



UK report on the economic struggles of young mothers and migrant domestic workers

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About ETHOS

ETHOS - Towards a European THeory Of juStice and fairness is a European Commission Horizon 2020 research project that seeks to provide building blocks for the development of an empirically informed European theory of justice and fairness. The project seeks to do so by:

- a) refining and deepening knowledge on the European foundations of justice - both historically based and contemporarily envisaged;
- b) enhancing awareness of mechanisms that impede the realisation of justice ideals as they are lived in contemporary Europe;
- c) advancing the understanding of the process of drawing and re-drawing of the boundaries of justice (fault lines); and
- d) providing guidance to politicians, policy makers, advocacies and other stakeholders on how to design and implement policies to reverse inequalities and prevent injustice.

ETHOS does not merely understand justice as an abstract moral ideal that is universal and worth striving for. Rather, justice is understood as a re-enacted and re-constructed lived experience. The experience is embedded in firm legal, political, moral, social, economic and cultural institutions that are geared to giving members of society what is their due.

In the ETHOS project, justice is studied as an interdependent relationship between the ideal of justice and its real manifestation – as set in the highly complex institutions of modern European societies. The relationship between the normative and practical, the formal and informal, is acknowledged and critically assessed through a multi-disciplinary approach.

To enhance the formulation of an empirically-based theory of justice and fairness, ETHOS will explore the normative (ideal) underpinnings of justice and their practical realisation in four heuristically defined domains of justice - social justice, economic justice, political justice, and civil and symbolic justice. These domains are revealed in several spheres:

- a) philosophical and political tradition,
- b) legal framework,
- c) daily (bureaucratic) practice,
- d) current public debates, and
- e) the accounts of vulnerable populations in six European countries (the Netherlands, the UK, Hungary, Austria, Portugal and Turkey).

The question of drawing boundaries and redrawing the fault-lines of justice permeates the entire investigation.

Alongside Utrecht University in the Netherlands who coordinates the project, five further research institutions cooperate. They are based in Austria (European Training and Research Centre for Human Rights and Democracy), Hungary (Central European University), Portugal (Centre for Social Studies), Turkey (Boğaziçi University), and the UK (University of Bristol). The research project lasts from January 2017 to December 2019.

EXECUTIVE SUMMARY

This report examines how the 2008 financial crisis and the agenda of austerity and Brexit have affected young mothers, migrant domestic workers and other precarious workers in the United Kingdom, and how political actors have mobilised for economic justice in this context. In addition to identifying explicit legal restrictions that have excluded workers from employment protection, we examine the gaps between labour law in the books and in practice, highlighting structural factors that have impeded the effective exercise of statutory rights. Our methods include legal analysis based on primary and secondary sources, a review of policy reports and academic publications on labour market trends, and semi-structured interviews with 11 workers, activists, trade unionists and think tank advisors.

The first part of the report, which focuses on law in the books, offers an overview of the creation and enforcement of labour rights through consultative bodies, Employment Tribunals and administrative agencies falling within the remit of a newly appointed Director of Labour Market Enforcement. It also describes the content of key UK labour rights in the light of minimal standards set out in EU directives, tracing their evolution since the 1990s. The second part problematises these provisions by looking at their implementation and impact from the perspective of workers themselves. We explore five structural sources of rights violations: 1) the subordination of subsistence to paid work created by welfare conditionality; 2) the subordination of legal residency to paid work; 3) the difficulty of claiming employment rights in court due to the casualisation of employment relations and rising judicial costs; 4) the underenforcement of worker-protective standards by administrative agencies; and 5) the decline of union membership. Subsequently, we address the formulation of justice claims around economic relations, international migration and childcare. Starting from interviewees' recollections and interpretations of concrete injustices, we outline their underlying ideals of justice, mobilisation strategies, mutual perceptions and expectations for a post-Brexit future.

Results suggest that the evolution of economic conditions during the last decade has exacerbated and exposed deep tensions between economic justice and the ideal of the worker citizen, the person who proves their citizenship through labour. While all interviewees adhered to a version of this ideal, notably by expressing reservations toward universal basic income, they also criticised its contribution to current material and symbolic exclusions. For an increasing proportion of workers on non-standard contracts, the worker citizen's promise of decent pay and positive identity has been replaced by low wages, short termism and unpredictability of hours. This has made it difficult for them to plan their personal and family life, enforce their rights in court and participate in political struggles. Official exhortations to take up paid employment under threat of benefit sanctions have reminded young mothers that family-provided childcare was not considered worthy of legal protection and financial compensation, but also that most jobs did not pay enough to turn its commodification into a plausible alternative. Migrant domestic workers lost their right to renew their visas and therefore the capacity to effectively enforce all employment-related rights. Trades unions have adapted their structure and tactics to deal with these challenges, but economic struggles have also been waged in other sites such as informal grassroots organisations, political parties and think tanks. The remedies advanced to tackle economic injustice have included minimum wage enforcement, stronger legal underpinnings for trade unions activities, state-funded vocational training, public awareness campaigns, guaranteed means of subsistence for carers and long-term residence rights. For most respondents, Brexit raised the prospect of further deregulation and tighter migration control.

CONTENTS

EXECUTIVE SUMMARY.....	4
LIST OF ABBREVIATIONS.....	6
TABLE OF FIGURES.....	7
1. INTRODUCTION	8
2. CREATION AND ENFORCEMENT OF LABOUR RIGHTS.....	11
2.1. Consultative bodies	12
2.2. Courts.....	13
2.3. Mediation, arbitration and legal advice	14
2.4. Executive enforcement.....	14
3. COMPARING EU AND UK STANDARDS ON WORKING CONDITIONS	15
3.1. Definitions of ‘worker’, ‘employee’ and ‘self-employed’	15
3.2. Transposition of EU directives in the UK	18
3.3. Additional protection offered by UK labour and social security law	24
3.4. Post-2008 restrictions.....	26
4. OBSTACLES TO THE EXERCISE OF LABOUR RIGHTS	28
4.1. Work-related conditionality of welfare benefits	28
4.2. Work-related conditionality of residency	31
4.3. Limited accessibility of judicial remedies	35
4.4. Selective underenforcement	38
4.5. Decline of union membership	40
5. STRUGGLES FOR JUSTICE	42
5.1. Understandings of injustice	42
5.2. Ideals of distributive justice.....	44
5.3. Modes of mobilisation	48
5.4. Mutual perceptions and engagement among stakeholders	50
5.5. Expectations for Brexit.....	52
6. CONCLUSION	54
BIBLIOGRAPHY.....	56

LIST OF ABBREVIATIONS

- ACAS Advisory, Conciliation and Arbitration Service
- BEIS Department for Business, Energy and Industrial Strategy
- BIS Department for Business Innovation and Skills
- DWP Department for Work and Pensions
- EAS Employment Agency Standards Inspectorate
- EAT Employment Appeal Tribunal
- EHRC Equality and Human Rights Commission
- ERA Employment Rights Act
- ET Employment Tribunal
- EU European Union
- GLAA Gangmasters and Labour Abuse Authority
- HMRC Her Majesty's Revenue and Customs
- LASPO Legal Aid, Sentencing and Punishment of Offenders Act
- NMWA National Minimum Wage Act
- TUC Trades Union Congress
- UK United Kingdom
- WRA Welfare Reform Act

TABLE OF FIGURES

Figure 1: EU employment directives and corresponding UK legal instruments

1. INTRODUCTION

Long before the global financial crisis in 2008, the governance of work and social and economic justice in the UK has been framed by the model of the ‘worker citizen’, the person who proves their citizenship through labour. This model can exclude migrants, the unemployed, carers, disabled persons and others, and negatively portrays the ‘idle poor’ as ‘benefit scroungers’.¹ Despite an increase in activism and media reports around precarity, executive overpay and tax avoidance exemplified by the Occupy movement, the crisis did not fundamentally alter the worker citizen ideal. On the contrary, the austerity programme introduced by the Coalition government in 2010 brought reductions in welfare payments, crackdowns on low waged migrants (including those from Eastern Europe) and wage freezes and privatizations in the public sector.² More recently, economic and migration debates have been dominated by the prospect of Brexit.³ Nevertheless, a growing number of critical voices have attempted to contest depictions of migrants and welfare recipients as economic threats, drawing attention to the ways in which underinvestment and deregulation had set the stage for low productivity and growth.⁴

This report seeks to shed light on current struggles for economic justice by contrasting the progressive ideals expressed in legal norms with people’s lived experiences of exploitation, insecurity and discrimination. Broadly speaking, our analysis looks at two types of discontinuity. The first relates to the non-exercise of statutory rights in terms of pay, working time, parental leave, protection from discrimination and union representation, which may be linked to workers’ dependence on employers for subsistence, obstacles in access to justice or deficient administrative action against non-complying employers. The second is exclusion from the definition of the ‘worker’ entitled to statutory protection. This is heightened by the UK tradition of maximal contractual freedom and the rise of ‘gig economy’ digital platforms such as Uber and TaskRabbit, which have allowed employers to resort to a variety of casual arrangements which are not easily accommodated within legal conceptions of the employment relationship. Such arrangements include contracts which do not guarantee a minimum number of hours (zero-hour contracts), triangular relations involving employment agencies and outsourcing of tasks to nominally self-employed workers. Since EU employment directives simultaneously provide a floor of labour rights and a somewhat broader definition of ‘worker’ than UK law, there are serious concerns about workers’ rights post-Brexit.⁵ Another long-standing problem is the exploitation of

¹ ANDERSON, B. 2013. *Us & Them? The dangerous politics of immigration control*. Oxford: Oxford University Press.

² O'HARA, M. 2015. *Austerity bites: A journey to the sharp end of cuts in the UK*. Bristol: Policy Press; ANDERSON, B. 2015. ‘Heads I win. Tails you lose.’ Migration and the worker citizen. *Current Legal Problems* 68, 179-196; BACH, S. 2016. Deprivilaging the public sector workforce: Austerity, fragmentation and service withdrawal in Britain. *The Economic and Labour Relations Review* 27(1), 11-28.

³ GIETEL-BASTEN, S. 2016. ‘Why Brexit? The toxic mix of immigration and austerity’. *Population and Development Review* 42(4), 673-680.

⁴ TUC, 2015. *The price of austerity. How spending cuts damaged the economy, and how they could do so again*, available at: <https://www.tuc.org.uk/sites/default/files/ThePriceofAusterity.pdf>; SKELTON, D. 2015. *Tackling low pay*, Centre for Social Justice, available at: https://www.centreforsocialjustice.org.uk/core/wp-content/uploads/2016/08/CSJJ3147_Tackling_Low_Pay.pdf.

