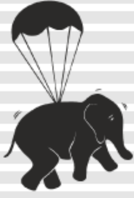
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The Changing Boundaries of Employment Relationships: Fragmentation, Fissures, New 'Labels': How Do We Now Analyse and Regulate Those at Work?

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Abstract

This article explores the diversification of employment relationships in recent decades and the shifting boundaries between various groups in labour markets. It notes the various pressures for change but also the growing insecurities for many. The implications of shifting boundaries raise critical issues for policy development, work management and labour market effectiveness. Despite an active social agenda at EU and member state level, reinforced by social partners and legal interventions, major issues remain, some, arguably, intensifying. These include questions of liability and accountability where harm us caused through work. The article then focuses on developments in the UK through its common law legal system which has led to some improvements but at the expense of a coherent and reasoned underpinning. For example, what essentially differentiates the employee from the self-employed/freelancer? Many uncertainties have often left the management of people at work imprecise and problematic.

Keywords: employment relationship, changes key words, UK, EU

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İstihdam İlişkilerinin Değişen Sınırları: Parçalanma, Çatlaklar, Yeni 'Etiketler': İş Yerinde Olanları Nasıl Analiz Ediyor ve Düzenliyoruz?

Özet

Bu makale, son yıllarda istihdam ilişkilerinin çeşitlenmesini ve işgücü piyasalarındaki çeşitli gruplar arasında değişen sınırları incelemektedir. Değişim için gerekli olan çeşitli baskıların yanı sıra birçok kesim için artan güvensizliklere de dikkat çekmektedir. Sınırları değiştirmenin etkileri, politika geliştirme, iş yönetimi ve işgücü piyasasının etkinliği için kritik sorunları gündeme getiriyorum. AB ve üye ülkeler düzeyindeki aktif gündeme rağmen sosyal partnerler ve yasal müdahaleler tarafından güçlendirilmiş önemli sorunlar devam ediyor. Söz konusu sorunlar; iş odaklı kişiye zarar verebilme potansiyeline sahip sorumlulukları ve hesap verilebilirlik temalı konuları içermektedir. İlerleyen bölümlerde Birleşik Krallıktaki ortak hukuk sistemindeki gelişmelere odaklanarak devam ediyorum. Söz konusu hukuk sistemindeki gelişmeler bazı iyileştirmeleri gerçekleştirebilmek için tutarlı ve mantıklı bir sistem dahilinde gerçekleştirilmiştir. Örneğin, çalışanı serbest meslek sahibi/serbest çalışandan temelde ayıran nedir? Belirsizliklerin çoğu, iş yerindeki insanların yönetimini genellikle belirsiz ve sorunlu bırakmıştır. Bu tema üzerinden ilgili alana katkı sunulmaktadır.

Anahtar Kelimeler: istihdam ilişkileri, değişen sınırlar, Birleşik Krallık, AB

1. INTRODUCTION: A Recent Period of Considerable Change

For over eighteen months and due to COVID-19, labour markets and employment relationships have experienced significant change and challenge (Rothwell, 2021). We know that in many states those at work who have suffered most, and have so often been those already vulnerable- the young, working mothers, older workers and various minority groups, and the self-employed (Leighton and Mckeown, 2020). We know that those who have lost their jobs and income typically find it especially difficult to return to employment and it is suspected, for example, that many of the self-employed in sectors such as hospitality, consultancy and the creative industries have given up self-employment and may well not return to this way of working.

At the same time, the effect of lockdowns and other restrictions, in addition to active labour market policies by many governments determined to preserve as much employment as possible, have changed the way that many now work.

Working from home have become the norm for millions. Early indicators have showed that this way of working, either full time or flexible, is likely to remain significant. A new language has also emerged, with many speaking of 'hybrid', 'blended' and even 'fluid' ways working as Covid-19 responses, by moves away from standard working (Felstead, 2022).

Insofar as fewer are working in offices there has been a marked reduction in commuting and other changes. The need or opportunity to reflect on work-life balance has led to a reported increase in house purchases which could enable an office to be developed in the house or garden and many speaking of new workplace 'hubs' where people share facilities. This is in much the same way as the co-working movement has developed for the self-employed. Regarding this current effect, many expect to experience major changes in the 'social' dimension of work, but also an urgent need for modification of management and HRM practices and major challenges for line managers.

