



Inspiring business

Business Manifesto Part IX

A photograph of the London skyline at sunset, featuring the Houses of Parliament and Big Ben on the right, and the River Thames in the foreground with a boat. The text 'Future of Flexible Work' is overlaid in white.

Future of Flexible Work

Election
2017

***Let's push
things forward*** >>>

Overview

The world of employment is changing. Shifting demographics and the diminishing cost of new technologies are shaping new attitudes to work across the world. In the UK, this trend has been widely associated with the rise of self-employment and platforms in the gig economy. These disruptive trends should be cause for celebration as they create more routes into work and increase the flexibility that people increasingly look for in jobs. However, as the trend towards self-employment continues, there are specific challenges that need to be addressed.

Proposals for all parties:

1. The next Government should clarify employment categories and publish easy-to-understand guidance.

The easiest way to achieve this would be for HMRC to create an online portal – alongside their tool for determining employment status for tax purposes – which clarifies their status for purposes of employment rights.

2. BEIS, DWP, HMRC and the Advertising Standards Authority should review advertising of self-employment opportunities. Making self-employment opportunities adverts fair and clear will go some way towards helping individuals to better understand the costs, risks and benefits.

3. The next Government should explore ways to facilitate continuous engagement in education throughout a person's life and career. Some of the steps should include opening up the Apprenticeship Levy to other forms of training, incentivising education providers to expand their provision of computer-based and blended learning opportunities, and flexing the income tax system to enable individual learners to engage in on-the-job training and e-learning.

4. The WorkerTech programme should be expanded to facilitate the setting up of specific services to benefit self-employed individuals. Some areas such as services require building up reputation in order to gain clients – the next Government should also work with online platforms to facilitate the development of a verified, portable ratings file that individuals can take with them to future jobs.

5. The ONS and HMRC should explore how more accurate data on self-employment and pay can be collected. Meanwhile, the LPC should take into consideration effects on self-employment when making recommendations on future National Living Wage rate rises.

6. The next Government should align Class 4 of NICs between the employed and self-employed more fairly.

The Government should also launch a new tax commission, following the report of the Taylor Review, to explore how to create a more level playing field without harming the options available - an individual's choice of employment status should not be determined by its associated tax.

7. Ensure the self-employed can access the social security safety net. The next Government should consult on boosting pension enrolment through a nudging scheme in the same manner as the employee auto enrolment programme, while HMRC should work on ensuring that the self-employed are made aware of their rights and social protection entitlements.

Context

The world of work is being transformed, driven by rapid developments in technology, globalisation, and demographic change. Now, the concept of 'employment' itself seems to be increasingly past its sell-by date. A proliferation of new, online platforms has made access to paid work easier and more efficient than ever before by instantaneously connecting people who have work they need to be done with others willing to do the task. The 'gig' economy has made it easy for workers to control when, where and how much they choose to work. In addition, the flexible nature of gig work offers benefits to employers, as they only pay when work is done, and don't incur staff costs when customer demand is not there. These disruptive changes offer the potential to boost growth and deliver more opportunities for both workers and consumers. However, they also have the potential to increase insecurity at work for some.

Figures from the Labour Force Survey (LFS) and the ONS suggest that easier routes into self-employment have led to rising participation in the labour force for those who have historically struggled to get into work; notably single parents, disabled individuals, and the long-term unemployed. Over half the part-time self-employed workforce is female and the number of women in self-employment has grown at around

twice the rate as men over recent years.

Older people, too, are increasingly choosing self-employment. Around one in three of those who work in their late 60s are going it alone, a figure that rises to almost half for the growing number of people working past the age of 70. Self-employment is also becoming a more important source of work for young people, with the number of under-25s going into conventional employment instead of self-employment actually falling since 2000. Political parties of all persuasions have supported this trend.

We should also be wary of the narrative that these jobs are predominantly of the low-wage, low-quality caricature; a picture often painted by their detractors. According to the Resolution Foundation, a left-leaning think tank, the gig jobs that have seen the highest rate of growth over the last decade are in typically high wage sectors, including a 90% increase in public administration positions, a 60% increase in banking jobs, and a 100% increase in advertising roles. Meanwhile, growth of self-employment in the taxi profession - one of the most widely scrutinised types of gig work - has been a relatively low 7%.

Nevertheless, of the nearly 3 million people who

have found a new job since 2008, around 45% have been classed as self-employed such that one in seven workers in the UK is now deemed self-employed. Consequently, HM Revenue and Customs are becoming increasingly concerned about the growing impact on the public finances, because self-employment is taxed at a lower rate than traditional employment. The Office for Budget Responsibility (OBR) has estimated that, on current trends, by 2020-21 the increase in self-employment will have cost the Treasury £3.5bn. At a time of ongoing national belt-tightening, this growing hole in the tax take is becoming increasingly hard for politicians to ignore.