⁵ TUC, 2016. *UK employment rights and the EU: Assessment of the impact of membership of the European Union on employment rights in the UK*, available at: <https://www.tuc.org.uk/sites/default/files/UK%20employment%20rights%20and%20the%20EU.pdf>.

family carers, volunteers, interns, prisoners and other people whose work across the world is excluded from protective mechanisms.

To examine the principal vulnerabilities faced by workers in recent years and the political strategies they have deployed in response, we will focus on two core social categories: young mothers and migrant domestic workers. Both groups are situated at the confluence of three significant sources of precariousness in contemporary European societies: the patchy legal protection of carers; prejudice-based discrimination; and exclusion from citizenship as legal and/or social status. Large-scale surveys have shown how young mothers' expected loss of flexibility or availability may lead their employers to withhold training or promotion opportunities, or even to dismissal.⁶ This is compounded by a decrease in the period for which full welfare support is available coupled with a long-standing scarcity of affordable childcare services. Migrants can also face racial, linguistic and religious discrimination, as well as legal restrictions on their employment mobility. In the case of domestic workers on temporary visas, these obstacles are compounded by the nature of the sector they are confined to (the private household), the isolation created by the short duration of their legal stay and, for those whose visa has expired, the irregularity of their status.

Statistical data illustrates the link between sex, age, parenthood, race and migration status on worker precarity, as well as the exacerbation of existing inequalities post-2008. Since the financial crisis the UK has seen the third-highest absolute growth in temporary employment and the highest growth in the number of self-employed in the EU, which increased from 3.8 to 4.6 million between 2008 and 2015.⁷ The average self-employed now earns 60% of the median annual rate of an employee per year, down from 70% a decade ago.⁸ Black workers are twice as likely to be in temporary work than the average worker. Their presence in such jobs increased by 56% between 2011 and 2016, compared to an increase of 11% for workers overall. Between 2011 and 2016, the self-employment rate among self-identified Pakistanis remained above 20% whereas the average was under 14%.⁹ In a representative poll with 1003 BAME workers, 37% reported having been bullied, abused or discriminated by their employer, and 37% of women state race and gender as the reason for the abuse. In addition, young BAME workers were more likely than those over 45 to have insecure contracts or to be unemployed.¹⁰ Official statistics reveal that minority youths are disproportionately affected by unemployment compared to their White counterparts, with the ratio reaching 1:2 in the case of Afro-Caribbeans.¹¹ According to 2002-2014 data from the Labour Force Survey, both male and female immigrants of Pakistani and Bangladeshi origin experience a significant hourly pay gap compared to their White

⁶ EHRC (2016). *Pregnancy and maternity-related discrimination and disadvantage: Experiences of mothers*, London: BIS, available at: https://www.equalityhumanrights.com/sites/default/files/mothers_report - bis-16-146-pregnancy-and-maternity-related-discrimination-and-disadvantage-experiences-of-mothers_1.pdf.

⁷ HUDSON-SHARP, N. and RUNGE, J. 2017. *International trends in insecure work: A report for the Trades Union Congress*. London: National Institute for Economic and Social Research, 16, 48, available at: <https://www.niesr.ac.uk/sites/default/files/publications/InternationalTrendsInInsecureWork.pdf>.

⁸ TUC, 2016. *Living on the Edge: The rise of job insecurity in modern Britain*, 7, available at: <https://www.tuc.org.uk/sites/default/files/Living%20on%20the%20Edge%202016.pdf>.

⁹ TUC, 2017. *Insecure work and ethnicity*, 2, available at: https://www.tuc.org.uk/sites/default/files/Insecure%20work%20and%20ethnicity_0.pdf.

¹⁰ TUC, 2017. *Is racism real? A report about the experiences of Black and minority ethnic workers – polling findings*, 5, available at: <https://www.tuc.org.uk/sites/default/files/Is%20Racism%20Real.pdf>.

¹¹ MCGREGOR-SMITH, 2017. *Race in the workplace: The McGregor-Smith Review*, 45.

British counterparts, although this gap closed for British-born minority women.¹² This is in the context of a more general motherhood penalty. A study on women born in 1970 found that mothers in full-time work earned 11% less than women without children and 42% less than fathers in the same situation. Interestingly, the first of these gaps only applied to mothers who had their first child in their 20s, whereas those who waited until age 33 experienced a comparative bonus of 12%.¹³ Employment rates for men and women were found to diverge around the age of 23 and a substantial gap persisted until their early forties. Mothers were much more likely than women without children to be working part time, whereas fatherhood had little impact on men's rate of employment and part-time work.¹⁴

The next two sections, which describe current labour (and labour-related) law as it appears 'in the books', will contextualise such issues by outlining the legal framework in which they are embedded. Based on a documentary analysis of relevant policy documents, statutes, case law and academic publications, they convey an institutional perspective on the definition and causes of economic inequality as well as on its remedies. Section 2 examines the actors and structures involved in the creation and enforcement of labour rights, including permanent and ad hoc consultative bodies, labour courts, mediation services, and various administrative agencies falling within the remit of a newly appointed Director of Labour Market Enforcement. Section 3 covers key UK labour rights in the light of minimal standards set out in EU directives, tracing their evolution since 2008. Rather than undertaking an exhaustive review of current legislation, it focuses on the specific measures which will be problematised in the remainder of the report.

Sections 4 and 5 reverse this top-down approach by adopting the perspective of workers themselves. Methodologically, they combine secondary data on policy impacts (mainly drawn from official statistical agencies, academic studies, trades unions and think tanks) with micro analyses of individual experiences and their relationship to the legal framework. While such experiences do not easily lend themselves to broad generalisation, they do provide important cues on the degree to which formal institutions are translated into observable change on the ground and on workers' perceptions of these institutions. Individuals also find themselves in a good position to inform on everyday political struggles that rarely make their way to newspaper headlines, such as small-scale attempts to challenge the practices of a public authority. To capture these processes, we conducted interviews with 11 workers, activists, trade unionists and policy advisors between November 2017 and January 2018. Except in one case where two participants were present at the same time, all interviews took place individually, either in person or through Skype. Most conversations lasted between one and one and a half hour. A semi-structured format was used with a view to steering exchanges toward the main areas of concern revealed by large-scale studies, while leaving space for respondents to develop complex experiences and views. After transcription, the interviews were manually coded in accordance with the pre-set themes and some new ones that emerged from fieldwork. To protect respondents' anonymity, most of them will be referred to by the capacity in which they were interviewed.

¹² LONGHI, S. and BRYNIN, M. 2017. *The ethnicity pay gap*. EHRC, 7-10, available at: <https://www.equalityhumanrights.com/sites/default/files/research-report-108-the-ethnicity-pay-gap.pdf>.

¹³ TUC, 2016. *The motherhood pay penalty*, 3, available at: <https://www.tuc.org.uk/sites/default/files/MotherhoodPayPenalty.pdf>.

¹⁴ CORY, G. and STIRLING, A. 2016. *Pay and parenthood: An analysis of wage inequality between mums and dads*, London: TUC, available at: https://www.tuc.org.uk/sites/default/files/Pay_and_Parenthood_Touchstone_Extra_2016_LR.pdf.

Section 4, whose approach could be characterised as socio-legal, exposes various gaps between what the law seeks to achieve and what it achieves in practice for young mothers and migrants. In particular, it argues that such gaps can be understood as flowing from 1) the subordination of subsistence to paid work created by welfare conditionality 2) the subordination of paid work to legal residency; 3) the difficulty of claiming employment rights in court, compounded by the casualisation of employment relations and rising judicial costs; 4) underenforcement of worker-protective standards by administrative agencies; and 5) the decline of union membership. Building on this analytical framework and particularly on interviewees' subjective experiences and perceptions, Section 5 explores the form and substance of political claims-making around economic justice, international migration and childcare. Since such claims tend to arise from concrete and often emotionally charged instances of injustice, we start by examining participants' recollections and interpretations of these key events. We then map the positive and often implicit moral ideals of justice that underlie the negative judgements identified in the previous section, including views on the appropriate role of courts, governments, workers, trade unions and other organisations in employment relations. The last three sections delve in mobilisation strategies and expectations for the future, paying special attention to potential alliances and conflicts among stakeholders. The conclusion recapitulates our main findings and the lessons they hold for the future of economic justice in the UK.

2. CREATION AND ENFORCEMENT OF LABOUR RIGHTS

The British approach to the regulation of industrial relations has famously been characterised as an instance of 'collective laissez-faire', whereby working conditions were negotiated by workers and employers with minimal state intervention.¹⁵ While this picture has been challenged by various authors who have highlighted the ways in which the legal framework has underpinned collective bargaining throughout the 20th century,¹⁶ the UK labour market remains one of the least regulated in the EU, with a relative scarcity of institutionalised social dialogue, sectoral arrangements and administrative enforcement of labour rights. This can be contrasted with the heavy enforcement of immigration restrictions to participation in the labour market. In this sense, it is notable that the recent role of Director of Labour Market Enforcement was created under the Immigration Act 2016, jointly sponsored by Home Office (HO) and Department for Business, Energy and Industrial Strategy (BEIS). The Director Sir David Metcalfe is responsible for setting the strategic direction of the three labour market enforcement bodies (see below). In recent years, this model of economic governance has come under increasing scrutiny, notably through public consultations where a wide range of organisations have submitted their views on how it could be reformed in the future.

¹⁵ KAHN-FREUND, O. 1965. Report on the legal status of collective bargaining and collective agreements in Great Britain. In: O. Kahn-Freund, ed., *Labour relations and the law*. London: Stevens & Sons.

¹⁶ EWING, K. D., 1998. The state and industrial relations: 'Collective laissez-faire' revisited. *Historical studies in industrial relations*, 5, 1-31; EWING, K. and HENDY, J., 2017. New perspectives on collective labour law: Trade union recognition and collective bargaining, *Industrial Law Journal*, 46(1), 23-51.