Training of managers and staff about the maintenance of the consumer/client service have been among the issues that must be considered to pursue the latest innovation and productivity. Many think about whether there may be 'losses' if working from home becomes the norm of the new pandemic period. For example, how will team working be affected, what will the role of meetings and what will be the impact on career development and reward systems? (We already know that homeworkers in the UK are much less likely to be promoted or received a bonus, and they work longer hours and receive less training (ONS, 2021).

In addition, we also know that Covid-19 has had a devastating impact on the mental health and well-being of many-especially those isolated and those working full-time and permanently from home (HSE, 2021). Insofar as 'normality' returns there are also concerns about workers having lost skills, confidence and social intelligence during the pandemic.

However, other aspects of work have not stood still. In particular, there has been an increased use of technology, not just for communication, monitoring and surveillance and the undertaking

of work tasks, but of artificial intelligence (AI), for employment decision-making (Huws, 2014) and HRM in general (Bondarouk et al., 2017; De Stephano, 2019). It is reported that most workers are unaware that key decisions about them, such as for promotion or redundancy, for example, are not being made by their line or other manager but by a machine (Huws et al., 2019). There are now many publications using the title- 'My boss the algorithm' or similar. Inevitably, there are mounting concerns about bias and discriminatory practices, which will lead to existing vulnerabilities becoming intensified (Huws, 2019; Rogowski, 2019). Of course, human beings can be biased or make errors, but they can be and are accountable. Are machines? Despite EU legislation requiring consent from workers before information technology is introduced (European Commission, 2018), the evidence appears to indicate that challenging employer decisions in this area is fraught with problems (Hermann, 2017; Huws et al., 2019).

2. BUT WHAT ABOUT THE COMPOSITION AND DEPLOYMENT OF WORKFORCES?

Although there are already many recent workforce challenges another challenge has been marked as the new feature for a longer period of time (Freedland and Countouris, 2011). This is the decline in the relatively straightforward linear employment relationship of one employer and one employee and its replacement by increasingly complex and diffused employment relationships. These developments have taken place mainly over the last forty years, though not necessarily in all states and at the same pace. For example, employment relationships have remained relatively stable in the Nordic states, but dramatically changed in the UK and USA, and changed to an extent in, say Belgium and the Nederlands (Eurofound, 2019). It is salutary to remember that this self-same period, at least up to around 2010, coincided with a major social policy agenda from the EU committed to dealing with disadvantage in the labour market, whether it be, for example, from physical hazards at work, harassment, job losses caused by business changes, working part time or on a short -term contract or invasions of privacy (Countouris, 2016; Rogowski, 2019). The European Convention on Human Rights and its Court has been similarly active in dealing with denial of, for example, collective rights at work and unjustified government or employer action of various sorts. Yet some consider the pace of change and improvement has considerably slowed (Hermann, 2017).

3. THE MODERN EVOLUTION OF THE 'FLEXIBLE FIRM' AND CHANGING EMPLOYMENT PRACTICES

To an extent all labour markets and employers have needed 'flexibility' of various sorts. Work, for example, in agriculture, fishing and, hospitality is often seasonal or fluctuating. There are times when there is little or no work to be done and the employer wants the 'flexibility' to 'lay-off' unwanted workers.

Following a period of recovery and development after the end of World War Two, employment began to be affected by technological change, this time having considerable impact on services (Rajan, 1987). This was much as after the Industrial Revolution from the eighteenth century

when the skilled craft workers who were members of the well-ordered and prestigious Guild system were often replaced by machines. Then the Guilds inevitably fell into decline and the world of work then changed irrevocably. Work changes led to important legal changes, the implications of which are with us today, though, as we shall see, the nature of changes have to an extent been dependent on the nature of individual legal systems. Some of these legal responses are considered below.

