



Response to the Work and Pensions Select Committee inquiry into the "gig economy"

BECTU January 2017

The Broadcasting, Entertainment, Communications, and Theatre Union is a sector of Prospect, the union for Professionals. The BECTU sector has over 40,000 members, working in the media, entertainment, and communications industries.

Approximately 10,000 of our members identify themselves as "freelance", predominantly in the film, TV and broadcasting, theatre, and events sectors. Their working relationships can consist of repeated short contracts as employees, provision of services as self-employed sole traders, or through personal service companies, or any permutation of these arrangements.

They are engaged by multiple clients, often supply equipment, or work away from the engager's premises, and as a condition of self-employed status, and to be out of scope of IR35, are not economically dependent on any single engager, except when working under a contract of employment. Engagements tend to be relatively short, although there are instances where members are fortunate to obtain work that lasts for weeks, or occasionally, months, for example on major feature films.

Unlike some other sectors of the economy, we do not believe there is a problem of "disguised employment" when our members work under contracts for service, rather than as employees. They are operating businesses in their own right, can accept or refuse engagements at will, incur business costs, and carry financial risks.

However, while our members working as self-employed sole traders are not classified as employees for tax purposes, they sometimes provide their services in a manner that qualifies them as "workers" for purposes of employment law, as determined by many judgements in Employment Tribunals and

Courts on the status of so-called "limb b" workers under S.230 ERA 1996. This concept also appeared in recent tribunal judgements in the Uber and CitySprint cases.

This hybrid status entitles them to some basic employment rights, the most important of which is entitlement to holiday pay under the Working Time Regulations. Other rights under the WTR also apply, but are almost never invoked because of the transient nature of the relationship between our self-employed members and their engagers.

Self-employed workers qualifying under limb b are also entitled to the National Living Wage, which arises as an issue in our sector only in the context of interns, and are also categorised as "eligible job-holders" for purposes of the Pensions Act 2008, and thus fall into auto-enrolment.

Qualifying self-employed workers are also covered by regulations on part-time working and protected disclosure, but in practice these have never been invoked by members in our sector of the economy.

Atypical working has been a common mode of work in our sector for many decades, and has grown, in part, due to the short-term nature of many projects, like film and TV production, live performances, and trade shows, which bring together an assorted team of workers for as little as a day at a time. The sector's business models are based on the availability of flexible, short-term labour, some of whom may never be used again by a particular engager after providing their services.

Most of our "freelance" members accept the status quo of atypical working, although at some points in their working lives would welcome more stability and predictability, particularly at moments when family or caring issues arise.

One important difference between our sector, and other parts of the economy where atypical work exists, is the ability of our freelance members to mediate their relationships with engagers. Most services provided by our members require a high level of skill and experience, and engagers often want the services of a named individual. This gives our members a degree of bargaining power which helps them maintain levels of fees, and standards of working conditions, that would be hard to achieve where the roles on offer are lower-skilled, and often being offered, at least on a geographic basis, by monopsony employers.

Our members have a far greater range of potential engagers than many other workers in atypical working arrangements, and are often able to negotiate their payment, rather than accept a fixed rate.

In response to the Committee's inquiry themes:

Universal Credit

We have had little feedback on the roll-out of Universal Credit from freelance members. The range of benefits available to workers whose NIC contributory entitlement is based on Class 2 NIC is very restricted. It is extremely difficult for a freelance worker, constantly looking out for engagements some of which will be almost immediate, to satisfy the conditionality inherent in the benefits system, so in one sense the switch from the previous system to UC has not made things any better or any worse.

However, one group has begun to emerge who are suffering detriment under UC, which is those of our self-employed members who choose, often for family reasons, to work fewer hours than would be regarded as a "full" week. These are not members for whom offers of engagements have temporarily dried up, but workers who have made a conscious decision to offer their services for only a few days a week, and may indeed turn down engagements for that reason.

The minimum income floor, which deems an income based on 35 hours at the Minimum Wage, is detrimental to these members since the part-time nature of their work will often produce profits well below the MIF, with a consequent effect on the calculation of UC components.

This puts a self-employed UC claimant, who satisfies all the gateway conditions, in a position where they are likely to receive lower benefits payments than an employed claimant who has worked the same number of hours, and is otherwise in identical circumstances.

Whilst the concept of part-time working is accepted for employed claimants, it is effectively barred to the self-employed. We are aware that the MIF was introduced on the basis that if self-employed workers cannot sustain a certain level of profit, their business has in some way failed, and presumably they are expected to look for something else to do. Unfortunately this disadvantages those who are actually successful in their business endeavours, but have simply decided not to work as many days or hours as a "full-time" sole trader.