2.1. CONSULTATIVE BODIES

From 1909, when the *Trade Boards Act* was enacted, until the 1990s, various social dialogue structures known as trade boards, wages councils and joint industrial councils were established by British authorities (upon request from employer and employee representatives) to set minimum wages and other conditions in specific industrial sectors. The standards set by these structures were enforceable in civil law and administratively through fines. At their peak in 1953, 66 councils offered legal protection to some 3.5 million workers. In the 1960s and 1970s their number declined due to concerns about their impact on job creation and economic growth. The *Wages Councils Act 1986* prevented the establishment of new councils and significantly reduced the powers of the 26 that remained, which were abolished in 1993. The Agricultural Wages Board, created separately under the Agricultural Wages Act 1948, remained in operation until 2013.¹⁷

At present, the involvement of employee and employer representatives in labour law-making mainly takes the form of permanent and *ad hoc* consultative bodies in charge of conducting research and drawing up recommendations on particular policy issues. The most wide-ranging of these, the Taylor Review of Modern Working Practices, was appointed in October 2016 with a mandate to explore the implications of new forms of work, including those which rely on digital platforms, on employment security, pay and rights; progression and training; the balance of rights and responsibilities; worker representation; opportunities for underrepresented groups; and new business models. The four-member committee published its report in July 2017, based on oral and written evidence submitted by various stakeholders.¹⁸ While identifying problems of low pay and productivity as well as ‘one-sided flexibility’, the report adopted a cautious approach to the statutory protection of workers’ rights. Because of the gap between the breadth of its mandate and the limited resources allocated to its drafters, it was described as ‘heavy on proposals but very light on original analysis informed by evidence-based policy making’.¹⁹

Other consultative bodies include the Work and Pensions Committee, the Migration Advisory Committee and the Low Pay Commission. In 2017, the Parliamentary Work and Pensions Committee, made up of 11 MPs drawn from the main parties, launched an inquiry into the rollout of Universal Credit, a new social security programme developed with the aim of streamlining the payment of various benefits and increasing claimants’ incentives to take up full-time work. The Inquiry, still in course at the time of writing, looked into the scheme’s impact on childcare support, housing and financial security and the self-employed as well as into the causes of widespread technical failures.²⁰ The Migration Advisory Committee, funded by the Home Office, comprises a chair and three independent economists. Its mandate is to provide advice regarding the impact of immigration on the

¹⁷ LOURIE, J., 1995. A minimum wage. House of Commons Library Research Paper 95/7; DEAKIN, S. and GREEN, F. 2009. A century of minimum wages in Britain, *CentrePiece*, 6-8.

¹⁸ TAYLOR, M. 2017. *Good work: The Taylor review of modern working practices*, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf.

¹⁹ BALES, K., BOGG, A. and NOVITZ, T. 2018. ‘Voice’ and ‘choice’ in modern working practices: Problems with the Taylor Review, *Industrial Law Journal*, 47(1), 9.

²⁰ UK Parliament, ‘Universal Credit Inquiry’, <http://www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/inquiries/parliament-2017/inquiry/> [consulted 1 February 2018].

labour market. In August 2017, it issued a call for evidence on the economic and social impact of the UK's exit from the EU and on the alignment of its immigration system with a modern industrial strategy.²¹ Finally, the Low Pay Commission was established under the National Minimum Wage Act (NMWA) 1998 to recommend minimum wage rates by balancing worker protection with job creation and economic growth. It is made up of nine commissioners with employer, employee and academic backgrounds.²²

2.2. COURTS

Until the 1970s judicial involvement in employment relations was scarce and conducted through general civil courts. The creation of specialised employment tribunals by the Industrial Training Act 1964 and the subsequent expansion of their adjudicatory powers to include a growing set of statutory rights enabled the consolidation of labour law as a partly autonomous field of legal practice. Except in Northern Ireland, which has a different labour law system, most employment-related claims are dealt with by a hierarchy of adjudicating bodies in the following order: Employment Tribunal, Employment Appeal Tribunal, Court of Appeal, Supreme Court and Court of Justice of the European Union (when EU law is engaged). In Scotland, the Court of Session replaces the Court of Appeal. The Court of Appeal and the Supreme Court both belong to the ordinary civil court system. Contractual, tort and personal injury claims mostly remain within the jurisdiction of civil courts.

In Employment Tribunals, professional judges are sometimes assisted by two lay counterparts selected from panels of employer and employee representatives. However, it is increasingly frequent for them to sit alone in cases relating to redundancy pay, holiday pay and unfair dismissal, among others. Full hearing normally takes place between six months and a year after a claim has been lodged. The process is adversarial, with witnesses attending on oath and submitting written statements in advance for cross-examination, but the tribunal is also allowed to ask questions. Judgments can be delivered either orally on the same day after an adjournment or in writing a few weeks later. Costs up to £20 000 can be imposed on the losing party in cases of abuse or unreasonableness. Enforcement of unpaid awards takes place through a separate procedure in civil courts.

Employment Tribunal decisions can only be appealed on a point of law. The Employment Appeal Tribunal (EAT) normally sits in Edinburgh or London. Since 2013, the EAT is composed of a single professional judge who has discretion to request the assistance of two lay judges, selected like those of first instance tribunals. The EAT may invite the ET to clarify its reasoning and answer parties' questions. After full hearing, the EAT can disallow the appeal, make a ruling on a point of law and remit the case to same or a differently constituted ET. More rarely it can decide the case itself. Delivery of judgement and costs follow the same patterns as at first instance.

²¹ MIGRATION ADVISORY COMMITTEE, 2017. *Call for evidence: July 2017 MAC Commission*, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/635638/2017_08_04_MAC_Call_for_Evidence.pdf.

²² UK Government, 'Low Pay Commission terms of reference', <https://www.gov.uk/government/organisations/low-pay-commission/about/terms-of-reference> [consulted 1 February 2018].

The Court of Appeal/Court of Sessions and Supreme Court hear cases related to a point of law of general importance and are comprised exclusively of professional judges. Since these hear only a minority of employment-related cases and normally have a barrister rather than employee background, they rely mainly on common law rather than labour law concepts and norms. Both courts usually take at least 18 months to reach a decision.²³

2.3. MEDIATION, ARBITRATION AND LEGAL ADVICE

The Advisory, Conciliation and Arbitration Service (ACAS), a public agency governed by a council of employer and union representatives as well as independents, provides mediation services in workplace conflict. In order to increase the proportion of extrajudicial settlements, the Enterprise and Regulatory Reform Act 2013 introduced an obligation for ET claimants to submit the details of their case to ACAS, which must subsequently make an offer conciliation (usually by telephone or email). The use of its services nevertheless remains at claimants' discretion.²⁴ Since the turn of the millennium, ACAS has also acquired powers to arbitrate cases of unfair dismissal and flexible working, but the vast majority of claimants have preferred to resort to the more formal procedures of Employment Tribunals.²⁵

The main source of legal advice in employment disputes is Citizens Advice, a charity delivering services in some 600 local offices throughout the UK with over 7000 staff and 23 000 volunteers. In 2016/2017, the charity received nearly £100 million in funding from BEIS, the Money Advice Service, the Ministry of Justice, the Department for Work and Pensions (DWP) and the Welsh Government.²⁶ Depending on the resources of specific offices, advice can be provided by generalist advisors with or without specific employment training, in-house solicitors, pro bono solicitors or collaborating law centres.²⁷

2.4. EXECUTIVE ENFORCEMENT

Until 2016, most executive powers of labour rights enforcement were distributed among independent agencies in charge of carrying inspections, issuing notices and bringing criminal prosecutions. The Gangmasters Licensing Authority (GLA), created in 2006, was responsible for licensing employment agencies in agriculture, food processing and shellfish; Her Majesty's Revenue and Customs (HMRC) monitored compliance with minimum wage regulations; and the Employment Agency Standards Inspectorate (EAS) ensured compliance with employment rights for agency workers.²⁸ As noted above,

²³ CORBY, S. and P. BURGESS. 2014. *Adjudicating employment rights: A cross-national approach*. London: Palgrave, 80-95.

²⁴ MANGAN, D., 2013. Employment Tribunal reforms to boost the economy. *Industrial Law Journal* 42(4), 413.

²⁵ CORBY, *Adjudicating employment rights*, op. cit., 92.

²⁶ CITIZENS ADVICE, 2017. Annual Report 2016/2017, 2, 38, available at: <https://www.citizensadvice.org.uk/Global/CitizensAdvice/citizens%20advice%20annual%20report.pdf>.

²⁷ BUSBY, N. et al, 2013. *Citizens Advice Bureaux and employment disputes: Interim report*. University of Bristol, 4, available at: <http://www.bristol.ac.uk/media-library/sites/law/migrated/documents/cabxinterim.pdf>.

²⁸ CORBY, *Adjudicating employment rights*, op. cit., 93-94; BEIS, 2017. *Employment Agency Standards Inspectorate enforcement policy statement*, 3, available at:

the Director of Labour Market Enforcement currently facilitates information sharing among these agencies and draws up an annual enforcement strategy. In his first strategy, published in June 2017, Director Sir David Metcalf announced his intention to look into penalties for non-compliance with minimum wage legislation, structural determinants of non-payment of wages, the extension of licensing into new sectors such as construction, care and cleaning, the regulation of online platform apps and umbrella companies, and the clarity of employment agency contracts.²⁹

The Immigration Act 2016 also significantly expanded the powers of the GLA, renamed Gangmasters and Labour Abuse Authority (GLAA), by including all sectors of the labour market within its remit, enabling it to enforce provisions on employment agencies, the minimum wage and ‘modern slavery’, and giving it the capacity of issuing undertakings and orders. Failure to comply with such orders may attract penalties of up to two years imprisonment.³⁰

The Equality and Human Rights Commission (EHRC), established by the Equality Act 2006, is entrusted with enforcement powers in the anti-discrimination field, including the power to investigate unlawful acts, to issue notices and to apply for courts to issue orders. It also assists individuals in legal proceedings relating to infringements of the Equality Act 2010. Finally, it monitors and enforces public authorities’ duty to have regard to the promotion of equality in the course of their activities.

The Health and Safety Executive and Local Authority environmental health officers enforce health and safety regulations in a range of workplaces.

3. COMPARING EU AND UK STANDARDS ON WORKING CONDITIONS

Since the beginning of the Thatcher era in 1979, the UK government has opposed considerable resistance to EU labour legislation, vetoing a number of directives and extracting significant concessions from others by invoking the principle of subsidiarity.³¹ As a consequence, the transposition of EU regulations into domestic law has frequently entailed the enactment of new statutory instruments and/or the exercise of opt-out prerogatives. At the same time, some areas where the EU has yet to intervene have been the object of significant regulation in the UK. Before turning to these, however, we will first lay out the UK approach to the personal scope of labour law.

