21st May 2018

CWU response to BEIS on ‘Good Work: The Taylor Review of Modern Working Practices, Consultation on measures to increase transparency in the labour market’

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. We support the objective of providing workers with more information and transparency, but this will not by itself tackle labour market exploitation. Overall, the Government’s proposals lack ambition and do not go nearly far enough in redressing the imbalance of power in the workplace. A right for workers to request a more stable contract amounts to no right at all if there is no obligation to provide it. It is also regrettable that there is nothing in the proposals to end the insecurity of zero hours contracts; provide workers with notice of their working hours; or ensure working people have a meaningful voice at work with a genuine say over the issues that matter to them most.

4. The CWU is calling for a new deal for workers which promotes and extends collective bargaining, ensures unions can access workplaces, and provides working people with guaranteed hours and the security of knowing when they will work and how much they will earn.

Written statements
5. We support the Government’s proposal to implement the Taylor Review recommendation that all workers – not just employees – have a right to a written statement of employment. This should include content in addition to what is currently required, such as length of notice before a contract can be terminated.

6. However, providing workers with additional information by itself will not change the power dynamic in the workplace or mean workers have an increased choice whether to accept insecure work. Furthermore, extending the right to a written statement will only be meaningful if it is accompanied by effective enforcement. This must include considerably more resources for the state led enforcement bodies and substantial financial penalties for non compliance.
Continuous service

7. The current rules on continuity of employment mean it is too easy for employers to manipulate the system to prevent workers from qualifying for basic rights such as maternity leave, statutory redundancy pay and protection from unfair dismissal. The rules mean that those most in need of protection at work – including zero hours contract workers, agency workers and casual workers – are those who are most likely to lose out on rights because they experience gaps in employment.

8. The Government is therefore right to revise the rules on continuous employment. However, the proposal to extend the period counted as a break in employment from one week to one month does not go far enough. It will not prevent unscrupulous employers from gaming the system to deprive working people of their statutory rights.

9. The CWU supports the TUC in its call for all workers to have day one rights including to maternity leave; the right to request flexible working; statutory redundancy pay; and protection from unfair dismissal. The creation of day one rights would remove the problems of the lack of continuity of employment and ensure all working people benefit from the same decent floor of rights.¹

Holiday pay

10. The CWU shares the TUC’s position that extending the reference period from 12 to 52 weeks for calculating holiday pay for those who work variable hours may disadvantage low paid workers who work for short, intense periods. However, it may be beneficial in some cases, and we therefore support the TUC view that employers and unions should have the ability to negotiate longer reference periods through collective agreements.

11. The Taylor Review proposal to introduce a right to receive ‘rolled-up’ holiday pay is misguided and something unions have campaigned hard to outlaw. It was deemed unlawful by the European Court of Justice as in breach of the Working Time Regulations, and it is welcome that the Government has acknowledged that it therefore cannot consider the proposal.

12. However, too many employers abuse the rules to reduce their costs and deprive workers of the right to paid time off. Agency workers and zero hours contract workers are often the most vulnerable to these practices, due to the short term nature of their employment.

13. The CWU believes the HMRC National Minimum Wage team should be given responsibility for enforcing holiday pay, alongside the employment tribunals. However, as we have said in our response to the Government’s consultation on enforcement, the HMRC NMW team can only be effective if it is adequately funded and resourced.²

¹ TUC Response to BEIS Consultation on Transparency, May 2018
² CWU Response to BEIS Consultation on Enforcement, May 2018
Right to request a stable contract

14. We do not believe that the Taylor Review recommendation to introduce a right for agency workers and zero hours contract workers to request a stable contract amounts to a genuine right.

15. With no safeguards in place to protect those who are refused, and no mention of redress or appeal if requests are refused, it is extremely unlikely that workers will feel able or inclined to exercise their right. The Taylor Review itself acknowledges the problems precarious workers face when raising issues with their employer:

“People were reluctant to have conversations with their employers [about employment status] in case they suffered a reduction in hours where they had a zero, or low, hours contract”\(^3\) and workers “often felt that to express legitimate views about conditions or make even reasonable requests risked having future work denied to them”\(^4\).

16. Even if workers did have the courage to exercise their right to request a contract, it seems there would be no obligation on employers to honour that request. The CWU joins the TUC in calling for a ban on zero hours contracts. Most individuals on zero hours contracts work regular hours for their employer, and workers should have a written contract which guarantees their normal hours of work. We also repeat our call to introduce the right to a permanent contract for agency workers after doing the same job for a period of 12 weeks.\(^5\)

Information and consultation

17. The Information and Consultation (ICE) regulations are extremely limited in their capacity to strengthen worker voice compared with the collective bargaining process. The regulations only give workers a right to be informed and consulted on business activities and decisions. They do not offer workers any right to negotiate with their employer or to have any meaningful say in decision making processes.

18. It must also be recognised that the ICE Regulations have at times been used by employers to undermine recognised trade unions and therefore weaken worker voice. On the other hand, they have in some cases helped trade unions to build a presence and secure collective bargaining rights. Overall, we are not against extending information and consultation of employees (ICE) regulations to workers who are not employees, and reducing the threshold for implementation from 10% to 2% of the workforce making the request.

19. However, trade unions are the most obvious and effective route to strengthening worker voice. If the Government genuinely wishes to ensure that all workers have the right to a voice at work, it must begin by repealing the Trade Union Act 2016 and introducing a set of positive rights to advance collective bargaining.

\(^3\) Taylor Review of Modern Working Practices, 2017, p.34
\(^5\) CWU Response to BEIS Consultation on Agency Workers, May 2018
For further information on the view of the CWU contact:
Dave Ward
General Secretary
Communication Workers Union
150 The Broadway
London
SW19 1RX

Email: dward@cwu.org
Telephone: (+44) 0208 971 7251

21st May 2018