By the 1970s, employment was relatively stable, trade unions and social dialogue were powerful features, especially in public sectors. Importantly, most employment relationships remained 'linear', ie they comprised just an employer and employee. The demand for workers grew and there was increased immigration to many, especially European states, largely from former colonies. Other states, especially in Asia were developing efficient labour markets and having a significant impact on the global economy. Rivalry between established labour markets and these developing markets led to increased and intense competition, often based on labour costs. Global market shares changed, especially for cars, textiles, white goods, toys and IT equipment. Globalisation had arrived though it was then subject to less critique, especially negative critique (Lechner, 2009; Robertson, 1992).

It was perhaps inevitable that many in the developed economies argued that employment practices would need to change in order to compete. Ideas emerged especially from the USA. (Van Overtveldt, 2007). In 1984 a researcher and writer from the then Institute for Manpower Studies, UK, produced a report that was highly influential. It set out a model whereby an employer employed a 'core' workforce of standard employees and a 'peripheral workforce' of part-time, short term, self-employed and other more marginal workers. These peripheral workers provided flexibility and were, essentially, easily dispensable (Atkinson, 1984). The idea was not new-many labour markets relied on 'seasonal', 'short term/temporary', 'as and when needed' staff, including skilled workers such as medical and teaching staff, but use was generally reasoned and coherent. The 1984 model was presented as a basis for debate. However, such were its attractions, especially in terms of cost savings, that in many employing organisations the 'flexible firm' became the norm.

These changes co-incided with the so-called neo-liberal political agenda, whereby regulation and other constraints on business practices were seen as economically damaging. A UK government document in 1986 summed up the policy and was entitled 'Building Businesses…Not Barriers' (UK Government, 1986). It strongly made the case that providing rights and benefits for workers would inhibit innovation and competitiveness.

A further development, and one that was seen as logical was to 'externalise' for skill needs, through, for example, agency working, and outsourcing/subcontracting and secondment, whereby the organisation utilising skills did not have the responsibility of directly employing them (Rubery et al., 2010). Hence, formal employment relationships were separated from day-to- day management. This was a profound change and presented many challenges to managers and management (And may not have been effectively responded to even today), but also

confusions for many individual workers who were often unclear who their own employer was. Separating the formal employment relationship from day- to -day management was a radical change and led to increased marginalisation for many (Leighton et al., 2007). Indeed, research, debate, policy development and, to an extent, legal developments recognised concerns about the change, but there was little political will to reform either law or management and few practical ideas. In fairness, there were many concerns expressed by EU and other commentators and policy-makers, who saw 'flexibility' as a disguise for exploitation (Hill, 2015), and who coined new terms, such as 'vulnerable', 'dependent workers', 'fragmented' (Rubery et al., 2010; Eurofound, 2016) or diffused workforces. But robust proposals for improvement have been limited to date (Mori, 2015). It has been almost inevitable that many of those who have suffered disadvantage and loss as a result of COVID-19 have been these self-same workers, who were easily dispensed with by employers and often unprotected by government employment support schemes.

4. OTHER FORMS OF FLEXIBILITY; AN OPPORTUNITY AGENDA

It is somewhat ironic that at the self-same time that exploitative forms of flexible working were rapidly evolving, another form of flexibility was being promoted, but this time for the direct benefit of workers. Especially in the USA and UK but also in many EU states, policy development was occurring around the notion of how best those, typically, with caring responsibilities or disabilities, retain access to good jobs and career development. The expectation was that promotion and leadership roles could only be effectively performed on a full- time, standard employment basis. When an employee asked to work part-time she was effectively marginalising herself. Employers preferred, it was said, employees prepared to work at the workplace on a full- time basis.

Many campaigning and support groups emerged and promoted ways of working, such as 'professional part-time work', job sharing, 'flexi-hours' and homeworking (Leighton and Syrett, 1989; Clutterbuck and Hill, 1981). Although it was generally difficult to persuade employers to change, the numbers, say, of job sharers and homeworkers, annualised hours(school)term-time workers and other forms of flexibility has been grown (Working Families, 1983-2020).