3.1. DEFINITIONS OF ‘WORKER’, ‘EMPLOYEE’ AND ‘SELF-EMPLOYED’

Due to the contractual nature of much British employment law and the consequent variety of arrangements obtaining in the labour market, one of the fundamental challenges faced by courts has consisted in establishing material criteria that claimants must fulfil to obtain legal protection. Statutory

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/615442/employment-agency-standards-inspectorate-enforcement-statement.pdf.

²⁹ METCALF, D., 2017. *Labour market enforcement: 2017/2018 strategy*, available at : <https://labourproviders.org.uk/wp-content/uploads/2017/07/Labour-Market-Enforcement-Strategy-2017-2018-Discussion-Document.pdf>.

³⁰ DAVIES, A., 2016. The Immigration Act 2016. *Industrial Law Journal*, 45(3), 435-436.

³¹ BERCUSSION, B., 2010. *European labour law*. Cambridge: Cambridge University Press, 42-46.

instruments establish a hierarchy between three types of workers, ‘self-employed’, ‘workers’ and ‘employee’, with the self-employed enjoying the most limited set of rights, employees the most extensive and ‘workers’ falling somewhere in between.³² However, they offer very limited guidance as to how to distinguish the three categories. The Employment Rights Act 1996 rather circularly defines ‘employee’ as ‘an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment’³³ and ‘worker’ as

an individual who has entered into or works under (or, where the employment has ceased, worked under)—

(a) a contract of employment, or

(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual (Art 230.3).³⁴

In other words, the self-employed are defined as providing services to clients or customers within an individual undertaking; employees are individuals who work under a contract of employment; and ‘workers’ are those who work either under a contract of employment or any other contract to do work personally but are not self-employed. This leaves open to judicial interpretation the question of how to distinguish a contract of employment, entered by an employee, from other contracts of service entered by ‘workers’ and contracts for services which govern the relationship between the self-employed and their clients.

Over the years, courts have developed a variety of criteria or ‘tests’ to approach these questions. These include a worker’s level of control over the content and manner of the work; potential for profit and business risk incurred; structural integration into the organisation; supply of capital, tools and equipment; requirement to do work personally rather than through substitutes; and obligation for the employer to provide work and for the employee to perform it (‘mutuality of obligation’).³⁵ While none of these factors is determinative, employer control over the employee, ‘mutuality of obligation’ and commitment to do work personally have generally gained in prominence and come to be seen as necessary to establish the existence of a contract of employment.³⁶

The casualisation of employment relations that has taken place across the labour market during the last decade (see Section 4) has given rise to a series of high-profile cases contesting employers’ capacity to sidestep their legal obligations by transferring risks and obligations onto workers. Various contractual arrangements, not necessarily new, have come under scrutiny, including

³² In the following we will use inverted commas to differentiate ‘workers’ in this narrow legal sense from workers as a general category of people who work.

³³ Section 230.1.

³⁴ Section 230.3.

³⁵ COLLINS, H., K. D. EWING and A. MCCOLGAN, 2012. *Labour Law*. Cambridge: Cambridge University Press, 194.

³⁶ BIS, 2015. *Employment status review*, 13-14.

'sham' self-employment, 'zero hour contracts' which offer the worker no guarantee as to the time and duration of work, and agency work. In *St Ives*,³⁷ the EAT found that a zero hour contract could involve a degree of mutual obligation, and thus be characterised as a contract of employment, when there was a long-established work pattern.³⁸ Similarly in *Autoclenz Limited v Belcher and Others*³⁹, the Supreme Court ruled that the presence of 'substitution' and 'no mutuality' clauses in a written contract did not automatically confer self-employed status to a worker if they did not reflect the day-to-day nature of the relationship.⁴⁰ In *Aslam & Farrar v Uber*,⁴¹ the ET found that any driver who had the Uber App switched on, found herself within the territory in which she was authorised to work and was able and willing to accept assignments was working for Uber under a 'worker' contract so long as these conditions were fulfilled.

The determination of employment status is further complicated by the imperfect correspondence between the definitions used in different laws. In the ERA 1996 for instance the right to a statement of employment particulars applies to all employees except those whose employment lasts less than a month; the right to protection from deduction of wages contains exceptions for retailing; the rights not to be unfairly dismissed and receive redundancy payment can only be exercised after two years of continuous employment, and excludes domestic servants employed by members of their family. Section 2 of the NMWA empowers the Secretary of State to exclude from its scope workers under the age of 26 who are within their first six months of employment, sheltered by their employer, participating in a training or job-seeking scheme or completing a work placement within a course of higher education. At the same time, the Act shifts onto the employer the burden of proving that claimants are self-employed, meaning that the latter could be entitled to the minimum wage but not to the other rights that usually apply to 'workers'. The right of fixed-term employees not to be treated less favourably than permanent ones (Fixed-Term Employees Regulation 2002) excludes trainees, apprentices and agency workers. The latter are protected under the Agency Workers Regulations 2010 but only after 12 weeks of service with the business resorting to agency services. The Equality Act 2010 offers anti-discrimination protection to individuals under a contract of employment, a contract of apprenticeship or a 'contract personally to do work', which may include some but not all forms of self-employment.⁴² For agency workers, who are usually considered as employed by the agency, a question also arises as to the legal duties deriving from hirers' decisions *inter alia* in discrimination cases.⁴³

While tax authorities have developed their own tests to determine employment status for the purpose of deducting income tax and national insurance contributions, these tests have only exerted indirect influence on labour law in specific cases. In *Tilson v Alstom Transport*,⁴⁴ for instance, an ET's

³⁷ *St Ives Plymouth Ltd v Mrs D Haggerty* [2008] WL 2148113.

³⁸ ADAMS, A., M. FREEDLAND and J. PRASSL, 2015. The 'zero-hours contract': Regulating casual work, or legitimating precarity? ELLN Working Paper 2/2015, 16-17.

³⁹ [2011] UKSC 41.

⁴⁰ BOGG, Alan, 2012. Sham self-employment in the Supreme Court. *Industrial Law Journal* 41(3), 328-345.

⁴¹ 2202550/2015.

⁴² COLLINS et al, *Labour Law*, op. cit., 206-210.

⁴³ ROYSTON, T., 2011. Agency workers and discrimination law: *Muschett v HM Prison Service*. *Industrial Law Journal*, 40, 92-102; PRASSL, J., 2015. *The concept of the employer*. Oxford: Oxford University Press, 85-88.

⁴⁴ [2010] EWCA Civ 1308.

decision to award unfair dismissal to a technician who provided services to a train company through an umbrella company was overturned by the EAT on the grounds that he had ‘chosen to work through an agency and umbrella company for his own advantage, including tax advantage’. The fact that the self-employed pay lesser levels of National Insurance contributions than other workers has provided an incentive for tax authorities to deploy narrower definitions of self-employment than those used by labour courts.⁴⁵

Another potential influence on British law’s approach to employment status is the jurisprudence of the European Court of Justice, which makes no systematic distinction between employees and workers. In the leading case of *Allonby v Accrington and Rossendale College*,⁴⁶ the Court defined ‘worker’ as ‘a person who, for a certain period of time, performs services for and under the direction of another person in return for remuneration’. Such a definition emphasised personal performance of work, subordination and continuity at the expense of mutuality of obligations, and may sometimes override the seemingly narrower definition of UK courts.⁴⁷ However, the recent case of *Ender Balkaya v Kiesel Abbruch*⁴⁸ revolving around the meaning of ‘worker’ for the purpose of collective redundancy regulations shows that the concept remains contested and subject to contextual variations. It remains to be seen how Brexit will affect the interplay between European and UK standards on the personal scope of labour law.

3.2. TRANSPOSITION OF EU DIRECTIVES IN THE UK

The following table displays the main EU employment directives adopted since the 1990s and their corresponding instrument in UK law, together with some comments on their content and transposition.⁴⁹

⁴⁵ LEIGHTON, P. and WYNN, M., 2011. Classifying employment relationships – More sliding doors or a better regulatory framework?, *Industrial Law Journal* 40(1), 5-44.

⁴⁶ Case C-256/01, *Allonby v. Accrington and Rossendale College* [2004] ICR 1328 (ECJ).

⁴⁷ COLLINS et al, *Labour Law*, op. cit., 205-206.

⁴⁸ C-229/14.

⁴⁹ BIS, *Employment status review*, op. cit., 52-54.

Figure 1: EU employment directives and corresponding UK legal instruments

EU law	UK law
<p><i>Obligation to inform employees of employment conditions (91/533/EEC)</i></p> <p>Covers identity of parties, place of work, nature of work, starting date, duration of contract, paid leave, notice period, remuneration, working hours, collective agreements</p>	<p><i>Employment Rights Act 1996</i></p> <p>Sections 1-7</p> <p>UK opted to apply an exemption for employment contracts lasting less than a month (Article 1.2 EU Directive and Section 155 ERA). The right to a written statement of terms and conditions is restricted to 'employees'</p>
<p><i>Health and safety in pregnancy (92/85/EC)</i></p> <p>14 weeks maternity leave (including 2 weeks compulsory leave)</p> <p>Paid time off for ante-natal appointments</p> <p>Protection from dismissal during pregnancy and maternity leave</p>	<p><i>Employment Rights Act 1996</i></p> <p>Sections 71-74</p> <p>26 weeks maternity leave</p> <p>Article 74 delegates protection from dismissal to secondary legislation.</p>
<p><i>Working time (93/104/EC - 2003/88/EC)</i></p> <p>4 weeks paid annual leave</p> <p>1 day of rest in 7 or 2 in fortnight</p> <p>11 hours rest between working days</p> <p>Rest break for working day over six hours</p> <p>Maximum week of 48 hours</p>	<p><i>Working Time Regulations 1998</i></p> <p>UK introduced individual right to opt out of the 48-hour week maximum.</p>
<p><i>European Works Councils (94/45/EC - 2009/38/EC)</i></p> <p>Obligation for companies with more than 1000 employees with at least 150 in another EU Member State to inform and consult employees</p>	<p><i>Transnational Information and Consultation of Employees 1999 / Transnational Information and Consultation of Employees (Amendment) Regulations 2010</i></p>

