The authors acknowledge that there are difficulties in assessing just what employees want from work, as tastes and attitudes differ between individuals, and indeed between individuals’ preferences at different stages of their lives. The plan to publish indicators of the quality of work will be an additional burden on firms and the taxpayer. All this will tend to entrench the increasingly prevalent but dangerous idea that businesses must be made to serve what bureaucrats think employees want rather than serve consumers and extend personal choice.