Interestingly, it has been the pandemic that has pushed homeworking, hybrid and other forms of working into prominence, which has led many employes to reduced costs and improved productivity. However, interestingly, it is reported in a UK survey covering the pandemic period that although 73% said they would like to continue to spend some time working at home, 44% of those who had been working full-time at home wanted to get back to the workplace (IES, 2021). They said that they miss the social dimension of work, and the lack of direction and development over the last year or so. This has promoted a re-think of core issues of employment relationships, visible in academic, professional publications but also social media (Leighton and Mckeown, 2020).

The recent shift to homeworking, albeit that not all are enthusiasts, has been an interesting development. The pandemic and responses to it has meant that workplaces have been closed and all types of workers, from the young and newly recruited to senior management have worked at home. There has been, at last, a realisation that management of homeworking (And indeed job-sharing, flexi hours etc) requires new managerial skills as well as effective technology. However, this recognition of the needs of homeworkers and others may not survive returns to 'normality', as data from pre-pandemic surveys shows, for the UK at least, that homeworkers tended to suffer considerable disadvantages, compared to those in the workplace. They were less likely to be promoted, receive a bonus, and be involved in decision-making, and were more likely to work unpaid hours, not be off work sick and not feel able to complain (ONS, 2021). The process of making choices, it seems, can be very fraught for many, especially those who combine work with caring.

When we explore changes in labour market and workforce composition it seems important to bear in mind the data that says that if you want your own flexibility, it tends to be at some cost to yourself. Whatever shifts we see in how people are working, it seems likely that there are still considerable advantages in continuing to work in a traditional manner, especially by being visible and close to decision-making.

5. SOME INTERIM OBSERVATIONS

From the 1980s many labour markets encountered major or even dramatic changes. Perhaps the main one was the loss of pre-eminence for the linear and simple employer/employee relationship. Within the common law world-USA, UK, Canada, Australia, for example, employment relationships have long been derived from employment contracts. Legislation has added specific protections, for example, so as to ensure health and safety at work, and that workers are not being unlawfully discriminated against. By contrast in civil law jurisdictions, legislation, such as Labour Codes dominate, with key protections being derived from them. Civil law applies in most of Europe.

Common law employment contracts have some key features, not least being the requirement for 'consideration' (pay) for it to be legally binding and the parties should agree to the express terms. Since the nineteenth century law courts have added *implied* obligations as parts of all contracts. This includes the employee obligation to obey orders, be 'faithful and loyal' and the employer obligation to pay agreed wages and to provide a safe workplace. Recently, there has been added a mutual obligation of 'trust and confidence', with law courts again playing the definitional role.

In terms of change, contracts are very effective in enabling unilateral change if well drafted by the employer. If workers need work, it is likely that they will agree to the terms, however uneasy they feel. They are anyway unlikely to have read the contract in detail-many for 'gig' workers are extremely lengthy and complex. Many of the changes in the composition of workforces and working conditions can come about, almost by default because workers are simply unaware

that what an employer is proposing or requiring is not authorised by the contract. By way of example, the contracts which Uber drivers signed in London until being the subject of litigation determined by the UK's Supreme Court, was one of over forty pages long (Uber v. Aslam, 2021).

Drafting contracts is a specialist skill, but unlike legislation it does not need political approval. As involvement, questioning and challenging the content of the contract can be limited, it is unsurprising that changes can be relatively easily made. In effect, the contract can be a risk limitation device for the employer, now made easier through the development of digital processes. For example, many recruitment processes undertaken digitally state that through continuing on -line or ticking a box can amount to acceptance of terms. Meaningful negotiation can be almost impossible to achieve. Indeed, it is arguable that the common law notion of a consensual agreement to a work relationship is rapidly declining. At the same time, legislation/Codes require political will to be implemented which, as has been noted has been limited in recent years, especially from the EU.

We must now turn to the key issue of the shifting boundaries of employment relationship-specifically the change from the linear relationship to greatly increased complexity. We have noted already that language and definitions are very important. For example, the 'flexible work' changes from the 1980s have two impossible to reconcile concepts. The 'flexible firm' notion is generally to the benefit of the employer -flexible working, such as through job sharing, flexi hours etc generally benefits employees. And yet part-timers are usually viewed in the same way for rights and benefits at work, despite the relationship possibly having very different 'drivers'/motivation.