	In 2016 there were 155 Works Councils set up under UK law. ⁵⁰
<p><i>Posting of workers (96/71/EC) / Enforcement of posting of workers (2014/67/EU)</i></p> <p>Prohibition of less favourable treatment toward posted workers regarding:</p> <ul style="list-style-type: none"> - maximum work periods - minimum rest periods - minimum paid annual holidays - minimum rates of pay, including overtime rates - conditions for hiring out workers, in particular the supply of workers by temporary employment firms - protection in pregnancy - children and young people; and - equality of treatment between men and women and other non-discrimination provisions. <p>2014 Directive introduced administrative and judicial measures to increase compliance with the Posting of Workers Directive, including joint liability in subcontracting</p>	<p><i>The Posted Workers (Enforcement of Employment Rights) Regulations 2016</i></p> <p>No specific transposition of 1996 directive. Section 196 of ERA 1996 excluding workers employed wholly or mainly outside Great Britain was repealed by Article 32 ERA 1999. The virtual absence of legally binding sectoral agreements in the UK reduces the material scope of the Directive to statutory rights</p>
<p><i>Parental leave (96/34/EC) (modified by Directive 2010/18/EU)</i></p> <p>Time off for emergencies</p> <p>Right to return to same or similar role within company</p> <p>Amount of unpaid leave increased from 13 to 18 weeks in 2010</p>	<p><i>Maternity and Parental Leave Regulations 1999 / Employment Relations Act 1999 / Work and Families Act 2006 / Parental Leave (EU Directive) Regulations 2013</i></p> <p>UK has gone further than EU by introducing right to request flexible working and shared parental leave. Since 2015 parental leave can be taken until the child turns 18</p>
<p><i>Part time work (97/81/EC – 98/23/EC for UK)</i></p> <p>Equal treatment of part-time relative to full-time workers</p>	<i>Part-Time Workers Regulations 2000</i>

⁵⁰ TUC, 2016. *Employment rights and the EU*, London, 13.

<i>Fixed-term work (99/70/EC)</i> Equal treatment of fixed-term relative to permanent workers	<i>Fixed-term Employees Regulations 2002</i>
<i>Transfers of undertakings (2001/23/EC)</i> Prohibits working conditions when a business is sold or a public service is outsourced to the private sector	<i>Transfer of Undertakings Regulations 2006</i> Goes further than EU Directive by covering cases where services are outsourced and no employee is retained ⁵¹
<i>Information and consultation of employees (2002/14/EC)</i> Information and consultation of employees in organisations with 50 or more employees	<i>Information and Consultation of Employees Regulations 2004 (amended in 2010)</i> Few UK companies affected due to cumbersome procedure for the recognition of employee representatives ⁵²
<i>Race equality (2000/43/EC) / Employment equality (2000/78/EC) / Sex equality (2006/54/EC)</i> Prohibition of direct and indirect discrimination as well as harassment and victimisation on the grounds of sex, race, religion and belief, disability, age, sexual orientation Race and sex equality Directives establish an obligation to create an equality body to provide assistance to victims, conduct surveys and publish reports on discrimination Sex equality Directive establishes a right to return to one's position without prejudice to terms and conditions after maternity leave.	<i>Employment Equality (Religion and Belief) regulations 2003 / Employment Equality (Sexual Orientation) Regulations 2003 / Employment Equality (Age) Regulations 2006 / Equality Act 2006-2010</i> UK goes further than EU requirements by: - conferring the EHRC powers to issue compliance orders, initiate legal proceedings against non-complying organisations, provide legal representation to claimants and launch investigations (Equality Act 2006) - imposing a duty on public authorities to have due regard to the elimination of discrimination (Sections 149-157 of Equality Act 2010); - protecting the grounds of gender reassignment, marriage/civil partnership and pregnancy and maternity. EU directive introduced discrimination by association and reversal of burden of proof

⁵¹ COLLINS et al, *Labour Law*, op. cit., 902.

⁵² Ibid, 624-629.

	and prevented cap on compensation in discrimination cases.
<p><i>Temporary agency work (2008/104/EC)</i></p> <p>Access to vacancies and facilities</p> <p>Equality with permanent employees in respect of remuneration, working time, night work, rest periods, rest break and annual leave</p>	<p><i>Agency Workers Regulations 2010 (builds on 1973 Act and 2003 regulations)</i></p> <p>UK has used derogation clause for workers employed for less than 12 weeks or those paid by employment agencies between contracts</p>
<p><i>Employment of illegally staying third country nationals (2009/52/EC)</i></p> <p>Dissuasive sanctions, including criminal ones, against employers of undocumented ('illegally staying') third-country nationals</p> <p>Gives undocumented workers right to claim unpaid wages and obliges authorities to claim unpaid taxes and social security contributions from employers</p>	<p>UK opted out, but see related provisions in <i>Immigration Act 2014/2016</i></p> <p>UK opposed right for illegally working migrants to claim unpaid wages from employers, which conflicts with doctrine of illegality applying to contracts involving undocumented migrants (see below).</p>
<p><i>Preventing and combating trafficking (2011/36/EU)</i></p> <p>Criminal sanctions for participating in the forced, fraudulent or deceitful displacement of people for the purpose of exploitation, including sexual exploitation, begging, slavery, criminal activities and the removal of organs</p> <p>Mandatory institutional mechanisms to investigate cases</p> <p>Support for victims, including exemption from responsibility for criminal offences related to trafficking</p>	<p><i>Modern Slavery Act 2015</i></p> <p>UK opted out of Directive, then in 3 months after its adoption</p> <p>Section 53 establishes a right for trafficked domestic workers to obtain 6-month leave to remain, work and change employer.</p>
<p><i>Seasonal third country national workers (2014/36/EU)</i></p> <p>Prohibits discrimination against seasonal workers in employment rights, with</p>	UK opted out

<p>exceptions for family and unemployment benefits, education and vocational training</p> <p>Gives seasonal workers the right to a written statement of terms and conditions</p> <p>Obliges employers to provide suitable accommodation</p> <p>Establishes obligations for seasonal workers and their employers, including a maximum of nine months residence per year and measures to prevent overstay</p>	
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Based on this overview, the implementation of EU directives in the UK could be characterised as falling within three broad approaches. The first, which we label ‘expansive transposition’, embraces all EU-derived labour rights often complementing them with pre-existing ones (EU directives on health and safety in pregnancy, parental leave, part-time work, fixed-term work, transfers of undertakings, non-discrimination and, after an initial opt-out, trafficking). The second approach, which may be called ‘restrictive transposition’, captures cases where the UK either made use of derogatory provisions introduced in EU legislation at its own request or applied common standards in a way that seriously reduced their scope or effectiveness. It seems most closely associated with directives relating to the provision of information on employment conditions, working time, posting of workers, information and consultation of employees and temporary agency work. Finally, the approach of ‘non-transposition’ manifested itself in opt-outs from directives on illegally resident and seasonal workers from outside the EU area of free movement.

While the identification of the forces underlying these legislative choices lies beyond the scope of this report, it is noteworthy that all directives protecting the labour rights of migrants were either opted out from (at least initially, in the case of the directive against trafficking) or restrictively implemented. One of the most significant gaps between EU and UK standards is the doctrine of illegality, which effectively strips undocumented workers of most of their employment rights on the grounds that the contract on which they rest was invalid from the outset.⁵³ By contrast, UK legislators have been more proactive when it comes to promoting female employment through pregnancy and parental protection, part-time work (which is disproportionately undertaken by women) and anti-discrimination. As we will see, however, many of these measures have been seriously undermined by the austerity agenda and its disproportionate impact on family carers. The restrictive transposition of the EU directive on temporary agency work can also be expected to have greater impact on young and migrant workers, who are more likely than others to have casual employment relationships.

It should be noted that many employment rights related to EU standards are reserved for workers with ‘employee’ status, including written statement of terms and conditions, parental leave,

⁵³ See eg *Hounga v Allen* [2014] ICR 847, SC.

maternity, paternity and adoption pay, protection from unfair dismissal and time off for emergencies. ‘Employee shareholders’, who work under an employment contract and own at least £2000 worth of shares in the employer’s company or parent company, lack rights to protection against unfair dismissal (apart from dismissal on grounds of discrimination and in relation to health and safety) and to request flexible working except in the first two weeks after returning from parental leave. They must also give 16 weeks’ notice if they want to come back early from maternity leave, additional paternity leave and adoption leave.⁵⁴ As for the self-employed, their rights are mainly confined to health and safety issues and protection from discrimination by some service users.

3.3. ADDITIONAL PROTECTION OFFERED BY UK LABOUR AND SOCIAL SECURITY LAW

Three important areas of law shaping employment relations in the UK largely remain beyond the scope of EU legislation, except indirectly through anti-discrimination provisions: the national minimum wage, trade union activity and social security.

The NMWA 1998 was enacted five years after the abolition of all except agricultural wages councils in England and Wales, sealing a transition from sectoral to - in principle at least – state-wide minimum wage setting. The Act establishes a Low Pay Commission charged with making annual recommendations on the minimum wage to be set by the Secretary of State. Since its creation, the minimum wage has increased faster than inflation and average earnings, going from £3.60 per hour in 1999 to £6.70 in 2015. Significantly lower rates applied to workers under the age of 21 and to apprentices in the first year of their apprenticeships. The National Minimum Wage Regulations 2015 introduced a national living wage for workers aged 25 and over (£7.83 from April 2018). In addition to the lesser protection of young workers and apprentices, the national minimum wage and national living wage do not apply to several categories of workers, such as interns, volunteers, prisoners, live-in domestic workers or au pairs who are treated like a member of the family, family members who perform work for a family business, residential members of religious communities, members of the armed forces and share fishermen. Payment of the national minimum wage can be enforced either by HMRC or by workers themselves through employment tribunals. Penalties for non-compliance remain low and enforcement patchy.⁵⁵

Collective bargaining rights, which remain to be enshrined in EU legislation but are regulated at the international level by the International Labour Organisation and the Council of Europe, are set out in the Trade Union and Labour Relations Act (TULRA) 1992. These regulations do not only aim to protect the bargaining power of unions vis-à-vis employers but also to limit union interference with business activity and the liberties of individual workers, be they affiliated or not. Since these different aims often come into conflict, the TULRA has been described as one of the reasons for the continuing decline of union membership. The cumbersome voting procedures required for unions to be legally recognised as negotiating partners by employers (which gives their officials a right to paid time off for union activities and access to relevant employer information) and to take industrial action have been

⁵⁴ Growth and Infrastructure Act 2013, Section 31. See PRASSL, J. 2013. Employee shareholder ‘status’: Dismantling the contract of employment. *Industrial Law Journal* 42(4), 307-337.