The rise of self-employment, together with the public profile of new companies in the gig economy, has focused debate about whether employment regulations and practices are keeping pace with the changing world of work. While relatively new gig economy firms have been the focus of much recent public and media attention, gig type work itself is nothing new. Internet-based platforms have simply altered the manner in which some people source gig work. Indeed, the majority of the increase in self-employment since 2008 has actually been in historically conventional types of work including administrative and support service activities; information and communication; and

health and social work. As such, the challenges thrown up at the boundary between self-employment and employment are not new.

While much of the focus has been on the use of online technologies, the trend towards increased levels of self-employment is what really matters. Viewed in the right light, new platforms and innovative new business practices have the ability to expand routes into work and provide a lifeline to those that find themselves displaced in a shifting economic environment.

Nevertheless, the rise of the 'gig economy' has raised questions about what it really means to be self-employed. One problem is that the theoretically binary divide between employment and self-employment understates the level of complexity that exists in practice. There is little clarity in statutory definitions of employment status, although there is a body of case law. Evidence suggests that a lack of clarity and certainty is resulting in confusion for both businesses and workers. Indeed, data from HMRC suggests that more than 5.5 million people report income from self-employment; but that almost 1.8 million of those people also report income from employment. In other words, approximately one-third of people who believe themselves to be

Definition

self-employed are actually, or also, in contracted employment.

Improving the rights and protections of vulnerable workers in a sustainable way without damaging the availability of work opportunities or economic growth is a difficult but important objective. The following sections suggest some policy options for how these issues can be addressed.

One of the key challenges facing employers, employees, the self-employed, and government departments is the ambiguity that exists between characterisations of employment for the purpose of employment rights (identified mainly through case law¹) and definitions for tax purposes. For the purposes of employment rights, an individual's employment status is usually categorised as one of three types - employee, worker, or self-employed - while for tax purposes, that individual can be categorised as one of two types - either employee or self-employed. In some circumstances, because employment law and tax law follow different statutes, it is even possible for an individual to be categorised as an employee for the purposes of employment rights, and self-employed for tax purposes (for example some seasonal workers and temporary contract workers²).

The confusion many individuals and employers experience in correctly determining whether a person is employed or self-employed is easily understandable. As a case in point, in a survey conducted in April 2017, nearly a third of IoD members said they were not confident that they fully understand the difference between a self-employed individual and a worker for the purposes of employment rights.

¹ Some loose definitions are set out in the 1996 Employment Act.

² Especially if there is no mutuality of obligation to be provided with or to undertake work on specific days

This arbitrage highlights the other challenge that arises from the murky divide between the established definitions of employment and self-employment: individuals, who may have many of the characteristics of being employed, nevertheless lack the rights and protections of employed workers. We must recognise that self-employment is not without its perils and pitfalls. Statutory sick pay, statutory maternity pay, training support and employer pension contributions are some of the occupational benefits individuals forgo when they become technically self-employed. The self-employment landscape in the UK is in clear need of simplification and clarity. There is a strong case for improving people's understanding of their employment status, as well as the rights, responsibilities and trade-offs that come with working in different types of employment.

This clarity would also be welcome for employers, with 75% of IoD members saying they would support clearer legal definitions of 'employees', 'workers' and the 'self-employed'. For SMEs in particular, the time taken complying with regulations is usually more burdensome than the sheer number of boxes they are asked to tick. While IoD members overwhelmingly value the flexibility that often comes with using the self-

employed and non-employee workers, the lack of clarity that exists at the boundary between the two can often be both confusing and off-putting.

Recommendations:

1. The next government should clarify the distinctions between the employment rights afforded by each respective employment category and publish an official guide to help workers and businesses to correctly identify the different legal employment types and obligations. The IoD urges HMRC to create an online portal – alongside their tool for determining employment status for tax purposes – which clarifies their status for legal purposes. The portal should also provide more information about their rights, as well as forum to lodge a complaint anonymously.

Information

The Government's own Dean Review found evidence that a lack of clarity and certainty is resulting in confusion for both businesses and workers. Indeed, Citizens Advice estimates that almost half-a-million individuals in the UK may be incorrectly categorised as "self-employed" while research by the Social Market Foundation suggests that approximately one-third of people who believe themselves to be self-employed are also, or actually, in some form of contracted employment. Many of these individuals may therefore lack a full understanding of their rights, responsibilities and the liabilities involved in working in a self-employed capacity rather than contracted employment. The new Government also needs to make sure the self-employed are aware of the tax and other benefits they are entitled to by virtue of their self-employed status. One difficulty is that, in certain circumstances, firms can be reluctant to do more to help self-employed individuals understand their rights and entitlements because doing so risks their relationship appearing like an employer-employee relationship should they be subject to an employment status challenge in court.