6. SO, HOW DO WE CATEGORISE PEOPLE AT WORK?

Across the world and regardless of legal system, we have long had two basic groups at work. They are employees and the self-employed. The latter are likely in Europe to be the heirs to the Guild system considered earlier, especially if skilled. They will typically self- define as autonomous, self-reliant, working this way through choice and will tend to have characteristics such as risk tolerance and to be seeking opportunities (Phillips, 2008; Leighton, 2013; Bologna, 2018).

The other major group are employees, typically defined by legislation or subject to a contract which essentially sees them as subservient to the employer. Typically also, the self-employed are taxed differently, but traditionally have only limited or no access to social protections or employment rights. They are essentially self-reliant but work for clients or customers on a contractual basis which, in theory, is one of equals. They are a distinctive group and across the EU account for between 10% and 15% of most labour markets, though in some states, such as Italy and Greece the percentage is higher. There has been a shift from self -employment being dominated by construction and agricultural and related workers to the service sector, especially health care, professional services and the creative industries.

Employers have been attracted to using them so as to reduce non- wage costs and to avoid statutory employment protections. The boundary between the employee and the self-employed, as will be seen, has not only been shifting but has become both difficult to define and controversial in many states.

Where there is a statutory definition, courts interpret and apply the statute. The courts also operate as the decision-maker regarding contracts in common law courts, where they look closely at any contract but also apply legal tests that have ebbed and flowed over the last one hundred and fifty years. One legal test looks for the locum of 'control'. If with the employer, then the individual is likely to be an employee; another test explores the 'economic realities', ie if an individual can profit and has business opportunities, then the individual will tend to be seen as self-employed and another test asks whether the individual is integrated into the organisation and managed by it. If so, they are likely to be an employee. These 'control', 'business' and 'integration' tests appear to not only focus on very different aspects of the relationship, but vary in use over time, such that predicting what the employment status is likely to be in a given situation is extremely difficult (Leighton and Wynn, 2011). They are also exploring very different aspects of the relationship. It is no wonder that this 'boundary' is so criticised (Wynn-Evans, 2021).

If the issue of differentiating the employee from the self-employed has proved problematic, this has been matched by emerging concerns and debate about the extent to which the 'employer' can be effectively identified. This is largely because of increasingly complex business relationships and alliances. For example in the UK's Supreme Court decision in Uber v. Aslam (2021), the 'functional employer' was Uber London Limited (ULL) but the claim was brought against the Dutch parent company, the contractual employer. Importantly, the Court decided the claim for 'worker' status on the basis of the relationship with the 'functional' employer not the question of who the contract was between.. This is a critical development in the context of the boundaries of employment relationships, though it is not possible to consider it further here (Prassl, 2015; Freedland, 2016).

7. THE RISE OF THE 'WORKER' CATEGORY

However, the change that has caused debates is the introduction of the concept of a 'worker'. 'Workers' exist in both UK and European law. In the UK, somewhat strangely, the 'label' has been used for several decades. The Payment of Wages Act, 1960, UK, which updated some nineteenth century legislation on preventing the unlawful deductions from wages by an employer, used the label 'worker', though it is thought as an abbreviation of the label 'outworker', ie a self-employed contractor to the employer. By the Wages Act, 1986, the definition used was reduced to 'worker'. The definition, now set out in the Employment Rights Act,1996 is much the same, as it refers to someone who 'personally executes work' and does so on the basis of the relationship *not* being on a 'business to business'(B2B) basis. However, this approach also carries with it fact that an individual can be *both* self-employed/freelance as

well as a ‘worker’ and able to access specified protective employment rights. It might be argued that this is an anomaly, as, arguably, self-employment implies risk tolerance and the ability to exploit opportunity.

The existence of this ‘worker’ category has been a major development and especially useful for circumventing attempts by employers to offload all or most employment risks by treating the ‘dependent worker’ simply as self-employed and, impliedly or explicitly as a part of the business community. ‘Workers’ have quickly become established as an intermediate/hybrid category between employees and the genuinely self-employed.