Jobcentre Plus

Our freelance members in media and entertainment have very little contact with the Jobcentre service. Offers of engagements are typically not advertised anywhere, with the exception of a few on-line services, and most work is obtained informally by word of mouth, based on reputation or the engager's previous experience. Their only potential interaction with the service would be at a point where they may be ending freelance work to enter permanent employment, but even then, few freelancers in our sector will give up work until they have secured employment, usually through open advertisements or word of mouth.

Labour Market Participation

The Committee seeks views on the participation of disabled and older workers, as well as carers, through increased self-employment. Unfortunately, our sector is a good example of why more self-employment could actually deter these types of workers from participating.

Whilst our freelance members have control over whether to accept work or not, the nature of the work is often excessively long and anti-social working hours, with unpredictability of actual working time, and engagements that are offered at very short notice. This militates against carers, or those with health issues, and the union has long campaigned that, for example, there should be greater efforts by industry associations to increase the engagement of women, who often have to drop out of the industry when starting families.

Places of work in our sector are frequently temporary premises, that lack any adjustments or facilities to serve disabled people, and anecdotally (because it is not monitored by all engagers) the proportion of the workforce with mobility problems is far lower than in the general economy.

As for older workers, there appears to be little difficulty for suitably experienced and skilled older workers to continue accepting engagements well beyond state retirement age. In fact, there is growing concern about the ageing workforce in the media and entertainment sector, and many efforts are being made to train younger workers in order to avoid an impending skills-shortage.

When analysing how self-employment may assist specific categories of workers, the Committee may want to take stock of the challenges posed by self-employment, with its uncertainties and risks. One

factor in the development of an ageing workforce in our sector is the fact that training costs fall on the individual worker, and in some cases are not admissible as legitimate business costs for tax purposes.

On the issue of the New Enterprise Allowance, too few of our members have entered the industry under the auspices of the scheme for us to comment.

Pensions

We strongly support affordable and simple pension arrangements for the self-employed, many of whom find they have to work beyond typical retirement ages because they do not have adequate financial arrangements in place. The introduction of the Single State Pension will eventually provide a welcome background pension for our freelance members, but given the remuneration levels amongst them, further income will be needed in retirement for most of them to reach the target 60% replacement rate.

Some of our members have benefitted from Auto-enrolment, since they qualify as limb b workers. However, many who satisfy the conditions to become eligible job-holders are excluded from auto-enrolment by the, perfectly legal, practice of engagers invoking the full three-month deferral of a worker's statutory assessment, by which time the engagement has usually ended.

Where we have members who are assessed despite this, for example freelance crews on TV soap-operas, whose contracts can run over three months, their engagers are dutifully enrolling them in qualifying pension schemes, and making the appropriate contributions.

The three-month deferral of assessment was included in the legislation mainly to deal with transitional problems, for example a company whose staging date would mean that a particular eligible job-holder due to retire in a short time would nevertheless have to be enrolled in a scheme. Now that we are nearing the end of the staging process, it may be time to reconsider what purpose the deferral provision actually serves.

In our sector there is a large number of self-employed workers who will never benefit from auto-enrolment because of the invariable application of the three-month deferral, and its abolition would bring many more of them into the Auto-enrolment system, giving them for the first time a matching payment to any pension contribution they are making.

For some, auto-enrolment is the only way they can make payments into a pension scheme. Many members have erratic and varying income, sometimes relatively low, and they are not an attractive proposition to the pensions industry, which prefers high and regular contributions. Placing a legal obligation on engagers to enrol, coupled with the existence of NEST which cannot refuse new members, no matter how unprofitable they may appear, has been a positive step for many of our members who previously had no arrangements in place.

We fully support pensions auto-enrolment for those self-employed workers who would benefit from this, as some of our members have done. However, it should be borne in mind that some of the self-employed community will already have arrangements in place, which could take the form of pension savings, other investment vehicles, and property. They are also used to running their own businesses, often handling their own accounting, which tends to make them wary of other entities taking control of their finances. This may suggest that, while many self-employed workers would benefit from auto-enrolment, others could see it as an imposition that they would prefer to avoid.

Another group in our sector which is currently out of scope of Auto-enrolment is members working through limited personal service companies, who, as sole employees and directors, will not be obliged to assess their own status as eligible job-holders. They could voluntarily participate in the system, but many already have personal pension arrangements, and the key advantage of auto-enrolment, which is an employer's contribution, is less attractive to them since it comes directly out of their profit. Although this is tax-deductible as a business cost, they are already receiving tax relief on any personal pension arrangements they may have in place, and obligatory auto-enrolment would impose an extra, albeit modest, administrative burden on them.

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T.L. 20170112