Recommendations:

2. It is important that self-employment opportunities are fairly and clearly advertised so that individuals understand the costs, risks and benefits. BEIS, DWP, HMRC and the Advertising Standards Authority should review advertising of self-employment opportunities with a view to ensuring that associated costs, risks and potential liabilities are clearly stated in marketing materials.

Education

The self-employed are less likely to have access to training compared to employees and for a self-employed person, organising and financing training is likely to be more difficult than for an employee. As well as the upfront training costs of courses, the self-employed also need to forego potential earnings by taking time off work to train. They are also less likely to enjoy the potential economies of scale that a large employer might have in procuring training for employees. This makes it harder for the self-employed to acquire new skills and accredit the skills they already have. It is clear that lack of skills and qualifications can be a barrier to moving into a higher pay bracket.

Supply-side policies will be crucial if self-employed individuals are to navigate through and progress up the pay ladder. Education and training could help the low-paid self-employed find more work, increase the amount they are able to charge for their service, or move into a different, more lucrative area of work. Equally, lifelong learning has a key role to play in boosting productivity, contributing to economic growth and aiding social mobility. For these reasons, government should explore ways to facilitate continuous engagement in education throughout a person's life and career.

Recommendations:

3. Currently many employment agencies pay the Apprenticeship Levy but cannot use it to train the self-employed contractors on their registers. The Apprenticeship Levy should therefore be opened up to other forms of training and employment so that self-employed people can avail themselves of its funds and courses.
4. The cost savings, convenience, and flexibility that new Edtech platforms offer have the potential to revolutionise education provision, but only if businesses and the education sector work together to capitalise on the potential of computer-based teaching applications to support employees in their pursuit of lifelong learning. The next government should incentivise education providers to expand their provision of computer-based and blended learning opportunities to enhance access to education, reduce the costs of provision, and capitalise on a growing demand for alternative learning opportunities.
5. On-the-job training and e-learning offer part of the solution but finance is also key.

Representation

Affordability and limited credit options are the biggest barriers to individuals enrolling on part-time or further education. The income tax system should therefore be flexed to encourage and enable individual learners to upskill throughout their working lives.

Successful work platforms have strong network effects, meaning that the more users a platform has, the more attractive it becomes to current and potential users. This dominance could potentially put successful platforms in a strong bargaining position compared to its users. This suggests that there is a case for looking at how the negotiation position and voice of the self-employed can be bolstered. Thankfully, this is another of the many areas where digitisation and the platform economy offer not a problem but a solution.

Recommendations:

6. The WorkerTech programme being run in partnership with the Cabinet Office seeks to seed, find, and back start-ups with promising ideas about how technology can be used for good in the world of work. HM Government, in collaboration with Social Enterprise UK, should explore how the WorkerTech programme can be expanded and enhanced to facilitate the setting up of specific services and associations to benefit self-employed individuals in their work lives.

Remuneration

Over the years many efforts have been made, first with the introduction of the National Minimum Wage and more recently the government's statutory National Living Wage, to increase pay per hour worked for low-paid individuals. Importantly, however, whilst the Low Pay Commission (LPC) is obliged to minimise potential effects on the employment rate when considering whether to propose an increase of the National Minimum Wage, the LPC are not required to take account of potential effects on the employment rate (or indeed the self-employment rate) when recommending increases to the statutory National Living Wage.

Alongside this, the UK currently has no official measure of earnings for the self-employed. Sir Charles Bean's review of government statistics highlighted a number of concerns about the accuracy of government data on self-employment. To ensure that the LPC is able to do its job effectively, better data is needed on the earnings of the self-employed.

Recommendations:

7. The ONS and HMRC should explore how more accurate and timely data on self-employment and pay can be collected to better inform LPC rate setting and broader government policy.
8. The Low Pay Commission's remit should be amended to ensure that it is explicitly required to take into account the effects on self-employment in making recommendations on future National Living Wage rate rises. The LPC should continue monitoring trends in the pay of the self-employed over time, as some impacts may be long-term in nature.

Taxation

In recent years, HMRC has been faced with a growing number of people moving away from employment and into forms of self-employment. These contribute less income tax and national insurance contributions to the Exchequer for a given level of income than contracted employment. The treatment of self-employed workers for income tax and National Insurance purposes means that a self-employed worker pays less tax above the lower limits for NICs than an employee on comparable annual earnings. In their 2015 Employment Status report, the Office of Tax Simplification (OTS) has said that the national insurance contribution differential between the employment statuses is significant, and, combined with related costs and regulations, results in “pressures on the employment status boundary from those who [firms] wish to gain a tax/national insurance advantage or manage the risk of getting it wrong”. Nevertheless, last November's Autumn Statement showed for the first time how this trend is increasingly cutting into the government's tax take. This trend will almost certainly accelerate if there are no policy reforms.