Much EU legislation for employment refers to ‘workers’, rather than employees, including equality and health and safety laws. However, again, the classification is the subject of considerable debate. Some argue it has a particular role in protecting pan-EU measures such as freedom of movement and cross border activities such as are covered by the Posting of Workers legislation. Others, consider that it was a deliberate choice to extend EU protections to virtually all at work (Kenner, 2003; Bercussion, 1996). Much UK legislation also applies to ‘workers, such as, working time, security of earnings, whistleblowing, equality laws etc., although both systems exclude job security protections.

Although many welcome the extension of some protections to workers, and therefore, some self-employed people, it remains hard to provide a convincing or generally accepted rationale for the category. Is it just to prevent exploitation? But then why do workers have such a strange mixture of protections? Undoubtably, the rise and analysis of the so-called ‘gig’ economy has had major impact. ‘Gig’ workers are referred to as such because they undertake work, often short term and often uncertain as to how long it will last for. There are no guarantees of continued work or renewal at a future time.

The emergence of new business models, such as Uber and other taxi companies utilising sophisticated technology to underpin the business has led to wider media coverage as well as academic critique (Skok and Baker, 2019) but also global litigation, often regarding the legal employment status of the taxi drivers (Leighton, 2016). What is vital to appreciate is how these companies also use contracts and other means to offload risk, save costs etc but also aim to disguise the true nature of the relationship, by, for example using language suggestive of their taxi drivers, delivery workers being business partners.

In principle, there is nothing new about gig working. Workers in many states have often been employed on short term and unpredictable work contracts in no way limited to less skilled work. ‘Gig’ working is also typical of much medical and paramedical work, the hospitality industry but also teaching, interpreting, media and other areas of professional work. However, Uber appeared to highlight the intrinsic unfairness of many of their practices and this has led to the emergence ‘new’ types of trade unions across Europe, with agendas of attracting and then promoting the interests of gig workers, hitherto widely considered as ‘simply’ self-employed and beyond the scope of employment and labour law.

When considering the nature and impact of 'boundaries' between different work relationships it is important to reflect on the fact, for example, that self-employment is by no means a coherent group of individuals (Phillips, 2008; Bologna, 2018). Some are highly paid members of liberal professions, others run small businesses and employ others. Yet others are freelance and work alone in a wide range of occupations. Although there are some unifying features, such as appreciating autonomy, in many other respects very little truly unifies them (Countouris, 2016; Leighton, 2013). The recently evolved legal concept of the 'worker' has meant that a significant percentage of self-employed are also 'workers'. This leads to many complications and anomalies, such as if they are 'workers' they can claim specified employment rights yet remain taxed as self- employed.

8. WHAT HAS HAPPENED TO WORKER CATEGORISATION: THE CASE OF THE UK

The UK's Employment Rights Act, 1996 sets out most, though by no means all of the basic employment rights in the UK. It is not a Code equivalent, as key areas, such equality laws, collective rights and health and safety protections are in other legislation. In addition, the common law rules covering core aspects of the employment relationship are in the contract of employment and apply only to employees, though, of course, it is possible for contracts of self-employment to provide specific protections if agreed between the parties. As previously considered the law adds important implied obligations to all employee contracts, such as obeying lawful orders, a right to agreed pay and duties of trust and confidence applying to both parties.

The contract of employment in the UK can only have two parties, which perhaps leaves it especially poorly equipped to deal with complexities now present in many employment situations. This would include agency working, outsourcing, secondment, posting of workers and employers outsourcing key obligations, such as the obligation to pay wages, to a specialist company. It is no surprise, as mentioned above, that many people at work in the UK do not know who their employer is, or who else is involved in the employment relationship. The contract of employment, is therefore, both capable of rapid change and can be very flexible, but the limit onto two on the number of participants often makes it difficult to analyse employment relationships (Wynn Evans, 2021).