⁵⁵ COLLINS et al, *Labour Law*, op. cit., 248-262.

particularly criticised.⁵⁶ In addition, collective agreements reached in the UK only acquire binding force when incorporated into individual employment contracts and, except in some parts of the public sector, there are no mechanisms in place to give them sector-wide application.⁵⁷ This being said, the Act also confers important rights to workers including the right not to be subject to detrimental treatment on grounds of union membership or activities.⁵⁸ Most trade union regulations are enforced by the Certification Officer, an administrative body appointed by the Secretary of State for Business, Innovation and Skills, whose powers were significantly expanded in 2016 (see below).

Social security is primarily regulated by the Social Security Contributions and Benefits Act 1992, the Jobseekers Act 1995, the Tax Credits Act 2002 and the Welfare Reform Act (WRA) 2012. Until 2012, the main means-tested, non-contributory schemes available for the working-age able-bodied population were income support and tax credits (for claimants whose income fell below a certain threshold), housing benefit (to cover housing costs) and jobseeker's allowance (for the unemployed actively seeking work). There were also non-contributory child benefits, council tax benefits and contributory maternity, paternity and adoption payments to be made either by employers or the state. The WRA 2012 combined all means-tested benefits into a new system, Universal Credit, designed to simplify procedures and eliminate 'cliff-edges' which penalised some claimants when their work hours went over a stipulated threshold of 16 per week.⁵⁹ The system built on the recommendations of a report published in 2009 by the Centre for Social Justice, a London-based think tank, whose Director MP Sir Ian Duncan Smith later became Secretary of State of Work and Pensions.⁶⁰ At the time of writing, Universal Credit was being rolled out alongside previous benefits schemes, slowed down by technical issues linked to the recalculation of benefits to take into account changes in claimants' situations. In terms of personal scope, third country nationals on fixed-term visas and EU citizens who do not comply with a number of work-related conditions remain excluded from access to most social security benefits.⁶¹ Single people under 25 and lone parents under 18 also receive lower means-tested benefits.⁶²

⁵⁶ BOGG, A., 2012. The death of statutory union recognition in the United Kingdom, *Journal of Industrial Relations* 54(3), 409-425.

⁵⁷ See COLLINS et al, *Labour Law*, op. cit., 490-590, 706-758.

⁵⁸ Section 146.

⁵⁹ BRADSHAW, J. and BENNETT, F., 2017. *ESPN thematic report on access to social protection of people working as self-employed or on non-standard contracts: United Kingdom*. Brussels: European Commission Directorate-General for Employment, Social Affairs and Inclusion, 1-30; SAINSBURY, R. and BRADSHAW, J., 2015. *ESPN thematic report on integrated support for the long-term unemployed*. Brussels: European Commission Directorate-General for Employment, Social Affairs and Inclusion, 1-14; BRADSHAW, J., BENNETT, C., GLENDINNING, A. and MAYNARD, F., 2015. *ESPN thematic report on social investment*. Brussels: European Commission Directorate-General for Employment, Social Affairs and Inclusion, 1-12.

⁶⁰ BRIEN, S. 2009. *Dynamic benefits: Towards welfare that works*. London: Centre for Social Justice, available at: <https://www.centreforsocialjustice.org.uk/core/wp-content/uploads/2016/08/CSJ-dynamic-benefits.pdf>.

⁶¹ SHUTES, I. 2016. Work-related conditionality and the access to social benefits of national citizens, EU and non-EU citizens. *Journal of Social Policy* 45(4), 691-707.

⁶² BRADSHAW, J. and BENNETT, F. 2015. *ESPN thematic report on minimum income schemes*. Brussels: European Commission Directorate-General for Employment, Social Affairs and Inclusion, 9.

3.4. POST-2008 RESTRICTIONS

In the aftermath of the financial crisis and particularly after the formation of a Coalition government under the leadership of Conservative prime minister David Cameron, both EU and UK rights in the area of employment and social security were weakened as part of a broader agenda of deregulation and austerity. Many of the setbacks in EU-derived rights took place in the field of anti-discrimination. The Enterprise and Regulatory Reform Act 2013 repealed provisions in the Equality Act 2010 holding employers liable for harassment of their employees by third parties and enabling employees to obtain information through a questionnaire procedure in anti-discrimination proceedings. Sections 1 and 14 of the Act, respectively obliging public authorities to have regard to the reduction of socio-economic inequalities and prohibiting multiple discrimination, have yet to be brought into force. The budget of the EHRC fell from £70 million to £17 million between 2007 and 2013, leading to a sizeable reduction in staff and to the closure of regional offices.⁶³ Another set of measures were aimed at speeding up or limiting the cost of dismissals, including by reducing the consultation period for collective dismissals from 90 to 45 days in the case of redundancies involving more than 100 employees;⁶⁴ raising the qualifying period to benefit from unfair dismissal protection from one to two years except in specified cases;⁶⁵ setting a cap of some £80 000 or one year's pay (the lower of the two) on compensations for unfair dismissal;⁶⁶ and creating the abovementioned 'employee shareholder' status which restricts certain rights in return for company shares.

Consistent with the Coalition policy of further limiting trade union influence, the Trade Union Act 2016 introduced provisions making it more difficult to engage in industrial action or political activities. These included imposing a 50% turnout on pre-strike ballots and a 14-day notice to employers;⁶⁷ obliging unions to appoint a supervisor for pickets and fulfil a number of procedural duties;⁶⁸ imposing an 'opt-in' procedure for new union members to fund political activities and detailed reporting requirement for unions spending over £2000 per year on such activities;⁶⁹ conferring new investigative powers to the Certification Officer, thus opening the door to tighter state supervision and quasi-criminal sanctions;⁷⁰ and limiting facility time for union officials and automatic deduction of union fees from wages in the public sector.⁷¹ Most of these measures were moderate versions of much more draconian ones inserted in the original Bill.⁷²

⁶³ HEPPEL, B. 2013. Back to the future: Employment law under the Coalition government. *Industrial Law Journal* 42(3), 206-207.

⁶⁴ The Trade Union and Labour Relations (Consolidation) Act 1992 (Amendment) Order 2013 (S.I. 2013/763), Articles 1, 3(2).

⁶⁵ The Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order 2012, Article 4.

⁶⁶ Enterprise and Regulatory Reform Act 2013, Sections 15(1)-(9), 103(1)(i), 103(2).

⁶⁷ Sections 2, 8.

⁶⁸ Section 10.

⁶⁹ Sections 11, 12.

⁷⁰ Sections 16-21 and Schedules 1-3.

⁷¹ Sections 13-15.

⁷² BOGG, A. 2016. Beyond neo-liberalism: The Trade Union Act 2016 and the authoritarian state. *Industrial Law Journal* 45(3), 299-336; FORD, M. and NOVITZ, T. 2016. Legislating for control: The Trade Union Act 2016. *Industrial Law Journal* 45(3), 277-298; DUKES, R. and KOUNTOURIS, N. 2016. Pre-strike ballots, picketing and protest: Banning industrial action by the back door? *Industrial Law Journal* 45(3), 337-362.

In the field of social security, most non-contributory benefits for the working-age population have been reduced and/or tied to new work-related conditions. Since 2012 income support for lone parents is withdrawn when the youngest child turns five, down from 16 until 2008.⁷³ Child benefits were limited to two children and frozen from 2011 to 2014, losing 15% of their value during the Coalition Parliament. Housing benefits were cut to cover only the lowest 30% of local rents and penalties (dubbed the ‘bedroom tax’) are imposed on social housing tenants considered to have spare rooms. Exemptions from council tax have been left to the discretion of local authorities while central funding for such exemptions has been reduced. Jobseekers Allowance, Income Support and the housing component of Universal Credit are now conditional upon an increasing number of reporting, job search or training duties, enforced through sanctions of benefit withdrawal.⁷⁴ These duties include work placements whereby employers are paid by the state to ‘activate’ claimants, with the least favourable claimant profiles drawing higher amounts of funding.⁷⁵ Workfare participants enjoy limited freedom to choose their placement and are not covered by minimum wage legislation, meaning they may earn less than a third of the minimum wage. The scheme has been the object of judicial litigation on the grounds that it amounts to forced labour in violation of Article 4 of the European Convention of Human Rights. British courts rejected these arguments in 2013 but obliged the Government to modify the Jobseeker’s Allowance (Employment, Skills and Enterprise Scheme) Regulations 2011 to detail claimants’ specific obligations.⁷⁶

Another far-reaching measure that came under judicial scrutiny was the £26 000 cap on the total benefits working-age families can receive in a year, reduced to £23 000 for those living in Greater London and £20 000 for others in 2016.⁷⁷ A claim against the cap was brought by three lone parents families in 2013 on the grounds that it discriminated against women and large families, but was rejected by the Supreme Court in 2015.⁷⁸ In June 2017, another case brought by four lone parents and three of their children under the age of two was successful in the High Court, which ruled that the revised cap was discriminatory and unlawful.⁷⁹ The Government has appealed the decision.

At a more fundamental level, access to ETs has been curtailed by the restriction of state-funded legal help (provided before hearing) and legal aid (provided during hearing) to discrimination cases⁸⁰ as well as by the introduction of fees ranging from £400 to £1200 for a hearing at first instance and appellate levels, allegedly to reduce the burden on taxpayers and businesses and encourage alternative forms of dispute resolution. The fees could be reimbursed in full or in part for successful

⁷³ HILLS, J. 2015. *The Coalition’s record on cash transfers, poverty and inequality 2010-2015*. Social Policy in a Cold Climate Working Paper 11, 26, available at: <http://sticerd.lse.ac.uk/dps/case/spcc/wp11.pdf>.

⁷⁴ HILLS, J. 2015, 16-17; NATIONAL AUDIT OFFICE, 2016. *Benefit sanctions*, 4-5, available at: <https://www.nao.org.uk/wp-content/uploads/2016/11/Benefit-sanctions.pdf>.

⁷⁵ BRADSHAW, J. and BENNET, F. 2015. *ESPN thematic report on minimum income schemes*, 16-23.

⁷⁶ PAZ-FUCHS, A. and ELEVLED, A. 2016. Workfare revisited. *Industrial Law Journal* 45(1), 29-59.

⁷⁷ Benefit Cap (Housing Benefit and Universal Credit) (Amendment) Regulations 2016/909.

