

Public Consultation:

Good Work Plan: one-sided flexibility - addressing unfair flexible working practices

To: The Department for Business, Energy and Industrial Strategy

By: The Intergenerational Foundation

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The Intergenerational Foundation (www.if.org.uk) is an independent think tank researching fairness between generations. IF believes policy should be fair to all – the old, the young and those to come.

Introduction

As IF is the UK's leading think tank which exists to promote the rights of younger and future generations, we are concerned that the problem of “one-sided flexibility” is having a disproportionate impact on younger workers compared to older ones.

We think that many of the proposals contained within the government's Good Work Plan should have a positive impact on young workers who are doing precarious or insecure forms of work, but we are concerned that it does not go far enough. In particular, we are worried that the proposals in this consultation will not significantly improve the position of self-employed young workers within the gig economy, who are arguably one of the groups within the UK labour market who are at the greatest risk of being exploited by so-called “one-sided flexibility”. The specific points that IF wants to raise are set out below:

1. Young workers are disproportionately affected by “flexible” working arrangements, and not necessarily by choice

Although “flexible” employment arrangements account for only a relatively small proportion of all employment arrangements in the UK, there is a significant amount of evidence which suggests that young adults make up a disproportionate share of them. For example, ONS estimates (based on the Labour Force Survey) suggest that 36% of people whom they define as being on zero-hours contracts are aged 16–24 years, compared with 11.4% for all people in employment who are not on a zero-hours contract.¹ Similarly, the research into the gig economy by the Royal Society of Arts (RSA) found that workers aged 16–30 made up over a third (34%) of the workers doing gig work, whereas this age group only accounts for 26% of employed

¹ ONS (2018) *Contracts that do not guarantee a minimum number of hours: April 2018*
Newport: ONS

workers and 11% of people who are self-employed and doing non-gig jobs.²

The available evidence suggests that the majority of them opt for flexible working arrangements as a matter of choice, either because they fit alongside educational or family commitments or because they want to earn more money on top of another job (although the fact that some may feel the need to do this may itself be reflective of difficulty finding a more conventional job which enables them to earn enough money to keep up with the cost of living).

Although there is less evidence that looks at young workers specifically, the evidence that we do have appears to suggest that the majority of workers who are employed flexibly aren't being exploited. For example: the ONS found that 59% of all zero-hours workers said they didn't want additional hours,³ and research by the Chartered Institute for Personnel and Development (CIPD) found that only 38% of all zero-hours workers said they wanted more hours and only 27% were dissatisfied with not having a guaranteed number of hours each week.⁴ However, it is plausible to suggest that the situation may be somewhat different for young adults working in the gig economy; the RSA's research suggested that 32% of young gig economy workers gravitated towards doing these kinds of work because they couldn't find any better alternatives, and 52% of young gig economy workers have no other sources of income.⁵ There is some evidence to suggest that young adults who are employed using flexible employment arrangements experience higher levels of stress and anxiety than employees do,⁶ which is a strong argument for ensuring that the ones who are not satisfied with flexible working arrangements should receive greater protection from exploitation.

2. The Good Work Plan doesn't go far enough to help young gig economy workers

The available evidence supports the conclusion that only a minority of employers are exploiting their workers using "flexible" contractual arrangements, and we think that the proposals in the Good Work Plan, broadly-speaking, manage to strike the correct balance between safeguarding the rights of these workers whilst not either making employers less likely to create jobs in the first place or driving some of these jobs into the shadow economy. IF is generally supportive of all four of the main proposals within the consultation document, although the extent to which they are successful at undermining "one-sided flexibility" will depend on how effectively they can be enforced in practice.

However, our main criticism of the Good Work Plan is that it appears to have been conceived with only one particular group of workers in mind – those who are *employees* doing "flexible" forms of work, through arrangements such as zero-hours or short-hours contracts – but it almost completely overlooks the rather different set of issues affecting young workers in the gig economy, most of whom would be described as *self-employed independent contractors*, who it can also be argued need protecting from the potential pitfalls of "one-sided flexibility."⁷

The RSA estimated that the gig economy now employs almost as many people as

² Balaram et al. (2017) *Good Gigs: a fairer future for the UK's gig economy* London: RSA

³ ONS (2018) *op. cit.*

⁴ CIPD (2013) *Zero hours contracts: myth and reality* London: CIPD

⁵ Balaram et al. (2017) *op. cit.*

⁶ TUC (2019) *Living on the Edge: Experiencing workplace insecurity in the UK* London: TUC

⁷ Balaram et al. (2017) *op. cit.*

the English NHS (around 1.1 million), and has developed extremely rapidly, reaching this level in under a decade of existence. There is a strong argument that the UK's employment laws have failed to keep up with the ways in which the world of work has been changing, as there is still no official definition of what a gig economy job is, and considerable legal ambiguity remains around the precise nature of the relationship between a gig economy platform and people who use it to obtain work.

