

September 2021
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Labour Research

**UK
workers
need legal
right to
'switch
off'**

**'Fairness
not
favours'?
Union
reform 21
years on**

**New state
aid regime
after
Brexit**



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Investment needed in prisons

Urgent investment in the prison service is needed to overcome rising suicide rates the POA prison officers' union has warned.

The union issued a statement in response to a recent BBC *Newsnight* investigation on the dramatic increase in prison suicide rates – in the last 10 years the rate has gone up by 220%.

The POA highlighted the struggle of prison officers after huge cuts to the Ministry of Justice budget left them with no time to build relationships with prisoners.

Instead, the union said, prison officers spend their shifts simply trying to deliver a regime set against unrealistic and undeliverable performance targets, with draconian cuts resulting in the loss of 86,000 years of prison officer experience.

"Many of our local prisons and training prisons suffered staffing cuts that were simply not safe for staff, and not safe for prisoners," the statement continued.

Newsnight described a world where mental health problems are treated too often with custodial sentences and where officers are never given training.

POA national chair Mark Fairhurst said: "Prison populations have grown massively, the number of people taking their lives increased, yet the number of front-line prison officers has fallen."

He added: "... we have campaigned tirelessly to remove razor blades from our prisons ... yet our employer has struggled to act with any sense of urgency."

UK must have permanent short-time working scheme

The TUC is pressing for the furlough scheme to be replaced with a permanent short-time work scheme as unions representing the airline industry warn of catastrophic consequences if action is not taken.

The TUC says the government must build on the success of the furlough scheme, due to close at the end of this month, and introduce a permanent replacement to deal with big disruptions to jobs in the future, such as the transition to net zero, future pandemics and technological change.

It points out that the UK is an anomaly among developed nations in having no permanent short-time working scheme to deal with periods of industrial disruption and weak demand.

In the 38-member country OECD intergovernmental economic organisation, 23 countries had short-time working schemes in place before the coronavirus pandemic, including Germany, Japan and many US states.

In a new report, *Beyond furlough: why the UK needs a permanent short-time work scheme*, the TUC says the case for such a scheme is clear as it would reduce the risk of workers losing their jobs in times of crisis.

And it would protect workers' incomes while the government would protect against long-term unemployment, the subsequent devastating impacts on communities and help stabilise the economy.

It would also save money, as the cost of furlough schemes is often below the cost of unemployment benefits, particularly where costs are shared with employers.

For employers, the union body says, such a scheme would produce significant savings on redundancy, training and hiring costs, as they enable firms to keep skilled workers on their books.

TUC general secretary Frances O'Grady said setting up a "daughter of furlough" to provide certainty to workers

and firms through future industrial change would be a fitting pandemic legacy.

"Too often in the past, periods of economic and industrial change have been badly managed – increasing inequalities and leaving working people and whole communities abandoned," she said.

Unions representing airline workers urged the government to do what is necessary to save the industry, with Office for National Statistics figures showing that 57% of remaining employees in air transport companies remain on furlough.

Martin Chalk, acting general secretary of the BALPA pilots' union pointed out that "one in four constituencies has over 1,000 people employed directly by aviation companies".

Diana Holland, Unite assistant general secretary, said: "Aviation is crucial to the UK's economic recovery. It needs furlough support to continue while Covid restrictions apply."

Civil service union warns over wages cuts for homeworkers

The PCS civil service union has warned of possible action if ministers try to cut the pay of civil servants over office openings.

Last month, anonymous government briefings to the media suggested civil servants' pay could be docked if staff refuse to return to the office.

One Cabinet minister said civil servants should have their pay docked if

they refuse to return to the office after working from home for so long during the pandemic. However, this was subsequently rejected by business secretary Kwasi Kwarteng.

Responding to the reports, a PCS spokesperson said: "It is the height of cowardice for ministers to anonymously brief the media about docking civil servants' pay

for not returning to the office.

"PCS is engaged in serious discussions with the Cabinet Office about how we can embrace the post pandemic world with hybrid working and keeping staff safe. Any attempt to dock pay for civil servants for any reason would be met with a swift industrial response, potentially including strike action."

Unions demand first minister gives commitment to rail

Transport unions in Scotland are calling on first minister Nicola Sturgeon to commit to rail after revelations that an internal report by the ScotRail Scottish rail service has put into question the future of ticket offices.

The report also suggests a 10% cut to services which unions say would lead to more than 1,000 job losses.

Unions called for the recommendations in the report by Iain Docherty, former non-executive director of ScotRail and of the Transport Scotland national transport agency, to be rejected.

They argue that the recommendations seek to exploit the Covid pandemic and its fallout to cut jobs and services.

In a joint statement, the ASLEF, RMT, TSSA and



Rail unions say they won't accept attacks on jobs and services

Unite unions said: "We need cast iron commitments from Nicola Sturgeon.

"Scotland needs investment in a safe, secure, reliable and accessible public rail system that meets the needs of the travelling public and reduces greenhouse gas emissions." The unions said they are

committed to working with the Scottish government to provide this, "but we will not accept attacks on our members' jobs and the rail services".

ScotRail is to come back into public ownership in March 2022 and, as Labour Research went to press, Sturgeon was meeting with the Scottish TUC.

TUC presses for an end to reign of umbrella companies

The TUC is calling for a ban on umbrella companies on the grounds that they are used to exploit workers.

Research by the union body estimates half of agency workers already work for umbrella companies.

This could spiral further post-pandemic because of a combination of changes to tax rules, which have come in this financial year, and the increase in agency work.

An umbrella company is essentially a payroll company, used by recruitment agencies to operate a PAYE system for

the agency workers they find work for. In many cases, the umbrella company will also employ the agency worker, with the agency workers becoming "employees" of the umbrella company.

The TUC says this creates a fragmented employment relationship and makes it difficult for workers to exercise their basic rights.

And it says workers face misleading and unfair deductions from pay, while breaches of holiday leave and pay entitlement are widespread. TUC general secretary Frances O'Grady

said: "Everyone deserves decent work. But too many low-paid workers are denied the wages they were promised and basic legal rights like holiday pay because they work for umbrella companies.

"Lots of them are the key workers we all applauded – like social care workers, teachers and coronavirus testing staff."

She said employers shouldn't be able to wash their hands of any responsibility "by farming out their duties to a long line of intermediaries".

IN BRIEF

State acquires Forgemasters

The nationalisation of defence manufacturer Sheffield Forgemasters has been welcomed in steel communities.

Unite assistant general secretary for manufacturing, Steve Turner said that "this is the news we've waited two years to hear".

He said the announcement that it is going into public ownership brings to an end years of instability for the 215-year-old company, but is also a sign that government may finally be waking up to a crisis of its own making.

He added: "Critical infrastructure industries like steel function better in public hands and advanced economies like our own need to have stable, secure domestic steel production capabilities to protect our national security interests as well as to compete in global markets."

NHS job protection agreement

The UNISON health union has secured a job protection agreement for over 10,000 NHS staff after its campaign received the backing of the new University Hospitals of Northamptonshire NHS Group.

The signed agreement, which lasts until the end of 2024, recognises the contribution made by NHS workers during the pandemic and aims to ensure job security under the merger of Northampton General Hospital and Kettering General Hospital trusts.

UNISON is urging other health employers across the region to follow suit.

UNISON East Midlands regional organiser Gareth Eales described the agreement as "significant locally", given the merger of the two trusts.

Inflation gap widens

Pay bargaining may be affected by a widening gap between the union-preferred RPI measure of inflation and the CPI measure including a housing element.

In July the difference grew to a full 1.7 percentage points, with RPI at 3.8% and CPIH at 2.1%. CPI inflation was 2.0%, matching the target set for the Bank of England.

Clothing and footwear prices and recreational goods and services contributed most to the fall.

Outlook remains uncertain

Falling inflation and a rising number of employees on the payroll do not necessarily add up to a certain economic recovery.

The international outlook remains uncertain, and the planned end of the furlough scheme this month could tip things into reverse here in the UK.

Statistics for July show that the number of payroll employees increased by 182,000 to 28.9 million, but that was still 201,000 below pre-pandemic levels. Total

hours worked were also up but remained below pre-pandemic levels.

Improvements between April and June included a quarterly rise in the employment rate of 0.3 percentage points, to 75.1%, and a decrease in the unemployment rate of 0.2 percentage points, to 4.7%.

Job vacancies reached a record high of 953,000 and average weekly earnings continued to bounce back: "total pay" including bonuses were up by over

10% in the private sector in May and June, compared with their Covid and furlough-affected levels of a year earlier.

But people in low-paid occupations (the young, those on fixed-term contracts or with low levels of education) have been particularly affected, the OECD intergovernmental economic organisation warns. And there is a "once-in-a-lifetime opportunity" to build a more inclusive labour market.

KEY INDICATORS

INFLATION +3.8%

AVERAGE EARNINGS +8.7%

EARNINGS AND PAY

% increase ¹	Whole economy	Manu facturing	Services	Private sector	Public sector ²	LRD pay deals ³
April	-1.2	-3.8	-0.1	-2.1	3.1	2.6
May	-1.4	-2.9	-0.5	-2.7	4.8	2.6
June	-1.5	-3.6	-0.7	-3.0	4.9	2.5
July	-0.2	-1.4	0.3	-0.9	3.0	2.3
August	2.0	-0.2	3.0	1.9	3.7	1.5
September	2.7	0.4	3.3	2.1	4.4	1.5
October	3.8	0.6	4.4	3.6	4.0	1.3
November	4.7	2.5	5.3	4.7	4.6	2.0
December	5.3	1.8	5.8	5.6	4.5	2.0
January 2021	4.2	1.8	4.8	3.9	5.4	2.0
February	3.9	1.9	4.5	3.5	6.0	1.7
March	4.8	2.3	5.2	4.6	5.6	1.8
April	8.7	6.9	8.6	9.8	3.8	2.0
May	8.9	6.6	9.0	10.4	2.7	2.0
June	8.7	7.7	8.7	10.3	2.5	2.1
Headline rate ⁴ for June	8.8	7.1	8.8	10.1	3.0	

¹ Increases in average weekly earnings (total pay) in Great Britain, seasonally adjusted, as monitored by National Statistics. ² Excludes financial services. ³ Midpoint pay increase among settlements reached in the previous three months, as recorded on the Labour Research Department's Payline database. ⁴ Average of the earnings increase figures for the latest three months compared with a year earlier. Figures may be revised from month to month.