⁷⁸ R(SG and others) v SSWP [2015] 1 WLR 1449.

⁷⁹ DA & Ors, R (*On the Application Of*) v Secretary of State for Work and Pensions [2017] EWHC 1446 (Admin).

⁸⁰ Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012; see CORBY, *Adjudicating employment rights*, op. cit., 90.

claimants or those who satisfied disposable capital and gross monthly income tests.⁸¹ Following a protracted legal battle waged by Unison, a large trade union, the Supreme Court quashed them in July 2017 citing access to justice rights.⁸² In October that year, the Government announced a scheme to refund claimants who had paid fees under the annulled order.⁸³

4. OBSTACLES TO THE EXERCISE OF LABOUR RIGHTS

According to a recent estimate, some 1.8 million workers lose £1.3 billion in unpaid wages each year, and this excludes workers with self-employed status or in the informal economy.⁸⁴ The figure gives an indication of the extent to which non-compliance with legal requirements distorts the picture of the general expansion of employment rights, even when austerity-driven setbacks are taken into account. It also points to the importance of looking at the law from the perspective of those who need to avail its protection in order to understand why rights so often remain confined to statute books and find ways to transform them into a lived reality. Without offering an exhaustive account, we now lay out the insights provided by recent literature⁸⁵ and key informants in this regard.

4.1. WORK-RELATED CONDITIONALITY OF WELFARE BENEFITS

One of the main preconditions for workers to vindicate their rights is a capacity to sustain themselves in case of protracted conflict with their employer or even job loss, for even exploitative work is often preferable to a situation of absolute poverty.⁸⁶ As we have seen, subsisting outside paid employment has become increasingly difficult, in part due to the decline in the real value of benefits and in part because eligibility requirements often mean engaging in time-consuming work-related activities in return for a fraction of the minimum wage. An estimated 800,000 recipients of Jobseeker's Allowance had their benefit withdrawn due to breach of conditions in the year up to March 2014, against an average of 200-300,000 per year in the decade before 2008.⁸⁷ Single parents of young children, most

⁸¹ MANGAN, D., 2013. Employment Tribunal reforms to boost the economy. *Industrial Law Journal* 42(4), 414; MINISTRY OF JUSTICE, 2017. *Review of the introduction of fees in the Employment Tribunals: Consultation on proposals for reform*, available at: https://consult.justice.gov.uk/digital-communications/review-of-fees-in-employment-tribunals/supporting_documents/Reviewofintroductionoffeesinemploymenttribunals.pdf.

⁸² R (on the application of UNISON) (Appellant) v Lord Chancellor (Respondent) [2017] UKSC 51.

⁸³ PYPER, D., MCGUINNESS, F. and BROWN, J., 2017. *Employment tribunal fees*. House of Commons briefing paper 7081, 59-62, available at: <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN07081#fullreport>.

⁸⁴ CLARK, N. and HERMAN, E. 2017. *Unpaid Britain: Wage default in the British labour market*. Middlesex University London, 40, available at: <https://www.trustforlondon.org.uk/publications/unpaid-britain-wage-default-british-labour-market/>.

⁸⁵ For a similar attempt to systematize the legal sources of precarious work, see KOUNTOURIS, N. 2012. 'The legal determinants of precariousness in personal work relations', *Comparative Labour Law & Policy Journal* 34, 21-46.

⁸⁶ CLARK, *Unpaid Britain*, op. cit., 40.

⁸⁷ MACINNES, T. et al., 2014. *Monitoring poverty and social exclusion 2014*, York: Joseph Rowntree Foundation, 95, <https://www.jrf.org.uk/sites/default/files/jrf/migrated/files/MPSE-2014-FULL.pdf>.

of whom are young mothers, have borne the brunt of such restrictions.⁸⁸ According to a 2017 report, 15% of all single parents claiming Jobseeker's Allowance were sanctioned in 2015, up from around 5% a decade earlier. In the vast majority of cases, the reason for referral was failing to participate in the Work Programme 'without good reason', not actively seeking employment and failing to attend or participate in an advisor interview 'without good reason'. Between October 2012 and June 2016, single parent claimants lost around £40 million due to sanctions, before taking into account compensatory hardship payments and reimbursements following overturned decisions.⁸⁹

A number of qualitative studies have described the strongly coercive effect of dwindling benefits and work-related conditionality. While official discourses on 'active employment policies' tend to emphasise the job search and training opportunities offered by job centre officials, many welfare claimants rather see them as powerful enforcers of a burdensome system with little positive contribution to their long-term economic prospects. A large-scale study on homeless people conducted in 2015 revealed that almost all had made efforts to find work and improve their skills, and even supported welfare conditionality, but that a variety of structural barriers and personal circumstances made it difficult for them to meet job centre requirements. These included mental ill health, poor literacy, family and other commitments, limited access to the Internet, insecure postal addresses and unclear communication. Universal Jobmatch, the Government's job brokering website, was seen as ineffective and demotivating, advertising already-filled position and yielding low rates of response or interview invitations. Perceptions of courses and work placements varied widely but some of them were seen as providing no new skills. As for sanctions themselves, their negative impacts ranged from debt and hunger to strained relationships with family and friends, loss of home, illness and engagement in illegal activities. Contrary to sanctions' intended outcome, this further diminished their chances of gaining a foothold in the labour market.⁹⁰

For single parents, conditionality often creates an 'impossible bind' between paid employment and childcare. A 2017 qualitative study with mothers of children aged two to four, who were about to be imposed new job-seeking requirements, showed that most were interested in taking up flexible or part-time work, but the majority of positions advertised within reasonable travelling distance were full-time or required late-night or early morning availability. Few of the remaining ones matched their skill profile or paid enough to cover the cost of childcare, which was in short supply and of uneven quality. Like homeless respondents, young mothers unanimously criticised the inadequacy of Universal Jobmatch, and several saw jobcentre personnel as more eager to pressurise them into paid work than

⁸⁸ For a detailed modelling of the impact of benefit cuts since the introduction of Universal Credit in 2012 on single parent families, see CHILD POVERTY ACTION GROUP, 2017. *Broken promises: What has happened to support for low-income working families under universal credit?*, available at: <http://www.cpag.org.uk/sites/default/files/Broken%20promises%20FINAL%20for%20website.pdf>; and RABINDRAKUMAR, S. 2017. *Paying the price: Still just about managing?* London: Gingerbread, available at: <https://www.gingerbread.org.uk/wp-content/uploads/2017/09/Paying-the-price-still-just-about-managing.pdf>.

⁸⁹ RABINDRAKUMAR, S. 2017. *On the rise: Single parent sanctions in numbers*. London: Gingerbread, 12-13, available at: <https://www.gingerbread.org.uk/wp-content/uploads/2017/10/One-the-rise-single-parent-sanctions-in-numbers.pdf>.

⁹⁰ BATTY, E. et al, 2015. *Homeless people's experiences of welfare conditionality and benefit sanctions*. London: Crisis, available at: <http://shura.shu.ac.uk/14613/1/homeless-experiences-welfare-conditionality-benefit-sanctions.pdf>.

to propose suitable training and openings. The lack of facilities for children also emerged as an obstacle for attending interviews.⁹¹

Elina, the single 40-year-old mother of three school-age children, illustrates the difficulties, disappointments and frustrations parents may go through during their dealings with job centres. When her youngest child turned five, a 'work coach' called her to appoint an interview and offer to support her back into employment. Having previously worked as a security guard, Elina asked to attend a course in this field, but none was available at that time. Elina then went to another job centre but ran into logistical problems:

I just randomly went to a job centre and asked them all this information. I went there once and I said I just need information about security courses. They said to me 'no, no, you have to book an appointment'. I booked an appointment, I went there and said 'can you pay my travel?' 'No, because you came here yourself.' That was the first thing they told me. Because you came yourself, we didn't call you in, you came yourself so we're not going to pay your travel.

In addition to the rigidities of the appointment system and the cost of travelling to the job centre, Elina had to contend with the constraints of childcare:

Now I'm on Jobseeker's Allowance. My sign-in day is on a Wednesday. [...] But my daughter goes to a therapist, because we have a difficult situation with housing and everything. So she needs to go to a therapist. And I said I can't do Wednesday, because it's in the middle of the day. So by the time I go there, I had to run to pick up my daughter at the therapist, and after it was finished I had to run to pick up my children from school. So there was not really time for me to come on time. I gave them a letter and they said 'can you come Thursday', I said 'okay I'll come Thursday.' Then I met them on Thursday and asked 'can you pay my travel?' They said to me 'no, because your sign-in day is on Wednesday, we can't pay your travel.' 'What is this? I wrote you a letter, it's not like I've just decided I don't like Wednesday, so I'm not going to come on Wednesday.' [...] But they treat people like this is all the time, you know, this time you come, 'we didn't call you and we're not going to pay', this time you come, 'oh! You came on the wrong date.' All the time it's like they're playing with you. Cat and mouse, cat and mouse.

Elina also identifies time-wasting inefficiencies in the training system:

Another time I came back to the job centre and I talked to this woman. And she said to me 'can you come tomorrow for your introduction?' And they sent me to some college or something. So I said 'okay fine' - I had some appointment on that date and I cancelled my appointment - so I said 'fine, I'll go to your introduction.' I didn't even ask what the introduction was for or whatever. I just went there. So when I went there they said to me 'you know to get on this course, we have to check your ability, how

⁹¹ DEWAR, L. and BEN-GALIM, D. 2017. *An impossible bind: Requirements to work under Universal Credit*. London: Gingerbread, 13-16, available at: <https://www.gingerbread.org.uk/wp-content/uploads/2017/10/An-impossible-bind-requirements-to-work-under-Universal-Credit.pdf>.

your English and your maths is.' I said 'I have all these certificates' [...] and they said 'no, we need to do a course here.' And I said 'fine, let's do the course here.' I had to pick up my children from school as well and it was, you know, I had very limited time. So I did my tests and everything, I passed my tests, both, English and maths. And then they gave me this form I needed to fill in. So when I started filling this form, it said which benefits are you on? I said income support. And they said 'oh! I'm sorry, this course is not for income support people.'