9. RECENT DEVELOPMENTS

As previously considered, the UK enthusiastically adopted more varied and flexible ways of working from the 1980s, with flexibilities, such as relating to type of contract, hours of work, length of engagement, provision or not of occupational benefits generally to the benefit of the employer. There was judicial reluctance to extend or amend the employee category and little political intervention to extend rights other than on an ad hoc basis. However, by the current century concerns about the numbers of those in 'marginal, 'vulnerable' or similar forms of work were mounting (Taylor, 2017). There was growing criticism of outsourcing schemes,

intensified by the collapse of some prominent construction companies with heavily criticised employment practices.

By 2010 litigation was being planned by the new types of unions referred to above as representing the self-employed, in an attempt to gain access to more rights using the ‘worker’ definition in the UK’s Employment Rights Act and other legislation. Key’ worker’ rights are entitlement to the National Minimum Wage, but also paid holidays, security of earnings and protections if they were ‘whistle- blowers’ and equality laws. It is an incoherent list of rights and unclear why they are the rights selected by legislation. Nonetheless, the last few years have seen a growing number of notionally self-employed individuals being classified as ‘workers’ so as to claim these specific rights.

Although, as it has been mentioned above, the worker category in the UK has a long, though debated existence it is the current definition in the 1996 Employment Rights Act which is critical. The twin requirements of the ‘personal execution of work’ (Not being able to send a substitute) but not on a B2B basis had not, until recently, generated much case-law. In 2016 two Uber taxi drivers claimed ‘worker rights’. (Perhaps significantly, they, along with many other UK claimants have *not* claimed in legal ‘reality’ to be employees and therefore entitled to the full range of protective rights. This is a ‘boundary’ that appears more enduring!).

Their case began in an employment tribunal end ended in the UK’s Supreme Court in February 2021. Despite all the endeavours of Uber’s legal team to prevent success, the drivers won, settling the issue of their employment status as ‘workers’. There have been many other recent cases involving delivery drivers, other taxi firms and links have developed between litigants in other parts of Europe and wider.

However, perhaps the most important aspect of the Court’s judgment was the fact that it was the statutory definition which applied, not the terms of any contract. This is a major change in UK and, as considered above, may well have important implications for employment relationships and employment law generally.

10. MORE SHIFTING BOUNDARIES?

If the boundaries of those entitled to some basic employment protections have been shifting, especially following litigation concerning drivers and other ‘gig workers, 2021 saw even more dramatic changes in the UK.

The background to these changes is that in UK law many groups at work, and not just the self-employed have been effectively denied any employment rights. One group is so-called ‘office holders’. These are people, typically performing some kind of public role, such as a judge, magistrate or sheriff. Individuals were seen by courts as temporary occupants of a role which had an on-going and distinct legal status. They have not been considered employees but were part of our public law. Their roles are typically well-rewarded and prestigious. They were

therefore not 'victims' or 'precarious', as domestic workers and many in the 'gig' economy are thought to be.

Then, a ground breaking decision by the UK's Employment Appeal Tribunal accepted in the case of The Nursing and Midwifery Council v. Somerville that the Chair of the professional body's Disciplinary Panel, who was a lawyer and paid a fee for each attendance, was a 'worker'. He matched the statutory 'worker' definition. Similar reasoning could apply to a wide range of work, from external examining, consultancy work and decision makers of various sorts. So long as they meet the statutory definition they, potentially, can benefit from protective rights.

Perhaps of far greater significance, though asyet untested there is the potential for unpaid workers to succeed in 'worker' claims. These are volunteers, charity workers and anyone who, arguably, bestows an economic benefit on others. Hitherto, claims by such groups were not possible as they did not have a contract-there being no 'consideration'(pay) for the work they provided.

Running parallel with these developments has been a critical decision by the Certification Officer for Trade Unions that organisations representing self-employed people and ones, for example, representing people performing specific statutory roles, such as foster parents can be registered as independent trade unions and able to take advantage of protections afforded by law.

What has happened in the last year in the UK is profound in terms of definitional issues and boundaries for employment relations (Ford, 2020). Many traditionally excluded now have access to various legal protections, which although limited at present are capable of expansion.

However, although the boundaries are shifting, such that many more self -employed people will get basic protections, possibly joined by thousands of volunteers, and possibly supported by new types pf trade unions, often with international links, some controversies remain.