INFLATION

	Retail Prices Index ¹ (RPI)	% annual increase in RPI	% annual increase in CPIH ²
January 2020	290.6	2.7	1.8
February	292.0	2.5	1.7
March	292.6	2.6	1.5
April	292.6	1.5	0.9
May	292.2	1.0	0.7
June	292.7	1.1	0.8
July	294.2	1.6	1.1
August	293.3	0.5	0.5
September	294.3	1.1	0.7
October	294.3	1.3	0.9
November	293.5	0.9	0.6
December	295.4	1.2	0.8
January	294.6	1.4	0.9
February	296.0	1.4	0.7
March	296.9	1.5	1.0
April	301.1	2.9	1.6
May	301.9	3.3	2.1
June	304.0	3.9	2.4
July	305.5	3.8	2.1

¹ January 1987=100 ² Consumer Prices Index Housing, Source: National Statistics

FULL-TIME AVERAGE WEEKLY EARNINGS BY OCCUPATION

All employees	£639.90	Administrative and secretarial	£505.60
All male	£676.60	Skilled/craft	£554.10
All female	£593.50	Services ²	£439.30
Managers	£932.20	Sales	£431.70
Professionals	£849.10	Operatives	£521.20
Associate professionals ¹	£666.20	Other manual jobs ³	£433.90

Based on: Annual Survey of Hours and Earnings 2020 full-time median gross weekly earnings uprated by the increase in Average Weekly Earnings (total pay)

¹ Includes technicians, police, firefighters, IT technicians, youth workers, legal and finance workers and housing officers.

² Personal service occupations such as care workers, travel assistants, hairdressers and caretakers.

³ "Elementary" occupations including farm workers, labourers, dockers, postal workers, porters, waiters and cleaners.

Women now run two largest trade unions in the country

Women now run both of the largest two trade unions in the country, following the stunning victory by Sharon Graham in the election to lead general union Unite.

As *Labour Research* went to press, Unite announced that Graham, the union's executive officer for organising and leverage, had won the three-cornered race, becoming the first female general secretary of the 1.2 million-member union.

She took 37.7% of the vote, beating Unite assistant general secretary Steve Turner, who had been closest to a "continuity candidate", as well as the man viewed by many as the "right-wing" option, former regional secretary Gerard Coyne.

Graham takes her place in the upper echelons of the UK trade union movement less



Sharon Graham is the new leader of the Unite union

than a year after Christina McAnea became general secretary of the UNISON public services union. The two unions between them account for over four in 10 trade union members.

Graham had styled herself as the "workplace candidate", concentrating her efforts on the immediate needs of members and

potential members rather than on influencing the Labour Party.

She said her priorities were to stop any planned union subscription increases, freeze them for 12 months and limit any increases to once every two years.

She succeeds retiring Len McCluskey and takes up the post with immediate effect.

IN BRIEF

The Professional Footballers Association (PFA), a TUC affiliate union, has its first new leader in 40 years, as Maheta Molango replaces long-term chief executive Gordon Taylor.

Molango, a former player, football club CEO and labour lawyer, says he will take a "player-centric" approach to his role.

"One principle will guide my leadership of our union, and it is this: the PFA belongs to the players. It should always be run on behalf of its members, for its members," he said.

Meanwhile, trade union stalwart and anti-racism campaigner Roger McKenzie has stepped down from his role as assistant general secretary of the UNISON public services union.

He has been appointed general secretary of the anti-imperialist human rights campaign organisation, Liberation.

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IN BRIEF

Increases for leaders Poland's three main union confederations, – NSZZ Solidarnosc, OPZZ and FZZ – have criticised a decision by the country's parliament to award large increases, of around 60% in some cases, to the prime minister, government members and parliamentarians while continuing with a plan to freeze public sector pay.

In a joint statement they say: "... we do not understand why, at the same time the pay of more than half-a-million public sector workers ... without whom the Polish state would not be able to function, is being frozen."

Covid passes

Several French union confederations, including the CGT, FO and CFE-CGC, have expressed their concern at new rules which extend the requirement to have a Covid-19 health pass to large areas of French life, including bars and restaurants, larger shops, public transport and hospitals.

The health pass is proof an individual has been vaccinated, has a negative Covid test or has recovered from Covid. Workers who fail to provide a health pass can be suspended. The unions argue that the law is discriminatory and an attack on key constitutional rights.

Delivery workers

Spanish legislation giving employee status to delivery workers, working through platforms such as Uber Eats (see *Labour Research*, April 2021, page 8) finally came into force on 12 August, several months later than originally expected.

A crucial element of the law is that employee representatives must be given details of the algorithms which decide how work is allocated.

Irish government issues new code on employment status

The Irish government has published a new code on employment status – and plans to give it statutory backing, with legislation introduced later this year.

Like many other countries, Ireland has seen a growth in new forms of work, such as platform work and the gig economy, in which self-employment is common. Around 10% of workers in Ireland are currently self-employed.

The code aims to make clear the criteria that classifies someone as an employee or as being self-employed.

Employment status – whether workers are employees or self-employed – has a major impact on employment rights as well as on tax and social insurance contributions.

The new *Code of Practice on Determining Employment Status* sets out the five factors that should be considered in determining whether an individual is an employee or self-employed:

- mutuality of obligation – whether one party must undertake work and the other must pay for it;
- substitution – whether the worker can use someone else to do the work;
- the enterprise test – whether the worker can profit if the work is done well or risks a loss if things go wrong;
- integration – the extent to which the worker has become part of the business she or he works for; and
- control – the degree to which the person paying for the work has control over the worker, including the power to decide when, how and

where the work should be done.

The courts already consider these factors, but the code contains specific examples of how the factors should be assessed.

Minister for social protection Heather Humphreys hopes this will "ensure that workers' rights and entitlements are protected".

However, for the ICTU Irish union confederation, the government's plans do not go far enough. General secretary Patricia King has called for binding legislation which would include a definition of self-employment.

The ICTU wants the government to "classify all workers as direct employees, in the first instance, until proven otherwise by applicant employers".

Women's progress threatened

The pandemic threatens to reverse recent progress on gender equality, with women "disproportionately exposed to the economic turmoil created by Covid-19", says a new European report.

Upward convergence in gender equality: how close is the union of equality?, produced jointly by the Eurofound EU research agency and the European Institute for Gender Equality, examines progress in six key areas: work, money, knowledge, time, power and health. It then uses the results to produce an index measuring gender equality.

Sweden comes out on top, with a score of 83.8 (out of 100), while Greece is lowest ranked on 52.2. The

EU as a whole (27 member states) scores 67.4.

The report looks at the progress that has been made since the index was first introduced in 2010 and finds that the EU has moved ahead by 4.3 points, with big increases in some previously poorly performing states like Italy, Malta, Portugal, Latvia, Estonia, Croatia and Cyprus.

However, other states, largely in central and eastern Europe, which also had below-average scores in 2010, have made much less progress. Bulgaria, Lithuania, the Czech Republic, Poland, Slovakia, Romania, Hungary and Greece all fall into this category.

Progress has been most rapid in relation to "power",

driven by an increase in the number of women on company boards.

But the report also points to the threat to gender equality progress posed by the pandemic. A higher proportion of women lost their jobs as Covid-19 hit sectors with high levels of female employment, while the amount of time women were required to spend on caring responsibilities increased.

The study argues that this makes gender sensitive recovery measures and a higher participation by men in unpaid care work essential. If not, the existing slow progress to gender equality will be halted or reversed.

Homeworkers need the 'right to disconnect'

The benefits of working from home need to be weighed against pressures on employees to be 'always available' – leading to demands for homeworkers to have a legal 'right to disconnect'.

While the official government "work from home if you can" advice at the height of the pandemic was lifted on 21 June, all the signs are that home-working or, at least, "hybrid" working, is here to stay.

According to recent data from the Office for National Statistics (ONS), 24% of businesses intend to use increased homeworking as a permanent business model while a further 28% are still deciding what their policies will be.

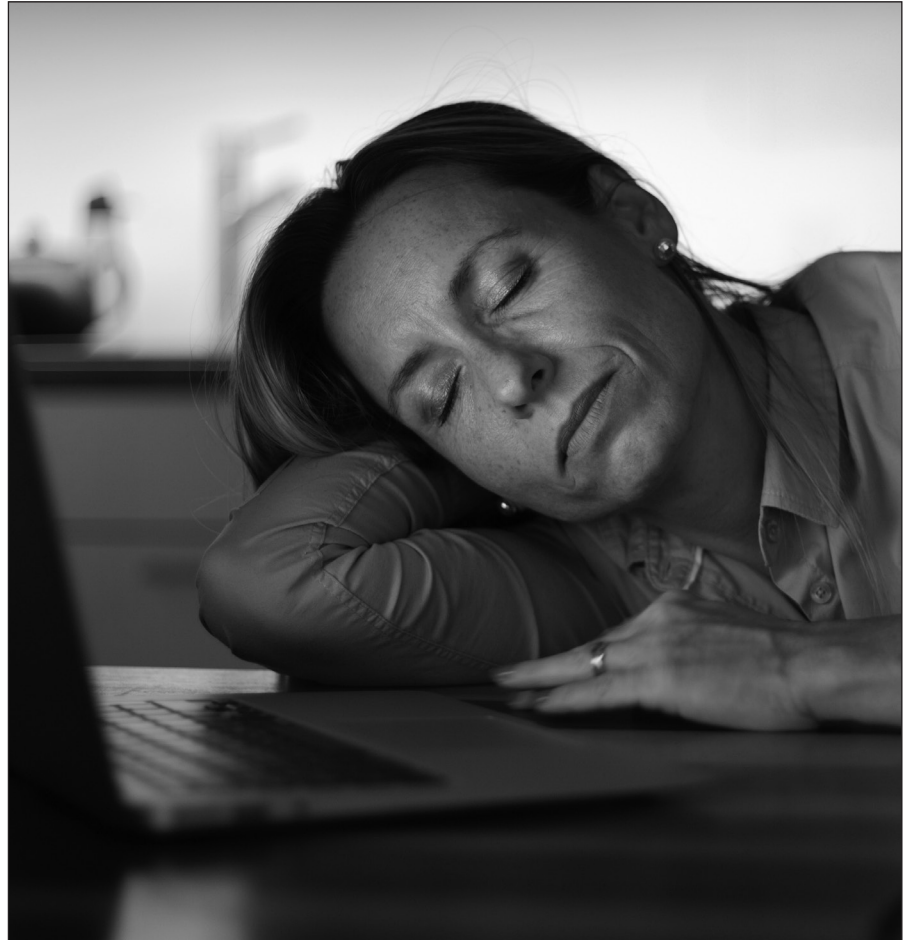
Surveys show that for some, homeworking has led to an improvement in their work-life balance. But for others, the increased reliance on digital devices has led to a blurring of boundaries between work and home life and a pressure to be available to handle work issues even outside of defined office hours.