The important distinction which IF would like to draw the BEIS's attention to is the fact that one-sided flexibility impacts employees and the self-employed in different ways. Although workers who are employed using contracts which do not guarantee a minimum number of hours can face a number of significant challenges which the proposals in the Good Work Plan have been designed to try and address, such as irregular hours and unpredictability of income, they do at least have the benefit of reasonably strong protection under existing employment law; research by the CIPD in 2013 found that almost two-thirds of workers on zero-hours contracts were classed as employees, with only 3% being self-employed.⁸

Their employment status confers a number of important protections on employees, including being covered by the National Minimum Wage legislation, eligibility for holiday pay and sick pay, pension auto-enrolment (if their earnings are high enough to qualify) and entitlement to certain working-age benefits. Recent research by the CIPD has shown that 82% of employers say their staff on zero-hours contracts are eligible for company training and development (which is especially important for young workers to help them develop their skills), 61% are entitled to annual paid leave and almost half (48%) are entitled to pension auto-enrolment,⁹ which suggests that young workers who are doing "flexible" work as employees are likely to be in a significantly better position than their counterparts who are self-employed and working in the gig economy. By contrast, for the 52% of young gig economy workers who say they have no other sources of income, not being covered by either the National Minimum Wage legislation or eligible for statutory sick pay places them in an extremely precarious position in comparison with young workers who are treated as employees, particularly if they are unable to work due to a period of ill-health.

It could be argued that this is a clear example of "one-sided flexibility", given that the value proposition of gig economy platforms is wholly dependent on them being able to draw upon a pool of willing and able workers at short notice, yet despite these platforms usually exercising a strong degree of control over these workers and often making them dependent on staying with the same platform (for example, by controlling the ratings data which an app user sees), the workers receive no guaranteed hours of work and enjoy far fewer protections than even employees on zero-hours contracts do.

IF is disappointed that the Good Work Plan doesn't go further by conferring greater protections on young gig economy workers, such as by implementing the proposal that was in the Taylor Review of making gig economy workers who rely on a single platform for their income eligible for the National Minimum Wage under certain circumstances. Given the ongoing legal debates concerning whether the people who obtain work through gig economy platforms should actually be treated as employees, the Good Work Plan currently looks like a missed opportunity to help clarify the legal status of young gig economy workers and to put measures in place which could help protect their standard of living against extreme fluctuations in income.

⁸ Op cit. Point 4

⁹ CIPD (2015) *Zero-hours and short-hours contracts in the UK: Employer and employee perspectives* London: CIPD

3. Young workers will still find it difficult to gain redress through employment tribunals

The other point which IF would like to make about the Good Work Plan is that it still leaves young workers who believe they've been exploited in a position where in most cases they have to take their employer to court through an employment tribunal in order to obtain redress. Given that the employment regulations are only effective if they can be enforced, IF would argue that this creates a significant barrier to enabling young workers to obtain justice in cases where they have been exploited.

While the Good Work Plan does propose increasing the maximum amount which employers can be fined for "aggravated breaches" of employment legislation from £5,000 to £20,000, it doesn't address some of the other criticisms which the Taylor Review made of the employment tribunal system. In the specific case of young gig economy workers who believe they've been unfairly denied their employment rights, the Good Work Plan doesn't commit the government to doing anything about the problem of workers having to prove their employment status before they can argue that they have been treated unfairly, rather than the burden of proof falling on the employer in a tribunal case.¹⁰ The Good Work Plan also fails to address Taylor's recommendation that "expedited preliminary hearings" should be introduced which could clarify a worker's legal status before a full employment tribunal in order to cut down on the amount of time which can elapse between a worker filing a claim and receiving a hearing, which currently averages around 7 months.¹¹ Given that a young worker who believes they've been treated unfairly may well have to effectively put their life on hold while they await a determination from a tribunal, it would be in everyone's interests for the system to be accelerated.

4. We need better data

Finally, IF would also like to argue that attempts to devise new policy for dealing with the opportunities and challenges posed by new ways of organising work are currently frustrated by the relatively poor availability of data in this area. This is partly due to the heterogeneity of the different forms which "flexible" working currently takes, and the variety of different definitions which exist, particularly where the gig economy is concerned. IF believes it would be useful for the government to ask the ONS to make gathering more evidence about non-traditional forms of work a priority, with a particular focus on the gig economy, in order to aid the design of more effective policy.

If you would like to learn more about the work of the Intergenerational Foundation please contact:

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¹⁰ Taylor, M (2017) *Good Work: The Taylor Review of Modern Working Practices* London: Department for Business, Energy and Industrial Strategy

¹¹ Briggs, R. and Dixon, A. (2019) *Good work for all – but what about worker status?* Published online: <https://www.twobirds.com/en/news/articles/2019/uk/good-work-for-all-but-what-about-worker-status>