11. THE RELATIONSHIP BETWEEN EMPLOYMENT AND TAX LAW

In 2017, a report was published on the state of employment law and rights in the UK (Taylor, 2017). It recommended a raft of reforms, including the extension of employment rights. Although the then UK government generally accepted the recommendations, to date little has happened and so the changes and extension of boundaries and protections that have been provided have come from law courts not legislation. However, one key legislative development that has had significant impact on how people are classified has come, not from employment law but tax law.

Despite little evidence, the UK government decided that a significant percentage of self-employment was 'false' self-employment and the individuals concerned were, 'in reality' employees and should be taxed accordingly. Legislation was implemented covering the public sector in 2017 and extended to the private sector in 2021. However, it only applies where an

individual was supplied to an employer through an 'intermediary'-agency, limited company, umbrella company etc. It requires the 'client' organisation to determine employment status and if an individual is assessed as being an employee, they should be taxed accordingly. Unsurprisingly, the legislation has proved controversial! For present purposes, there are recent indicators that intervention by tax authorities in the UK have merely confirmed the intrinsic difficulties in trying to differentiate the genuine employee from the genuine self-employed. Although around 20% are determined to be 'falsely' classified, around 40% of the investigation have been held to be 'indeterminate', ie unclear (HMRC, 2021). For such an important issue affecting millions at work this seems quite unpredictable and worrying.

This initiative drew on suspicions of tax avoidance. If the suspicions were, indeed, correct, the 'genuine' self-employed sector should be reduced (Recent data had shown that self-employment had been steadily, if not dramatically increasing in recent decades).We are yet to see the outcomes of the changes but if self-employment declines the initiative demonstrates that shifting boundaries of employment classification can emanate from a variety of sources, not just employment legislation and case-law., and not least in the future through technological changes. We now have a situation whereby some self-employed people will pay tax at employee rates and yet are denied employee rights. Having 'worker' rights may well not be seen as adequate.

12. REFLECTIONS

Although the categorisation of those at work and its implications have changed over time, the last few decades have seen the pace of change considerably quicken. The notion of the 'flexible firm', which has impacted on most economies to a greater or lesser extent has produced fragmentation and complexity. Although some forms of flexibility have been to the benefit of those at work, generally flexibility, especially externalising work, has benefitted employers.

These employment and management models which have dominated discourses, especially of HRM have had intrinsic logic and structure. However, they have left many at work precarious or in unclear situations. We have seen initiatives from governments, the EU and social partners to ameliorate the situation and 'rights' for example for agency workers, posted workers at least notionally improved. There are other major consequences, not least in terms of skills development and the notion of a career. They also have impact on the private life of individuals which affected in terms of difficulties in accessing homes, loans and other facilities. Are we now seeing a more sustained improvement through the re-drawing of boundaries.?

Two issues emerge. First, why have these employment changes and new protections emerged? Is it simply that many people at work are vulnerable and therefore need support? Or, are there other policy reasons, such as fiscal ones, management ones, productivity concerns, training and skills shortfalls etc.? These are all valid concerns. It seems unclear at present, if there are to be formal moves to clarify relationships, re-define boundaries and provide better protections, whatever the drivers are.

Second, it is important to reflect on the strategies to improve employment conditions for those who are vulnerable, especially providing them with individual rights. It is arguable that relatively little improvement has been achieved in this way. For example, an agency worker who brings a claim is likely to be 'blacklisted' and find it hard to get other work. A fixed term worker who complains will simply not be offered for work again. Bringing a claim is stressful, and sets individuals against management and sometimes colleagues, which is time consuming and can be expensive. However, this is what we are relying on to achieve change. Is it really realistic to expect a worker faced with technological changes -surveillance, monitoring, decisions made by AI to be capable making a successful legal challenge in the future? (Leighton and Mckeown, 2020)

The shifting boundaries of employment from both a legal and management perspectives have major practical implications. It is argued that that the response policy agenda needs further analysis and attention, but in a context of simply providing individuals with rights and expecting change is unrealistic.

DECLARATION OF THE AUTHOR

Declaration of Contribution Rate: The author contributes the study on his/her own.

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