'Always on' culture

For this reason, unions are increasingly voicing concern about the "always on" culture that some are facing and are ramping up the campaign for government measures to address the additional pressure this can put on employees' mental health, wellbeing and working life.

Even before the pandemic, a 2017 study by the CIPD body for HR professionals found that almost a third (32%) of UK workers felt having remote access to the workplace meant they couldn't "switch off" in their personal time.

And 40% said they actively checked their work mobile or emails at least five times a day outside of working hours. Other polls have since found the numbers



SHUTTERSTOCK

Unions are increasingly voicing concerns about the 'always on' culture faced by some

facing this pressure to be even higher. One, by workspace provider, Office Group, from October 2020, found half (51%) of the 2,000 UK workers surveyed saying they had been working outside of their typical hours since lockdown.

The average worker put in an extra 59 hours of work at home – the equivalent of seven working days over just five months.

The Prospect union for specialists has carried out its own study into the impact this situation is having on workers. Andrew Pakes, director of research says: "People's experience of working from home during the pandemic has varied wildly depending on their jobs, their home circumstances, and crucially the behaviour of their employers.

"It is clear that for millions of us, working from home has felt more like sleeping in the office, with remote tech-

nology meaning it is harder to fully switch off, contributing to poor mental health."

A poll commissioned by the union confirmed that the combination of long working hours and higher demands during the pandemic has led to more cases of anxiety, depression, burnout and other mental and physical health issues.

Its research found that 35% of remote workers say their work-related mental health has got worse during the pandemic with 42% saying this is at least partly a result of inability to switch off from work.

Angus Wheeler-Rowe, a worker from the telecoms industry, was quoted in the *The Guardian* saying that working from home had "helped to keep people safe", but had also "made it harder to separate work, home and family commitments.

"When your personal space becomes your office, and with no commute to bookend the day, pressure grows for

RIGHT TO DISCONNECT

longer days and response to requests at unreasonable hours.”

It is a call they have led on since 2016 and which has now been strengthened by the addition of other union voices and the introduction of similar laws elsewhere in the world.

“Setting rules about the boundaries for remote or hybrid working would make a big difference in helping people switch off and recharge, especially if we are going to be spending much more time working from home in the future,” says Pakes.

“Reinforcing the distinction between work and home will increase motivation and at-work productivity, which has to be better for bosses and workers.”

The right to disconnect refers to a worker’s right to be able to disengage from work and refrain from engaging in work-related electronic communications, such as emails or other messages, during non-work hours.

Constantly accessible

The concept was first developed after the widespread use of smartphones and other digital devices led to employers pressuring staff to be constantly accessible when working remotely. Prospect first called for this right as part of the union’s view that the increasing use of technology and data analytics is changing the relationship between workers and employers.

Other closely related digital technology issues requiring protection for workers include the use by management of data generated by workers and of monitoring and surveillance software.

In March 2021, the TUC got behind the campaign with its *Dignity at work and*

the AI revolution manifesto. Among many other demands around new technology and transparency, worker voice, equality, data awareness and human connection, it calls for “a statutory right for employees and workers to disconnect from work, to create ‘communication-free’ time in their lives”.

Pakes says that including a right to disconnect in the *Employment Bill* “would be a big step in redrawing the blurred boundary between home and work and would show that the government is serious about tackling the dark side of remote working”.

The union’s research says 66% of those working remotely currently support such legislation.

However, there is little sign yet of any government action on the issue, as a promised Bill on workers’ rights has been repeatedly delayed.

A spokesperson for the BEIS business department made only a vague commitment that, when introduced, the Bill “will deliver the largest upgrade to workers’ rights in a generation, including measures that will help people to balance work with their personal lives”.

Other governments have been faster to recognise that the expectation that workers should be always available for online or mobile communication is potentially hazardous to workers’ health.

In April 2021, the Republic of Ireland amended their official code of practice to give employees the right to “disconnect from work”.

The code is designed to complement and support the rights and obligations of both employers and employees under Irish employment legislation and sets out

the key elements of the policy:

- the right of an employee not to routinely perform work outside normal working hours;
- the right not to be penalised for refusing to attend to work matters outside of normal working hours; and
- a duty to respect another person’s right to disconnect

France

A new legal right was pioneered in 2017 in France, where leisure-time is fiercely guarded and there is a shorter working week. There, employers with more than 50 workers have been obliged to draw up a charter of good conduct, negotiated with union representatives, setting out the hours when staff are not supposed to send or answer emails.

However, as the law doesn’t specify what procedures employers must put in place to ensure a workers’ right to disconnect, the level of protection is likely to differ widely from employer to employer. Additionally, employees at organisations with fewer than 50 employees cannot enforce their right to disconnect.

France may well soon be joined by the rest of the EU. In January 2021, the European Parliament recommended to the European Commission that the right to disconnect should be an EU-wide fundamental right.

Currently, the Working Time Directive refers to a number of rights related to similar issues: in particular, the minimum daily and weekly rest periods required to safeguard workers’ health and safety.

The EU has also recently been concerned more generally with promoting a better work-life balance.

This can be seen in Principles 9 (work-life balance) and 10 (healthy, safe and well-adapted work environment and data protection) of the European Pillar of Social Rights – which commits to common minimum standards across the EU – as well as the directive on work-life balance for parents and carers.

However, the UK government is no longer obliged to match these provisions.

Canada

In Canada, the federal government is also investigating a similar policy.

It has established a Right to Disconnect Advisory Committee, consulting with unions and business leaders to develop rules that would enable employees to disengage after regular working hours.

Some legislation on the right to disconnect has also been implemented in recent years in Italy, Spain, Slovakia and the Philippines.

Table: Who works from home?		
Industry	Mainly Work from Home	Have Ever Worked from Home
Information and communication	14.8%	53.1%
Professional, scientific, technical activities.	12.8%	46.3%
Real estate activities	12.3%	40.3%
Agriculture, forestry and fishing	8.6%	39.0%
Financial and insurance activities	5.2%	38.9%
Education	2.7%	38.3%
Arts, entertainment and recreation	9.9%	33.3%
Other service activities	7.8%	30.3%
Electricity, gas, air cond supply	4.9%	29.6%
Public admin and defence	2.6%	29.4%
Extraterritorial organisations	4.6%	27.8%
Construction	3.8%	25.9%
Mining and quarrying	5.7%	24.8%
Admin and support services	5.6%	23.2%
Manufacturing	3.9%	21.1%
Water supply, sewerage, waste	1.9%	20.4%
Health and social work	3.9%	20.3%
Households as employers	10.8%	19.5%
Wholesale, retail, repair of vehicles	3.2%	13.4%
Transport and storage	1.8%	11.0%
Accommodation and food services	2.1%	10.0%

Source: Office for National Statistics



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In the absence of legislation on the issue, unions can bargain and have been bargaining for similar protections.

An early example comes from 2016 in Germany where transport union EVG signed an agreement, "Work 4.0", with the state-owned railway Deutsche-Bahn.

This puts the "promotion of worker health" with the use of new technologies at its heart.

It has a section on "stress, dissociation and health protection". It acknowledges that the use of mobile technology, for example smartphones and tablets, requires a multitasking ability that can potentially cause psychological stress to workers.

Regulated

It also specifies that the constant "availability" that mobile technology enables should be regulated – that workers be given the right to disconnect and that full "psychological" risk assessments be undertaken for remote working.

It also ensures the employer provides funding for activities such as stress management seminars. Last year in Spain, the public services union federations, FSC-CCOO and FeSP-UGT signed a new agreement on remote working covering 2.5 million public sector employees.

The agreement includes basic principles that remote working arrangements should be voluntary and reversible and subject to key provisions relating to health and safety, equality, transparency and objectivity. It also guarantees a right to disconnect, data protection and the right to privacy.

In the UK, several unions have produced model agreements and guidance for unions looking to negotiate on the issue. Prospect is promoting a template drafted by the Irish Financial Services Union. Its preamble reads:

"... we support our staff's right to disconnect. As an employer, we do not expect staff, normally, to work more than their contractual working hours.

"If you find you are, you should talk to your line manager or your union representative."

It continues: "If you do receive a work email, or any other form of communication outside of working hours, there is no expectation that you read it or respond until you are working."

The model agreement then proposes specified commitments on hours of work and overtime; disconnect out of hours; regular breaks and lunchtime; managing meetings and times; oncall, standby, weekend attendance and other allow-

ances; culture of work; and complaint procedure.

General union Unite also has a template homeworking agreement which includes a clause on the right to disconnect.

It commits employers and workers to the provision of "compliance records regarding employee working hours including starting and finishing times, rest breaks, daily breaks and weekly breaks and to ensure compliance with working time legislation" so employees do not feel obliged to be constantly connected.

The UNISON public services union also provides guidance on the issue.

Official data

ONS data published in April 2021, shows that 35.9% – or 8.4 million people – were completing duties from their place of residence at some point at the height of the pandemic.

The figure compares with 12.4% in 2019. The groups with the highest rates of homeworking last year were "women, those working in information and communication, those residing in or working in London and those in professional occupations".

Those working in the accommodation and food service sector were among the least likely to home work at just 11.4%



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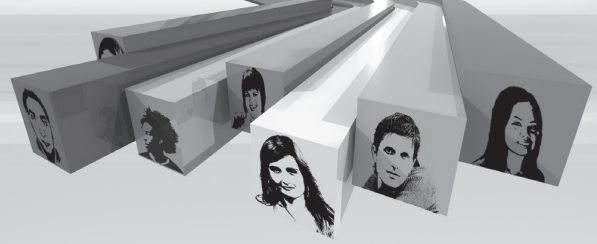
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This year marked the “coming-of-age” 21st anniversary of the statutory union recognition procedure, writes *Gregor Gall*. Established by Tony Blair’s New Labour government as a result of the *Employment Relations Act 1999*, Blair promised to deliver “fairness not favours” for unions with the Act and the statutory recognition procedure at its heart.