Diminishing tax receipts are hardly welcome at a time of ongoing fiscal constraint and increased pressure on public spending. However, forcing businesses and self-employed individuals to shift

to employer-employee relationships would risk distorting HR and payroll management decisions, reducing business efficiency, and taking away valuable choices for individuals in how they choose to work. There is a clear need, therefore, for government to take a cross-departmental look at the implications of these changes for the Exchequer and to explore appropriate, non-distorting, solutions that would align the UK's fiscal policies with the overarching imperative to support an increasing flexible employment market both for today and for the foreseeable future.

Recommendations:

9. Following the report of the Taylor Review, the incoming government should launch a new tax commission to explore how to create a more level playing field without harming the options available to the self-employed, and avoid any future changes to the tax system that indirectly widen the tax differentials between employment statuses.
10. An early first step should be to begin a fairer alignment of Class 4 National Insurance Contributions between the employed, self-employed. We consider that the choice of an individual's employment status should not be

Protection

determined by its associated tax cost but by the broader commercial and legal drivers for its business.

As increasing numbers of workers move into self-employment, the reach of the next government's social security policies – which are largely focused on employees – will become less effective. Ensuring the self-employed can access the social security safety net when needed is similarly important.

Recommendations:

11. The self-employed face particular challenges because they are not covered by employer pension schemes or pensions auto-enrolment, and they may well have lower awareness of the saving options available to them. The next government should consult on boosting pension enrolment through a nudging scheme in the same manner as the employee auto enrolment programme, which has boosted the number of pension savers by 4.4 million.
12. There are many practical barriers to improving savings amongst the self-employed. Some of these concern the need better publicising the savings benefits available to the self-employed, such as the tax relief. The RSA estimates that only 60% of the self-employed claim the tax credits they are entitled to, compared with 85% of employees. The

Competition

solution may also lie in providing better, cheaper and easier advice on the best savings and pension options already available to individuals. HMRC should focus on ensuring that the self-employed are made aware of their rights and social protection entitlements via the online portal as discussed in our first recommendation.

The online and gig economies' capacity to grow are immense. New digital platforms are challenging established industry leaders by flattening hierarchies and supporting more producers and consumers to participate. Ultimately, this is shifting power in the market. Many industries that were dominated by a few big businesses are now being dispersed by individuals. However, there is a growing potential for 'networked monopolisation', where although other platforms or companies could technically compete, it becomes difficult to offer users the same level of utility without being able to match the size of the network effect. This could ultimately limit the entry of new businesses, and reduce competition and innovation in the market. At present, it is difficult to predict whether networked monopolies are likely to endure because the sustainability of businesses in the gig economy has yet to be proven. Indeed, most have yet to turn a profit. Nevertheless, the next government would be wise examine the potential effects of new networked monopolies on the economy and take measures to boost competition where appropriate.

Recommendations:

13. The Competition and Markets Authority (CMA) should monitor platforms in the gig economy to ensure that competition is able to flourish in the sector.

14. In some areas such as services like cleaning or gardening, the route to higher pay is in building up a reputation for high quality service provision. There is a need, therefore, to enable individuals to take verified records of their reviews and career history with them to upload onto another platform should they decide to move from one to another. The relevant government departments should work with online platforms to facilitate the development of a verified, portable ratings file that individuals can download and take with them to future jobs.

Conclusion

The world of work is being transformed, driven by rapid developments in the sophistication and cost of technology, globalisation, and demographic change. Indeed, the concept of 'employment' itself seems to be increasingly past its sell-by date as a proliferation of new online platforms have all made access to paid work easier and more efficient than ever before. The rise of self-employment, together with the public profile of

new companies in the gig economy, has focused debate about whether employment regulations and practices are keeping pace with the changing world of work. This paper sets out a series of proposals which the IoD believes would enable the next government to improve the rights and protections of vulnerable workers in a sustainable way without damaging the availability of work opportunities or economic growth.

Authors



Seamus Nevin
Head of Employment & Skills Policy

Seamus leads the IoD's work on improving and reforming schools, higher education, further education and vocational training to meet the skills needs of UK employers.



Jamie Kerr
Head of Entrepreneurship & Tech Policy

Jamie leads the IoD's policy work on behalf on start-ups and works closely with the IoD99, the 1,500-strong network for young entrepreneurs.