And while welcoming the procedure, unions nevertheless had serious reservations about it. This was because Labour’s 1997 manifesto set out a straightforward commitment: where a simple majority (50%+1) of workers wished to have union recognition, it would be granted.

Yet the procedure ended up with many qualifications and caveats – created because of employer influences, especially through the CBI business organisation. Unions had many reservations in relation to:

- using ballots because these allow for employer interference (unlike a membership check);
- bargaining units for recognition having to be compatible with “effective management”;
- applications only being acceptable where there is no existing recognition, providing incentives for “sweetheart” deals;
- the procedure allowing for union derecognition;
- statutory agreements limiting what can be bargained over on terms and conditions;
- in ballots, a simple majority for recognition also equating to 40% of all those entitled to vote;
- restricted workforce access by unions in the run-up to a ballot; and
- the procedure only applying to employers with more than 21 workers.

From 6 June 2000 until 30 June 2021, 1,225 applications were made for statutory recognition, with recognition granted in just over 360 cases (see table on page 14), representing a 30% success rate.

Recognition resulted from unions either winning ballots after they had shown they had majority support without majority membership, or by showing they had a majority of workers in membership.

That success rate is, however, not the full story. In just under 400 cases (33% of cases), applications were used to gain voluntary agreements.

In these cases, unions withdrew their applications. And, given that some applications were also withdrawn before they could be adjudicated upon because of



SHUTTERSTOCK

The pharmacists’ PDA Union says the procedure has brought benefits

Lack of recognition?

Has the statutory union recognition procedure delivered ‘fairness not favours’ as promised by the Labour government that enacted it?

errors but were then resubmitted, the number of applications is actually less than 1,225, again raising the success rate.

This brings the success rate up to about 70%. But this is still not the full story. Using the extent of coverage of collective bargaining over pay (from the *Labour Force Survey*) as the best available proxy measure for the extent of union recognition, the situation is quite grave.

Union recognition has declined almost consistently from 37.0% in 1997 to 25.6% in 2020, the most recent available year for data. And this is despite purely voluntary agreements signed in the “shadow” of the law since 6 June 2000

numbering just over 3,000 and covering some 2.5 million workers.

Here, employers knew unions could make applications if the voluntary route did not yield an agreement. So, as the Labour drafters of the law wished, the statutory procedure was only being used as a last resort.

Although the situation could no doubt have been a lot worse without the statutory procedure, the overall picture that emerges is not union- or worker-friendly enough and not strong enough to make a big, positive difference.

If it was, it would have allowed unions to stop the declining coverage of union

■ THE VIEW FROM THE TUC

In the TUC's view, the statutory recognition process is "flawed and bureaucratic", as demonstrated by the "very low numbers" of applications made, according to Tim Sharp, its senior employment rights officer.

Looking back over the last 21 years, Sharp believes: 'Unions are likely to pursue voluntary recognition wherever possible given the limited

nature of statutory agreements, even if they can navigate the complicated process.

"But the statutory process does offer a way of seeking recognition in the face of an intransigent employer, even if simply in persuading them to pursue a voluntary agreement."

The TUC is seeking significant reform of the current procedure. In particular, it advocates that the CAC's role is

switched "from implementing complicated rules to support for collective bargaining where workers want it".

To that end, it set out a series of proposals in 2019. In addition to the reduction to 2% membership of the bargaining unit for acceptable applications, the TUC says there should be no requirement for a ballot if a simple majority in the bargaining unit are

members. And the 40% threshold of all entitled workers voting for recognition should be replaced by the threshold of a simple majority.

Other proposals concern increasing unions' workplace access and removing the 21+ worker threshold.

■ **TUC: A stronger voice for workers: how collective bargaining can deliver a better deal at work, 2019.**

recognition or even turn it around. As it is, employers have increasingly unilaterally determined terms and conditions of employment.

The Central Arbitration Committee (CAC), the body that administers the statutory procedure, initially expected around 150 applications per year. Over 21 years, that would have amounted to some 3,150 applications.

But no one year had 150 applications and the highest was the first full year, with 118. That less than 40% of those applications have materialised suggests union concerns were well founded, leading them not to seek to use the procedure as often as they might have.

Falling applications

Initially, there was a spate of applications and a huge rise in voluntary agreements signed without recourse to the CAC. Thereafter, the number of applications per year fell to half of that high point while the number of voluntary agreements fell to a tenth of what it was.

Here, the relatively easy picking of the "low hanging fruit" occurred, only to reveal a permafrost of employer opposition which the procedure is not strong enough to thaw.

This is again highlighted by the paradox of bargaining unit determinations. Nearly 70% were pro-union, with most of these being the units the unions proposed. But this has not led to greater usage of the procedure by unions.

Most of these bargaining units were small because unions feared using larger ones where employers would be able to intervene to stop recognition.

Under the statutory procedure, there is very little regulation of employer behaviour. Outside, there is almost none. So employers are free to engage in strategies of suppression (like victimisation) and substitution (like setting up

staff councils) to prevent unions from recruiting sufficient members and winning sufficient worker support to make successful applications.

This helps explain why the union recognition agreements gained via the CAC cover so few workers. Generally, unions will only apply for recognition where they have very high membership and, in a context of employer opposition, that means unions can only sustain these high levels of membership among small groups of workers in non-union workplaces.

It is also the reason the TUC calls for the 10% membership threshold test for an application to be replaced with a 2% threshold (see box this page above), in line with that for information and consultation rights.

Defenders of the procedure would point to a different conclusion – the ratio of a low rate of applications to the relatively large number of voluntary agreements demonstrates the law drafters were correct in providing a procedure only to be used in the last instance.

But this fails to see the wood for the trees. The procedure's weaknesses mean unions are not keen on using it and so prefer the voluntary route.

And while some unions feel the procedure has some merit, many feel it is overly complicated, trapping unions in a bureaucratic snare that hands far too much over to employers.

For example, Mike Kirby, Scottish secretary for the UNISON public services union, believes the procedure has a

negative impact, discouraging applications because significant obstacles have to be passed to establish the bargaining unit and to pass ballot thresholds.

He said: "Our organisers have sometimes witnessed significant shifting of the goalposts over how bargaining units are determined and with employer staffing lists being inaccurate but without unions having any ability to verify them."

As a result, he says: "Our preference is to secure voluntary agreements" and the statutory procedure has been little used. He favours amending the procedure so that simple voting majorities determine ballot outcomes.

Management tactics

UNISON's North West regional organiser, Vic Walsh, recounts that once applications have been made, they can stimulate management tactics like organising anti-union petitions and victimising reps because it signals to the employer that the union is firm in its desire to gain recognition.

The GMB general union has had "very low usage" of the procedure with many more agreements signed without using it, according to GMB head of organising Martin Smith. He says the union finds the latter approach offers better terms for bargaining. The CAC route, on the other hand, has had a tendency to create "damaged industrial relationships whether applications were won or lost".

He adds that the procedure is not only increasingly out of date where multiple

Table: Outcomes of applications for statutory union recognition – June 2000-June 2021

Acceptance stage	Accepted 722	Not accepted 151	Withdrawn 350
Bargaining Unit stage	Unit Decided 218	Unit Agreed 355	Withdrawn 138
Ballot stage	Recognition without Ballot 192	Ballot Held 273	
Ballot outcomes	Union recognised 171	Union not recognised 102	

Source: Statistics at CAC, 1 July 2021

■ NORTHERN IRELAND

Northern Ireland's statutory procedure is essentially the same but administered by its Industrial Court.

It had received 84 applications by 6 June 2000. Recognition was gained by a statutory award in 17

cases and a statutory application resulted in a voluntary agreement in 21 cases, a 45% success rate overall.

employers occupy the same workplace, zero hours contracts prevail and workers are generally more mobile, it also "fails to achieve the more level playing field of power between workers and employers".

The BFAWU foodworkers' union also said it has seldom used the procedure. Again, the union prefers to secure voluntary recognition, said general secretary Sarah Woolley.

This "builds up membership and the relationship with employers to a level where employers see the benefit of engaging in collective bargaining without the need to involve the CAC".

However, she added that using the procedure can be beneficial if an employer is reluctant to engage, although "this does not necessarily make the relationship with employers easier because begrudgingly they have to comply".

'Tortuous'

The Public and Commercial Services (PCS) union has found the recognition process "torturous and extremely time consuming" where the union has sought recognition from private sector employers, said John Moloney, its assistant general secretary.

In part, he attributes this to having to get to grips with the impact of test cases over how bargaining units are defined, with the CAC not actively helping unions navigate this.

Because of this, the PCS's preference "is to use the voluntary route using Acas, which is certainly potentially faster".

Paddy Lillis, general secretary of the Usdaw retail union, recalls how, initially, "the procedure had a positive impact, with Usdaw signing more new agreements in 1999 and 2000 than compared to normal". But subsequently, the impact was smaller, he says, attributing this to diffi-

culties gaining the 10% membership threshold across large employers operating multiple workplaces.

As a result: "Udaw prefers to reach voluntary recognition agreements with employers where possible as we believe that this starts the relationship off on a better footing."

The union has mostly used the procedure to "help focus discussions on reaching voluntary agreements" and has found a statutory agreement will not necessarily alter the employer's attitude towards recognition.

Lillis notes the impact of the procedure has been "weak" and could be very much improved through appropriate amendments.

In particular, Usdaw supports reducing the 10% threshold to 2%, unions being given greater and unhindered workforce access and widening the scope of bargaining under statutory agreements.

One union that reckons the procedure has paid off is the PDA Union for pharmacists. PDA director Paul Day says the procedure helped his union "bring the benefits of union recognition to a new area of the economy, with agreements with over 20 employers [such as Boots and Lloyds] covering around 15% of all pharmacists".

He believes this would have been much harder without a statutory process of some kind.

In the case of Boots, the PDA used the procedure to gain recognition and set a precedent for getting other employers to concede voluntary recognition.

That said, and stemming from the Boots case, Day says the PDA wants "a review of the ability of a non-independent union to block recognition by an independent union" and believes ballots to derecognise non-independent unions

should also constitute ballots to recognise independent ones (see *Labour Research*, January 2018, page 7).

Alan Pottage, the RMT transport union's national organising coordinator, says his union frequently uses the procedure and "generally found it useful in forcing recognition upon unscrupulous employers because it concentrates their minds". But he cautions that winning recognition "is not the be all and end all because often the employer will try ignoring the agreement or pay lip service to it".

In similar terms, Scotland organiser for the NUJ journalists' union John Toner said his union found the procedure has proved to be "positive and beneficial", as it not only helped regain recognition but also gain recognition where the NUJ didn't have it before.

However, the union's preference would always be for a voluntary agreement, although the statutory procedure "encourages voluntary agreements".

This was echoed by Chris Morley, his NUJ Northern and Midlands counterpart: "It has been generally positive in providing employers with a focus on recognition claims that in the past they would have tried to ignore," Morley says.

Incentive

"They have a choice and an incentive to come to voluntary agreements given that a lot of management time and energy can be wastefully used up in opposing recognition where it is known the union has sufficient numbers."

Mike Clancy, general secretary of the Prospect specialists' union, says his union's experiences "vary by the many different environments we operate in [so that] much of Prospect's approach is pragmatic and depends on the context".

Looking back over the last 21 years, the fears unions have had about the impact of employers' influence have been largely borne out. Success has been limited in turning the clock back to a point where most workers were covered by union recognition.

As a result, the TUC has drawn up proposals for significant reform of the procedure (see box on page 14).

The next step will be to get Labour to adopt these as part of Labour's plans to reconnect with its core base of support among workers.

■ Gregor Gall is visiting professor of industrial relations at the University of Leeds and an affiliate research associate in the School of Law and the School of Social and Political Sciences at the University of Glasgow.

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State aid after Brexit

The government's proposals for new post-Brexit rules applying to the award of public subsidies to businesses fall well short of union demands for a state aid regime.

The Tories claim their new *Subsidy Control Bill* "seizes the opportunities from having left the EU's bureaucratic state aid regime". And it says the legislation will "enable key domestic priorities, such as levelling up economic growth across the UK and driving our green industrial revolution". But unions say the proposals are unsatisfactory and don't go far enough.

When a member of the EU, the UK followed the EU's state aid regime governing the awarding of subsidies.

Now that the UK has Brexited, the government is laying out rules for a new UK system in the *Subsidy Control Bill*, introduced to Parliament at the end of June (see box on page 17). Subject to Parliamentary approval, it will come into effect in 2022.

In the past, when put on the spot over the issue of state intervention to save jobs and industry, British governments would insist that bailouts and (re)nationalisation were not possible, citing EU state aid regulations as the reason.

Hide

Anna Mowbray of the Community union's research and policy team told *Labour Research*: "It's good the government is now saying 'we're not going to hide behind EU bureaucracy' when before they said their hands were tied.

"It wasn't actually true, as other countries have provided much more support, but we welcome that the government is highlighting its Bill as a potential opportunity following Brexit."

Nevertheless, unions and the TUC have expressed major concerns about the proposals in response to an earlier consultation.

And GMB general union head of research and policy Laurence Turner says the Bill contains only limited improvements to reflect these concerns.



The Bill represents a 'Westminster power grab', says the GMB union

For example, the consultation document said the government was merely "minded" to take forward defence and security exemptions for subsidy policies.

"This is very important for the GMB as a shipbuilding union," Turner told *Labour Research*. "Companies are operating in an environment where there is limited genuine competition, and companies in other countries are often heavily state-subsidised."

'Useful language'

The second improvement concerns "useful language" about the scope for subsidies where there is the risk of economic hardship, and particularly job losses, contained in the post-Brexit UK-EU deal, the Trade and Cooperation Agreement. "They weren't included in the consultation document, which was a real concern," Turner said. "It didn't give the government the full powers it has under the EU agreement."

Although improved language was incorporated into the Bill, there are still restrictions about where the government can intervene to prevent economic hardship and job losses – and interventions are time limited.

And while union pressure resulted in these limited gains, the GMB still has deep concerns about other parts of the Bill. For example, there is no requirement for the new Subsidy Advice Unit (see box on page 17), to engage with trade unions, and there is no representation of trade unions in its structures.



SHUTTERSTOCK

Moreover, he said, “whereas Westminster, the Scottish government and Welsh and Northern Ireland assemblies were all individual voices among many lobbying the EU, under the proposals in the Bill, the devolved nations are subordinate to Westminster”.

Both the Scottish and Welsh governments have previously made important industrial interventions. For example, the Scottish government acquired stakes in Burntisland Fabrications and Ferguson Marine, specialist firms that support essential skills, and which otherwise risked total closure.

“It’s not clear if similar interventions would be possible under the new subsidy control regime,” Turner pointed out.

Meanwhile, the TUC has highlighted the UK government’s poor record and its repeated failure to invest in “held-back” sectors and parts of the country. In 2018, for example, Britain spent just 0.34% of GDP on state aid, compared to 1.45% in Germany and 0.79% in France.

Jobs under threat

In 2018, it chose to put £2 billion worth of shipbuilding contracts out to international tender at a time when jobs were under threat in UK yards. This was despite an exemption for most defence procurement from compulsory competitive tendering under Article 346 of the Treaties of the EU.

It also failed in 2019 to support investment to keep the Orb electrical steel plant in Newport going and didn’t see the wider potential for electrical steels at Orb, vital to the decarbonisation of the economy. According to research for Community, this failure is set to cost the economy more than £1 billion over the next decade.

A further problem is that while the Bill states environmental objectives are something bodies making decisions about subsidies should have regard to,

Turner said the GMB wants to see a social partnership model that provides “a voice for both employers and employees, and we worry this new central unit will be a remote, technocratic body”. That worry is heightened by some of the language used by ministers.

When it comes to some of the key provisions on social and economic hardship – how large-scale job losses are defined, for example – the process will take place in an “ideologically-charged environment”, with a lack of trade union representation, he added.

The RMT rail union points out that twice in the consultation document “the 1970s are used as an example the government is desperate to avoid returning to”. This was re-emphasised when the government announced the new Bill, saying that: “The system will not be a return to the failed 1970s

approach of government trying to run the economy, ‘picking winners’ or bailing out unsustainable companies.”

But, says the RMT, nationalised industries were the norm, not the exception, in the 1970s. And there are many arguments for bringing back specific public services into public ownership, including rail. It says that “having this framing” effectively rules out and dismisses public ownership models.

The Tories claim devolved governments “will be empowered for the first time to decide if they can issue subsidies by following a set of UK-wide principles”. Previously, they say, the devolved governments were subject to the EU’s prescriptive state aid regime.

But Turner said the Bill represents a “Westminster power grab”. The devolved administrations are not represented in the structures of the new central unit.

■ KEY ELEMENTS OF THE UK SUBSIDY CONTROL REGIME

The government’s stated objectives for the new subsidy control regime are:

- facilitating interventions to deliver on the UK’s strategic interests;
- maintaining a competitive and dynamic market economy;
- protecting the UK internal market; and
- acting as a responsible trade partner.

“What’s not here is reference to levelling up and decarbonising and

moving to zero carbon,” said Anna Mowbray from the Community trade union research and policy team. “Active government support is really essential for decarbonisation.”

The Bill sets out a series of principles including:

- there must be a benefit to wider society in providing the subsidy;
- subsidies must incentivise and lead to a change in the behaviour of the beneficiary and help

address the public policy objective being pursued;

- alternative policy levers should be considered before turning to subsidies;
- there should be minimal impact on competition and investment within the UK; and
- public authorities should assess the material effects on competition and investment in the UK, and international trade and investment, and decide whether the benefits of the

subsidy are greater than the harmful impacts of providing the subsidy. Exemptions include subsidies for “safeguarding national security”.

A Subsidy Advice Unit within the Competition and Markets Authority will provide advice on the regime’s operation, but it won’t have the power to prohibit the granting of support. Enforcement will be through the courts and tribunal system.

STATE SUBSIDIES

social and environmental objectives are not brought together, said Turner. The GMB has long demanded that subsidies for renewable energies should consider supply chains and jobs in the UK.

There have been significant government subsidies for offshore wind, for example, but very few jobs have materialised, and the government has not acted on the powers it has, Turner added.

"Electricity generation projects haven't supported UK producers," Community's Anna Mowbray said.

For example, the offshore Seagreen wind farm at Fife didn't contract a local company to make the steel jackets for wind turbines, even though the Scottish government supported the company.

The steel will be shipped from abroad rather than providing local jobs. "That's not environmentally sustainable," she added. "The government should be including environmental costs in procurement and using British steel producers."

Turner said: "Environmental subsidies need to provide good quality jobs, with decent levels of pay and trade union recognition, otherwise this will be a historic missed opportunity." The TUC says that supporting decent jobs through social clauses in public procurement to drive up labour standards, skills and

environmental outcomes should be one of the principles guiding the development of the UK's post-Brexit state aid scheme.

And although Turner welcomes the Bill's proposal of a central database on subsidies awarded, he says the threshold is too high. The government wants to set this at £50,000, below which subsidies would not have to be reported.

Cronyism

As the GMB's submission to the government consultation points out: "Following well publicised examples of inappropriate procurement and cronyism in access to contracts during the coronavirus pandemic, there is a public interest in greater transparency under future regimes – not less."

Turner said: "There is a gap in the legislation regarding disclosure and we want to see the minimum standard of transparency in the Coronavirus Job Retention Scheme apply to a future scheme. Over recent months we've seen companies that received money through the JRS using fire and rehire tactics to lower terms and conditions. Transparency is important and we want to see that improved in the Bill."

Mowbray said Community wants to see measures in place to support steel,

"because it's a strategic industry and we want the government to take a holistic view of the benefits of providing support rather than making excuses for not supporting it.

"Steel plants have already collapsed with devastating effect. The government has always had the flexibility to support strategic industries and hasn't done so."

For all the government rhetoric around the new regime, the TUC has warned it could be more restrictive than the EU's. Under the previous system, certain sectors benefitted from a "general block exemption", containing more than 20 measures to provide lawful state aid without going through the notification and approval process.

These have covered, for example, aid for disadvantaged or disabled workers and for research, development and innovation support. The government's consultation document did not identify or consult on derogations from the existing block exemption.

"The proof will be in the pudding as to whether they deliver," Mowbray said. "It's not just about state aid. The government needs to look at the bigger picture and consider the social and environmental impact of support for strategic industries."

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FAILURE TO CONSIDER FURLOUGH MEANT REDUNDANCY WAS UNFAIR

A care assistant was unfairly dismissed because her employer had failed to consider whether she should have been furloughed, according to an employment tribunal in *Mhindurwa v Lovingangels Ltd ET Case No. 3311636/2020*.

Ms Mhindurwa was employed by Loving Angels Care Ltd from 2018 as a live-in care worker. In February 2020, the person she was looking after at home was admitted to hospital and subsequently to a care home so no longer needed care at home.

In May 2020, Loving Angels told Mhindurwa that it was not

able to offer her live-in care work and had some discussions with her about her employment ending and what alternative work may be available. The only work it could offer her was domiciliary care work in a different location, which was unsuitable.

Mhindurwa asked if she could be furloughed but was refused on the basis that there was no work for her.

At this time, it was still possible for staff to be furloughed for the first time, since it was before the cut-off point of 10 June 2020. (A revised furlough scheme was opened to first-timers in November 2020).

There was a further meeting with Mhindurwa in July 2021, and she was dismissed a week later by reason of redundancy. Her appeal against dismissal was rejected and she brought claims in the employment tribunal including unfair dismissal.

The tribunal accepted that the reason for dismissal was redundancy as there was no longer a requirement for a live-in care assistant. But the refusal to consider furlough was not reasonable and this made the dismissal unfair.

The employment judge noted that the whole purpose of the furlough scheme was to

avoid the lay-off of employees because of the effect of the Covid pandemic.

Mhindurwa's employer had stated that it had no immediate work for her because the requirement for live-in work had reduced significantly due to Covid-19.

This was the type of situation that the furlough scheme envisaged, the judge said, and the company had not explained why it was not considered whether Mhindurwa should be furloughed for a while to see what change, if any, there was in the availability of live-in care work or other work that she could take on.

DECISION NOT TO CAST PREGNANT ACTOR IN ROLE WAS PREGNANCY DISCRIMINATION

A film production company's decision not to cast an actor in a new series because she was pregnant was pregnancy discrimination, an employment tribunal has held in *Kinlay v Bronte Film & Television Limited ET Case No. 2200251/2020*.

Antonia Kinlay played the character Sarah Shadlock in *Career of Evil*, part of the *Strike* television series adapted from the novels of JK Rowling under the pseudonym Robert Galbraith. The character was a minor role, appearing on screen for around 30 seconds.

The same character appeared in the next series, *Lethal White*. Kinlay expected to play her again, and was included in the cast list drawn up on 24 June 2019. The role was still minor, but slightly larger and more pivotal to the plot

because the character has a romantic relationship with the lead character's husband. Kinlay's fee was to be £4,370.

On 15 July, a casting agent contacted *Lethal White*'s producer to tell her that Kinlay was 12 weeks pregnant. Filming was due to start on 16 September 2019.

On 29 July there was a production meeting at which it was decided not to cast Kinlay in the role and her agent was informed in the next few days.

Kinlay did not find out until a month later that she had not been cast, and it was only on 23 October that she was told it was because she was pregnant.

There was some delay before her claim for pregnancy discrimination was issued on 23 January 2020. She had apparently

been wrongly advised by her trade union that she could not bring a claim because she had no contract, and then by Acas that she was self-employed and had to bring a claim in the county court. She also mistakenly believed that she needed to instruct solicitors to bring a claim and had to sort out funding.

The employment tribunal decided it was just and equitable in the circumstances to extend the time limit and allowed her claim to proceed. It held that the failure to cast Kinlay was unfavourable treatment by reason of pregnancy and upheld her claim of discrimination.

While it was accepted that the Shadlock character could not appear pregnant in the programme as this would raise questions for

viewers, the tribunal found that there were various ways in which Kinlay's bump could be concealed.

These included costume choices, the positioning of other actors, camera angles, lighting and the use of props. If necessary, the bump could be digitally removed from the images in the post-production process, which it accepted may be required in one scene.

The tribunal found that the cost for the post-production work would be in the range £5,000 to £8,000 and not the £25,000 quoted by the production company.

Bearing in mind the overall budget, and that the actor who replaced Kinlay was paid £9,555, this was proportionate. Kinlay was awarded loss of earnings (£4,370) plus £6,000 for injury to feelings.



Changes after TUPE

■ **Two years ago, several employees transferred to the council from a private firm. Some of them have discovered they would be better off under the council's existing terms and have asked them to be changed.**

■ **Management have refused, saying that the TUPE Regulations prevent them making changes to their terms and conditions without an economic, technical or organisational reason. Can TUPE be used in this way?**

Under the *Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)* (as amended by the *Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014*), a change to contractual terms is only allowed if:

- it is unrelated to the transfer;
- it is for an economic, technical or organisational reason entailing changes in the workforce;
- the contract permits it, or;
- the transfer took place on or after 31 January 2014, the term is incorporated from a collective agreement, more than a year has passed since the transfer and, overall the employee's terms are no less favourable following the change.

Other changes are void under Regulation 4(4).

There is nothing in the TUPE Regulations, or in the EU Directive they derived from, that deals with changes to terms and conditions that are beneficial to the employee. This has led to some debate about the position where the parties want to agree better terms.

In the recent case of *Ferguson and others v Astrea Asset Management Ltd [2020] UKEAT/0139/19*, more favourable terms agreed by the transferring company were void, but that was because the directors were trying to gain an advantage

after they transferred. The Employment Appeal Tribunal (EAT) said this was an abuse of EU law.

This is different from the position where changes are agreed after the transfer.

Guidance from the BEIS business department, *Employment rights on the transfer of an undertaking*, states that terms can be changed "when changes are entirely positive from the employee's perspective". Acas guidance also says that changes are allowed "if they improve your terms and conditions".

The Court of Appeal's judgment in *Power v Regent Security Services Ltd 2008 ICR 442* also says that beneficial changes are allowed. In that case, it concerned an increase to retirement age that the claimant had accepted.

The Court said the purpose of the TUPE regulations was to safeguard employees and there was nothing in them to prevent them agreeing more favourable terms.

Based on the guidance and this Court of Appeal decision, your employer is not prevented from agreeing to improve the terms of those staff who transferred across.

Adjustments for interview

■ **My manager has told me that the company is getting rid of the late shift that I currently work and has asked me to attend an interview for an early shift. The interview is at 7.30am and I can't get there in time. I can't drive because I have a problem with my sight. My manager has refused my request to go to a different site and also said there is no redundancy available because there is plenty of work on the early shift. What can I do?**

If you are certified by a consultant ophthalmologist as sight impaired or partially sighted, then you are automatically deemed to have a disability under the *Equality*

Act 2010. If that is the case, then your employer has a duty to make reasonable adjustments that could include changing the time or location of the interview, and finding a shift pattern that is suitable for you at a site that you can get to.

The definition of redundancy includes where the employer's requirement for employees to carry out work of a particular kind "in the place where the employee was employed" has ceased or diminished (section 139(1)(b) *Employment Rights Act 1996*).

This means if you were employed to work at your current site, and there is no mobility clause in your contract that requires you to work at another site, you could still be redundant.

You would need to check your terms of employment to see whether there is a mobility or flexibility clause.

If there is a redundancy situation, the duty to make reasonable adjustments applies to both the redundancy process and the offer of alternative work.

Even if you are not disabled, your personal circumstances may make it reasonable for you to refuse an offer of alternative work and retain your right to a redundancy payment.

Disclaimer

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Original and updated versions of UK legislation are available at www.legislation.gov.uk. Recent cases are analysed monthly in LRD's *Workplace Report*. See www.lrd.org.uk for subscription details.

For full case transcripts visit www.bailii.org

The Labour Research Department's employment law specialist answers dozens of legal queries each month from affiliates. Here is a recent selection.

COMBINING ONSITE WORKING WITH WORKING REMOTELY

Hybrid working

This month, *Back-up* looks at issues around hybrid working.

There is no doubt that the Covid-19 pandemic has changed the way that many people work.

For those who can work from home – because the type of work they do allows it, and because they have the space and equipment they need at home – working from home has made it much easier for them to manage childcare and other caring responsibilities around their work.

While some may be keen to get back to the workplace, and others to remain working from home, so-called “hybrid working” is becoming more commonplace as we get used to life after lockdown.

This is when workers work part of the time in the workplace and part of the time remotely (usually at home).

Increase in remote working

In a YouGov survey commissioned by employment conciliation service Acas, over half of employers (55%) expect an increase in staff working from home or remotely for part of the week. And almost half (49%) expect an increase in staff working from home or remotely all week.

Acas has issued guidance on the introduction of hybrid working for those considering a mix of workplace and remote working.

Hybrid working is a particular form of flexible working, but it is not the only one. The legal right to request

flexible working was introduced in the *Employment Act 2002* by the then New Labour government as part of a package of new “family friendly” employment rights that included statutory paternity and adoption leave.

The provisions are contained in Part 8A of the *Employment Rights Act 1996*.

Initially, the right was available only for childcare and other caring responsibilities. However, this was opened up in 2014 to requests for any reason to all employees with six months’ continuous service.

Fair procedure

Notably, the law only gives a right to *request* flexible working, and an employer is entitled to refuse the request, so long as they do so for specified reasons and follow a fair procedure. This is explained in the *Acas Code of Practice on Handling in a Reasonable Manner Requests to Work Flexibly*.

It is also only available to “employees” and not those who meet the definition of “worker”.

Flexible working requests can relate to the number of hours, times and place of work. If accepted, the change to working arrangements becomes a permanent change to the contract, and only one request per year can be made.

Hybrid working, on the other hand, is not underpinned by any legal rules. While this makes it more flexible, it can also make it harder to challenge if employers are not acting fairly when introducing it.

A recent case in the Employment Appeal Tribunal (EAT) illustrates the risk of discrimination when an employer introduces flexible

working without proper consideration, and trade unions will need to be ready to challenge discrimination when it occurs in relation to hybrid working as well.

Discrimination and working hours

The case of *Dobson v North Cumbria Integrated Care NHS Foundation Trust* *UKEAT/0220/19* was brought by a community nurse who was dismissed after refusing to accept a change to her working hours that would require her to work occasional weekends.

Dobson had three children, two of them disabled, and had agreed to work 15 hours per week over two fixed days, Wednesday and Thursday, after making a flexible working request in 2008.

In 2016, the trust reviewed all its flexible working arrangements and issued a new roster. Dobson was asked to work an occasional weekend a maximum of once a month. She said she could not consider alternative arrangements and rejected the proposed changes.

Her grievance was also rejected. The trust gave her notice to dismiss her and re-engage her on the new roster terms. She refused again and was dismissed.

She brought claims of unfair dismissal and indirect sex discrimination, which were rejected by an employment tribunal. Dobson appealed to the EAT, with the Working Families work-life balance charity intervening, and her appeal was upheld.

In a claim of indirect sex discrimination, the claimant

must prove that she is personally disadvantaged by a provision, criterion or practice (PCP) that also disadvantages

women as a group. Here, the PCP was the requirement to work flexibly, including at weekends, and the pool for comparison was all community nurses.

The employment

tribunal had only looked at the circumstances of those in her particular team – eight other women and one man, all of whom were able to comply with the new requirement to work occasional weekends.

The EAT said this was wrong, because the flexible working policy was applied across the whole NHS trust.

What is most significant, though, for other women, is that the EAT said the tribunal should have taken notice that it had already been accepted in legal cases that women are more likely than men to be disadvantaged because of childcare responsibilities.

This means they do not have to provide evidence of the “group disadvantage” and this can be taken as a fact in future cases.

Continuing challenges

While Acas points out the potential benefits of hybrid working, including increased productivity and job satisfaction, and the ability to attract and retain a more diverse workforce, it is not without its challenges.

Trade unions will need to ensure they are properly consulted over changes to working practices and consider both the discriminatory and health and safety impact for all their members.

Hybrid working is a particular form of flexible working

HEALTH AND SAFETY 'A FUNDAMENTAL RIGHT'

Occupational health and safety must be recognised as a fundamental right, the ITUC international trade union confederation general secretary Sharan Burrow told those gathered at the annual safety campaign group Hazards conference at the end of July.

Both she and TUC national health and safety policy officer Shelly Asquith also highlighted the impact of the climate crisis on workers' health and safety.

More than 300 union reps and safety activists signed up to the online conference to hear a powerful global line-up of speakers. They included New Zealand Council of Trade Unions president Richard Wagstaff who reported on the health and safety lessons learned from the country's approach to Covid-19.

Wales TUC general secretary Shavanah Taj set out the seven key tests unions demanded as the Wales government lifted Covid restrictions, after only one in four workers reported that their bosses have complied with Covid regulations.

And Middlesex University professor Phil James said that by 5 July 2021, the Health and Safety Executive had conducted 275,000 Covid spot checks, but nearly 100,000 were carried out by "unwarranted" partner organisations. Only around 7,500 were carried out by warranted inspectors.

The conference also heard powerful testimonies from Families Against Corporate Killers campaigners who called for tougher enforcement and penalties to prevent more work-related deaths.

NEW DUTY WILL TACKLE SEXUAL HARASSMENT

Unions have welcomed news that the government will introduce a new duty on employers to protect staff from sexual harassment at work, with explicit protection from third-party harassment.

But they have warned it must act swiftly to implement the reforms, and the MU musicians' union is demanding inclusion of protection for freelancers.

TUC general secretary Frances O'Grady described the proposals as "a victory for years of trade union campaigning". She said: "No one should face sexual harassment at work, but the shocking reality is that most women have. Employers will now have a legal responsibility to protect their staff from sexual harassment."

UNISON public services union national women's officer Josie Irwin said: "The government must now act



Unions say the reforms must be implemented swiftly

swiftly to turn words into action, change the law and enforce it."

And Equity actors' union president Maureen Beattie commented: "Victims have waited far too long for this already, so I look forward to the government making these changes a priority."

The proposals also include plans to extend the time limit

for bringing cases to an employment tribunal from three to six months.

But the MU said it is disappointed the response did not adequately address those falling outside the scope of the protections of the *Equality Act*. It has launched a petition to *End sexual harassment at work for freelancers too* on the Megaphone website.

UNIONS TAKE STAND AGAINST ABUSE OF HEALTH WORKERS

Health unions have joined forces to stand up against the abuse NHS workers have faced during the pandemic.

A group, including members of the midwives' RCM and UNISON unions, urged people to stand with them after RCM chief executive Gill Walton received abuse and death threats on social media for encouraging pregnant women to have the Covid vaccine.

The RCM's rallying cry of #IStandWithGill has shone a spotlight on the abuse health and care staff experience every day. "Our midwives, doctors, nurses,

porters, cleaners, everyone working for the NHS, has the right to safety and respect in the workplace," said Walton.

"It's health workers that have made the vaccination programme such a success," added UNISON general secretary Christina McAnea.

"But as they encourage everyone to have their jabs, some have suffered appalling abuse. This must stop. The pandemic is real, and the virus can kill."

Meanwhile, a new survey of more than 2,400 doctors in England, Wales and Northern Ireland by the

BMA doctors' union found that more than a third had faced recent abuse from patients.

Last month, it said that half of GPs in the survey reported verbal abuse in the previous month. And two-thirds (67%) said their experience of abuse, threatening behaviour or violence had got worse in the last year.

The BMA called on the government and NHS England to lead "an honest public conversation" about the precarious state of the NHS after 18 months of managing the pandemic.

SHUTTERSTOCK

VENTILATION CAN HELP PREVENT COVID SPREAD

Ventilation and Covid

Following the government's lifting of its working from home instruction, *Back-up* looks at new official guidance on the ventilation of workplaces.

Unions and safety campaigners have been calling for more attention to be paid to the critical role of ventilation in controlling the transmission risk of Covid.

As Hazards campaigner Hilda Palmer makes clear in a recent article in *Hazards* magazine: "The prevention three amigos of 'hands, face, space' deals with contact and droplet risks – but does not address transmission of virus-laden airborne aerosols."

New workplace guidance for England produced by the BEIS business and DCMS culture, media and sports departments, and updated Health and Safety Executive (HSE) guidance, now recognise the risk of aerosol transmission of Covid and provide more detailed advice on what employers should do to comply with the law.

"The law says employers must make sure there's an adequate supply of fresh air (ventilation) in enclosed areas of the workplace," says the HSE. "This has not changed during the pandemic."

The *Workplaces (Health, Safety and Welfare) Regulation 1992*, Regulation 6 – and the *Workplace (Health, Safety & Welfare) Regulations (Northern Ireland) 1993* – state that, in enclosed workplaces, employers must provide effective and suitable ventilation to supply a

sufficient quantity of fresh or purified air.

New guidance from the UNISON public services union, *COVID-19 and ventilation in the Workplace*, also points out that the approved Code of Practice to the regulations states the air introduced should, as far as possible, be free of any impurity likely to be offensive or cause ill health.

BEIS and DCMS have published six new *Working safely during coronavirus* guides to coincide with the government's lifting of Covid mitigations.

This sets out that providing adequate ventilation is the second of six priority actions businesses should take after completing a health and safety risk assessment that includes the risk from Covid-19.

There should be a supply of fresh air to indoor spaces where there are people present. This should be through natural ventilation, opening windows, doors and vents; mechanical ventilation using fans and ducts; or a combination of both. Any mechanical ventilation systems should be set to maximise fresh air and minimise air recirculation.

Employers should identify any poorly ventilated spaces and improve fresh air flow in these areas where "residual virus can remain in the air after an infected person has left and increase the risk of Covid-19 spreading".

They should encourage the use of outside space where practical, in particular for higher risk activity such as exercise or when people are singing or raising their voices.

The risk assessment should prioritise identifying areas that are usually occupied and poorly ventilated and improving

ventilation to reduce the risk of aerosol transmission. If ventilation in these spaces cannot be improved, employers should consider whether it is safer to restrict the time spent there and the number of people that access them, or stop using them.

There is new advice on using CO₂ monitors. CO₂ levels are not a direct measure of possible exposure to Covid, but a build-up of CO₂ in an area can indicate the need for improved ventilation.

A consistent CO₂ value of less than 800 parts per million (ppm) is likely to indicate that a space is well ventilated, while a CO₂ concentration of above 1500ppm in a space indicates poor ventilation.

Employers should take action to improve ventilation where CO₂ readings are consistently higher than 1500ppm. And where there are high risk activities (see above), CO₂ levels should be kept below 800ppm.

In large areas, multiple sensors may be required to provide meaningful information.

Monitors are less likely to be useful in areas occupied by people for short periods or varying amounts of time; areas where air cleaning units are in use – filtration can remove contaminants like Covid-19 from the air but not remove CO₂; small spaces like changing rooms, toilets or small meeting rooms; spaces used by few people; and areas where CO₂ is produced as part of a work process.

The HSE advises employers: "Your ventilation is likely to be adequate to minimise the risk of COVID-19

aerosol transmission if the rooms or spaces in your building(s) are:

- used within the occupancy limits specified in the building design, and
- have a sufficient fresh air supply to meet the current minimum building standard. You

can get advice from a competent ventilation engineer or, as a precautionary approach, operate your system on the maximum air flow rate."

Simple ways to identify poorly ventilated areas include:

- looking for areas where people work and where there is no mechanical or natural ventilation; and
- checking mechanical systems provide outdoor air, temperature control, or both. If a system only recirculates air and has no outdoor air supply, the area is likely to be poorly ventilated.

It also provides detailed guidance on how to use CO₂ monitors to help identify poorly ventilated spaces.

The UNISON guidance for safety reps recommends that where ventilation can't be improved in other ways, cleaning devices such as HEPA (High Efficiency Particulate Air) filters or ultraviolet type devices should be considered.

The NASUWT teaching union says CO₂ monitors should be in place in every school as part of an effective Covid safety response.

And the GMB general union has called on the government to fund the installation of CO₂ monitors and safe ventilation systems in schools.

There should be a supply of fresh air to indoor spaces where people are present

FTSE FIRMS STALL ON DIVERSITY IN TOP ROLES

FTSE 100 boards have been accused of making “embarrassingly little progress” on increasing their ethnic diversity, according to the latest report by executive recruitment specialist Green Park.

Green Park has been analysing the diversity of the FTSE 100 senior leadership since 2014 and early findings from its current report show that, for the first time since analysis began, there are no black leaders in the top three roles of chair, CEO or chief financial officer (CFO) at the UK’s largest companies.

This is blamed on the failure to increase black executive leadership, which remains at 0.6%, unchanged over eight years. By comparison, black leaders make up 3.4% of non-executive roles.

Ethnic minority representation in CEO, CFO and chair roles remains at 3.7% with only one additional ethnic minority leader since 2014.

Meanwhile, female representation in the top three roles is only 12.2%; 38 years off gender equality based on the current pace of change.

The survey did reveal some positive signs of progress towards greater gender and ethnic diversity at board and executive committee levels.

Yet where change is happening, it is often within HR and marketing. These roles are considered far less likely routes to the leadership top tier compared to those of finance, sales and operations – paths dominated by white, male employees.

DISABLED WOMEN REPORT WORK SEXUAL HARASSMENT

Up to seven in 10 disabled women report being sexually harassed at work, according to a TUC poll.

Findings from the first major UK report into sexual harassment of disabled women at work also showed that one in eight of those who had been sexually harassed left their jobs because of this.

And younger disabled women aged 18 to 34 are even more likely to have experienced sexual harassment, with almost eight out of 10 (78%) reporting being harassed at work.

The research reported that around two-fifths (38%) of disabled women have experienced unwelcome sexual advances at work; more than a third (36%) say they have experienced unwanted touching; almost a fifth (18%) experienced sexual assault, such as unwanted sexual touching and one in 25 (4%) have experienced a

serious sexual assault or rape at work.

Two-thirds (67%) of disabled women who experienced sexual harassment at work told the TUC they did not report the harassment to their boss the most recent time it happened. The most common reason given was that they didn’t believe they would be taken seriously (39%).

Some said they were worried it would have a negative impact on their career or work relationships (30%). Other reasons included not thinking they would be believed (13%) or thinking they would be blamed if they reported the incident (11%). And of those who did report the most recent instance of sexual harassment, more than half (53%) said it was not dealt with satisfactorily.

Disabled women told the TUC that sexual harassment had a big effect on their lives

with around a third (34%) saying their experiences had a negative impact on their mental health.

More than one in five (21%) said it negatively affected their relationships with colleagues. And it caused one in eight (12%) to leave their job or employer entirely.

Previous TUC research from October 2020 found that disabled women earned 36% less than non-disabled men. The analysis found that the unemployment gap for disabled women, when compared to non-disabled men was 32.6 percentage points.

TUC general secretary Frances O’Grady said: “Four years on from the explosion of #MeToo on a global scale, employers still aren’t doing enough to make sure women are safe at work. It’s time for every employer to take responsibility for protecting their staff from sexual harassment.”

COVID UNDERMINES CAREER OPPORTUNITIES FOR YOUNG

Up to 43% of young people feel the pandemic has harmed their long-term career prospects says research by HR professionals’ organisation, the CIPD. The study says this may be because they’ve lost their job; the industry or organisation they want to work in now has fewer openings; or working from home means they’ve missed out on networking and development opportunities.

Findings show that 50% of young people currently not in work have been so for 12 months. Half (49%) of

those unemployed are not confident about finding any work in the next three months – and even more (72%) aren’t confident about finding a job that meets their career ambitions and salary expectations in the next three months.

The survey, based on responses from 2,064 young people (aged 18-30), also finds that one in seven young people not in work (14%) have applied for more than 30 jobs in the last three months. Forty-four percent of those not

currently in work, but looking for employment, attended university.

While the economy is recovering from Covid, official UK figures show there were 166,000 fewer young people (aged 16-24) in the UK in employment in June 2021 compared with March 2020.

Yet the CIPD notes that many employers are struggling with staff shortages, highlighting the need for more organisations to invest in young people in different ways to bolster their talent pipeline.

THE FUTURE OF WORK: WHAT DOES IT LOOK LIKE?

Future for jobs

Forecasts about how work will look in the years ahead are always in demand. But predictions can easily be derailed by unexpected changes or unreliable assumptions.

Recent events have dialed up the level of uncertainty – from the pandemic (and the soon-to-be abolished furlough scheme) to Brexit, new technologies and the growing sense of urgency about the climate.

As one influential report from the past decade ironically noted, there used to be “a widespread belief among commentators that the defining feature of the future UK labour market would be radically reduced working hours and increased leisure time”. (*The future of work, jobs and skills in 2030*, UK Commission for Employment and Skills, 2014).

Five years ago, the World Economic Forum predicted strong employment growth across job families in architecture, engineering, computers and mathematics; a moderate decline in manufacturing and production roles; and a significant decline in office and administrative roles.

It foresaw other fields of work having a “largely flat global employment outlook”, including business and financial operations, construction and extraction work, and sales.

As we now know, retail employment is declining and was doing so before the pandemic.

But those were short-term projections for 2015-2020 only. One popular estimate, the report conceded, was that “65% of children entering primary school today will ultimately end up working in completely new job types that don’t yet exist”.

Looking slightly further ahead, UK innovation charity NESTA predicted that by 2030, education, healthcare, and wider public sector occupations were likely to grow. But some low-skilled jobs in fields like construction and agriculture, were “less likely to suffer poor labour market outcomes than has been assumed in the past”. Interpersonal skills, higher-order cognitive skills, and systems skills would generally be in greater demand.

The pandemic put all of this into a new light. Low-paid, insecure jobs have been hit hardest while the market for higher-paying jobs held up better.

The Joseph Rowntree Foundation, who compared online job vacancies with the profile of unemployed people, concluded that the most intense competition for work has been for sales and customer service jobs, administrative and secretarial roles and “elementary” occupations.

That fits with what the Office for National Statistics (ONS) has been saying about a fall in the number and proportion of lower-paid employee jobs.

A change in the composition of the UK workforce during the pandemic has contributed to accelerated earnings’ growth in recent months.

But the tempo is now changing again. Labour shortages are forcing transport employers to offer

wage incentives and other improvements for drivers, to keep their lorries on the road. Similar stories are emerging in food manufacturing and engineering, hospitality and theatres, health and social care, local government and further education (see LRD’s *Workplace Report*, September 2021).

Kate Shoesmith, deputy CEO of the Recruitment and Employment Confederation (REC) says that since the final Covid mitigations were lifted in July, the number of new job adverts has continued to ramp up. “Employers are desperate to find good staff to help them recover and grow in the coming months,” she said.

Permanent and temporary vacancies are up across all sectors and recruiters are “working flat out to help find the best people”, with starting salaries rising at the sharpest rate since the REC began surveying the recruitment scene in 1997.

Its 2021 *UK report on jobs*, compiled with the KPMG accounting and professional services firm, finds:

- in the first week of August, there were 1.65 million active job adverts in the UK (the second highest weekly figure since December 2020);
- there were around 204,000 new job adverts posted that week, the fourth highest weekly figure since the start of the pandemic;
- photographers, audio-visual and broadcasting equipment operators were in increasing demand as well as insurance underwriters and farm workers; and
- four out of the UK’s top 10

hiring hotspots were in north-west England in the first week of August, whereas there was least growth in job adverts in parts of Scotland.

So, that’s the reality today. But what does the future for jobs look like now? With retraining widely seen as a way forward, people need to know which jobs have growth potential.

The Open University recently asked a group of business experts which jobs in management, business and computing, and IT they thought were most likely to grow over the next five years.

Among their top picks were AI analytics engineer/developer; “blockchain” (databases associated with crypto-currencies) expert; cyber security penetration tester/expert; data analyst; and data protection officer.

Futurelearn (an online course provider part-owned by the Open University) agrees that jobs in artificial intelligence and blockchain have a strong future.

Beyond such IT-related options it also sees a strong future for hygiene specialists, gene experts, mental health jobs, drone experts or pilots, and entrepreneurs.

Customer-facing roles in retail are “at risk of extinction in the near future”, says Futurelearn, while smart vehicles that drive themselves may make driver jobs – including rail drivers – obsolete.

Optimistically, it says the technology involved in replacing these jobs will create thousands if not millions of new jobs “that are not even comprehensible right now”.

‘Employers are desperate to find good staff to help them recover and grow’

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e-views

The latest evolution in workplace technology has been the move to cloud computing. It has changed the fundamentals of IT infrastructure, removing the need to invest heavily in in-house hardware and software in favour of flexible internet-based computer resources.

There are different types of cloud services. Technology that provides access to software through the internet is known as Software as a Service (SaaS). This approach removes the need to store data on a local computer, and usually makes it easier to work on the applications across devices and locations.

Cloud computing also increasingly provides the core

IT services required for companies and organisations. For example, email can now be provided in the cloud, removing the need to buy, set-up and maintain a dedicated server. Similarly, file storage and enterprise software can be provided or hosted online. This approach is known as Infrastructure as a Service (IaaS).

I've been working with the TUC as their virtual chief information officer now for five years. In that time, I've been working with the TUC team on modernising the IT infrastructure, using Cloud services such as SaaS and IaaS to reduce costs, increase resilience, improve access, and redevelop processes.

For example, we've adopted Microsoft 365, Microsoft's cloud productivity suite. As well as moving email services fully online, we've replaced the traditional file server with a far more

sophisticated SharePoint set-up. We used a "rip and replace" approach where, rather than just "lifting and shifting" what we had, we completely redesigned file storage to unlock the advantages provided by a modern document management system.

This has helped improve collaboration, access and transparency and made information much easier to find. Similarly, by using different opportunities offered from IaaS, we removed the dependency on internal hardware infrastructure. We now only have one small, non-critical server left hosted in any of the TUC offices and we can quickly adapt as the demand for resources changes.

The Covid-19 pandemic has accelerated the speed in which cloud technology is being adopted. Working from home has been much easier

for organisations that have already started modernising their technological infrastructure.

The growth in cloud computing will continue as a move to hybrid working sees some workers permanently shift to a blend of home and office work.

I've recently written a report for the TUC called *Managing IT infrastructure modernisation for trade unions*, which looks at why unions may want to move to the cloud, and explores issues like migration, security, data protection and productivity.

For a copy of the report, visit the TUC Digital Labs website <https://digital.tuc.org.uk>.

This e-view was contributed by Simon Parry, a freelance website consultant with a special interest in unions. Simon blogs at www.infobo.com.

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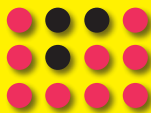


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John Wood, Digital Manager, TUC

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