At the time of writing, not only was Elina still waiting for a security course to be held but she was unsure whether her entitlement to Jobseeker's Allowance would last long enough to allow her to take part:

When I asked them what course they had they said to me 'oh! We have some construction course', which I'm not interested in. I asked them if they had any security course, so they replied to me that they were going to have one around 25 January. [...] I received a letter from the job centre saying that my Jobseeker's Allowance was going to be for three months, so it expires on 10 January, and then they're going to reassess. So basically, if I'm looking for this course, I don't know if I'm going to still be on Jobseeker's Allowance, and they don't do this course for anyone else. And then the woman said to me 'oh, well, and if I can get a job now, I can't go on this course anyway.' So either way it's just, yes.

The advice provided by job centre staff left Elina with little hope of finding a fulfilling job that would fit around childcare:

'Oh! You have to go back to your job, take any job, any cleaner job or something.' I'm not taking any cleaner job! I don't want to work as a cleaner, pay someone to look after my kids and everything. I want to find a job which I can do when my kids are at school, and that's it.

The reporting, job search and training requirements imposed on benefit claimants can interfere with childcare responsibilities in very similar ways as paid employment. At the same time, the increasing financial precarity of welfare claimants considerably reduces parents' capacity to cope with this burden, for instance by paying for short-term care or travelling between their home, their children's school and the job centre. The inadequacy of training schemes only reinforces the comparative attractiveness of insecure employment as a way of achieving minimal living standards in the short term.

4.2. WORK-RELATED CONDITIONALITY OF RESIDENCY

The threat of absolute poverty faced by the unemployed is magnified in the case of migrants on short-term visas who, as we have seen, are generally barred from social security schemes. This leaves them completely reliant on employers, emergency services (such as shelters and food banks), family or friendship networks and informal economic activities (such as begging or theft) for subsistence. However, an even more determining source of precarity is the subordination of their residency to

continued employment, which effectively leaves them with no other choice than obeying their formal employers, leaving UK territory or live in a state of constant ‘deportability’ that obliges them to avoid most contact with the state lest their presence comes to the attention of immigration officials. While significant numbers of undocumented migrants have chosen the latter option, it has become increasingly impracticable due to the multiplication of immigration control duties placed on private actors such as transport companies, employers, landlords, banks and universities.⁹² An offence of ‘illegal working’ was also created under Section 34 of the Immigration Act 2016, effectively criminalising undocumented migrants (or migrants without authorisation to work) for engaging in activities that, in addition to ensuring their livelihood, are normally portrayed as an essential component of ‘good’ citizenship.⁹³ The overall result is that migration controls work together with welfare exclusion to produce workers whose bargaining power is reduced to near zero. This makes them highly attractive to employers, who often frame their legally constructed docility and loyalty in terms of cultural traits.⁹⁴

Rosa Crawford, policy officer for EU and international relations at TUC, thus synthesises the situation:

The whole framework of immigration law in the UK makes migrants incredibly insecure and vulnerable to exploitation. For non-EU migrants, it’s very easy to become undocumented, because after you finish your studies you have a very short space of time where you have to get a job, and if you don’t get a job you become undocumented. You can become undocumented if you have a bad employer and can’t find another job after leaving that employer, because you only have about two months to find another employer. So there are loads of reasons why you can lose your original immigration status. Then you become undocumented if you can’t find another sponsor, and then you have effectively no employment rights in the UK, which is where we differ from other EU countries like Belgium or the Netherlands. They have an employment structure whereby employment rights are separate from immigration status. So you can always get compensation and a legal right to redress when you’ve been exploited. Not like in the UK. In fact, the Immigration Act 2016 says if you are undocumented and you are found to be working, then your wages count as the proceeds of crime, so you become a criminal. You face up to 12 months in prison. The worker faces a criminal sentence and is likely to be deported, whereas the employer, if they called the border guards, then they’ll probably get off for nothing, because they gave intelligence about this ‘illegal’ worker. [...] All the weight of the law is against the worker. It’s a situation where all the incentives are for employers to exploit undocumented workers. For non-EU migrants the law creates a framework that

⁹² ANDERSON, ‘Heads I win’, op. cit., 179-196.

⁹³ ANDERSON, *Us & Them?*, op. cit., 12-28.

⁹⁴ ANDERSON, B. 2010. Migration, immigration controls and the fashioning of precarious workers. *Work, Employment & Society* 24(2), 308-311; ANDERSON, B. 2011. British jobs for British workers? Understanding demand for migrant workers in a recession. *The Whitehead Journal of Diplomacy and International Relations*, 103-114.

encourages exploitation, which makes a complete mockery of the government's apparent agenda against modern slavery.

Migrant domestic workers who are brought to the UK by their employers offer a paradigmatic example of these problems. Between 1977 and 1998, they were admitted into the country on visas that explicitly prevented them to work outside of their sponsoring family, placing them in a position of extreme subordination and vulnerability to systematic abuse. After a long campaign fought by voluntary associations and a large trade union to have them recognised as workers, the law was amended to provide them with 12-month renewable visas under which they could formally exercise labour rights and apply for permanent settlement after five years.⁹⁵ This achievement was reversed in April 2012, when the Coalition government followed up on a campaign pledge to curb 'low-skilled' immigration by limiting the duration of the Overseas Domestic Worker Visa to six months, tying it to a specific employer and making it non-renewable.⁹⁶ In 2015, an independent review of the regulations' compatibility with the Government's commitment to tackling modern slavery recommended that domestic workers be allowed to change employer and renew their visa up to a maximum of two and half years.⁹⁷ The first recommendation was incorporated into the Immigration Rules but the second was abandoned, with exceptions for victims of trafficking or modern slavery.⁹⁸

Marissa Begonia, who campaigns with London-based charity The Voice of Domestic Workers, explains how precarious residence already translated into precarious employment for domestic workers under the more favourable pre-2012 visa:

The problem we have is this one. If the employer declares them part time but in reality they are working full time and they are being paid below the national minimum wage, and the employer refuses to rectify the written contract, then if backfires on the domestic worker. [...] The Home Office will refuse the visa of the domestic worker. They don't actually penalise the employer but only the domestic worker. [...] If they have this kind of employer, then their visa will be refused and they will be undocumented. And when they become undocumented it makes it harder for them. So they will just accept whatever there is. [...] They will be safer if they have their indefinite leave to remain. But as long as they are on renewal they are in danger of losing their visa.

According to her experience accompanying domestic workers, the 2012 regulation made things worse by impeding long-term settlement and indirectly hampering access to justice:

I follow [domestic workers] in their job interviews and what shocks me is how, for example, an employer gives a contract. In that contract it is written 10 hours work, 30-

⁹⁵ ANDERSON, B. 2010. Mobilizing migrants, making citizens: Migrant domestic workers as political agents. *Ethnic and Racial Studies* 33(1), 60-74.

⁹⁶ ANDERSON, *Us & Them?*, op. cit., 172-175.

⁹⁷ EWINS, J. *Independent review of the overseas domestic worker visa*, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/486532/ODWV_Review_-_Final_Report_6_11_15_.pdf.

⁹⁸ HOME OFFICE, 2017. *Domestic workers in private households*, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/602790/Domestic-workers-in-private-households-v17_Oext.pdf.

minute break, no food, employer keeps the passport, no paid annual leave, no bank holiday... And they put it in the contract. I couldn't shut my mouth, because I only accompany but I couldn't keep quiet, so I said 'actually, she has a right to work, and all employment rights in the UK apply to her. And it is illegal to keep the passport of a worker here in the UK.' The response was 'I'm not English.' They say they're not English but they're actually permanent residents in the UK. And then they're not paying tax and national insurance. So the whole tied visa system, it licenses employers to abuse domestic workers.

Interviewer

How useful are Employment Tribunals in those cases, for workers?

Respondent

It is hard, because you're on a six-month visa, they're not even aware, I mean, do they have one month left? Do they have two weeks left? Or are their days numbered? So how could they possibly claim their rights? Say they have unpaid wages. Those six months would not give them time to claim their rights.

A domestic worker of Moroccan origin who settled in the UK under the pre-2012 regime explains the importance of long-term settlement for workers to learn and defend their rights:

We came to this country in 2004, but I didn't know at that time that I could change employer. I didn't know anything about rights. They didn't teach us about anything. But when I came back, I knew. Someone told me that you can change employer, you can find another one, and then I did it.

Interviewer

Who told you that?

Respondent

A friend of mine. She was in Dubai. She ran away, and she's the one who told me. She said, 'You can change employer. You can fight. You can do this, and this, and this.' But when I first started here in this country, then my English was zero. My English was very bad. The employer was using me, £150 per week, Monday to Friday. And then after five months she forced me to work Saturday with no extra money. And she used me in her mother's house which was just opposite. And she told me now when I'm not here with my children, you need to go to my mom and help her. But I was scared to talk because I didn't know about my rights. I didn't know that I had the right to talk and then I had no family here. And I was saying to myself, if I say no she will sack me and where should I go? I don't know anywhere to go. I don't know English, I don't know nothing. Then I stayed with her one year and a half. And then one day someone told me about Vulnerable Migrants UK [VMUK - the name of the organisation has been changed to preserve anonymity]. Then when I went there they said, 'You have right to change employer. And you have right to talk. You have the right to say this and this.'

Then I didn't understand, I went to another to discuss this and I said 'please, I heard something but I want to make sure that it is clear. Do I have right to change employer?' 'Yes! If you don't like this one even though you work two days you have to change.' And then I said, 'I need to know if I can say something.' She said, 'Yes.' 'Then I need to tell her, it is not fair to take me to your mom. But where can I have that word? I don't know English.'

Lack of time to lodge a complaint, limited knowledge of the legal framework, available support and informal norms of interaction, language barriers and separation from family and friends can thus combine to reduce recent migrants' capacity vindicate their rights against exploitative employers, including by finding a new job. When domestic workers' visas expire, employers can also use the threat of deportation as a means to keep them confined to the home:

Even though [domestic workers] know that there is no future for the visa, for their rights as workers, they don't have any choice. They prefer to be underground, hiding. They don't have a salary. And I saw most of [the employers], they keep telling them bad stories. 'If you go out the police will catch you. If there are drunk people on the street they can kill you.' And lots of things to keep them scared or just hiding.

Interviewer

Employers tell that to the workers?

Respondent

Yes. They tell them bad stories. 'Don't go out, if you go out the police will catch you.' A lady told me 'people are drunk at nighttime.' And she told me 'look, look, come, come, come.' She would tell, 'come have a look. This is what I was telling you. That people are drunk. If you go out they will kill you.' They won't care about you. It's just to make them scared to go out, or just be hiding. And they're using them. They don't have any access to justice as workers, no minimal wage. Sometimes employers don't pay them and they're just using them. If something breaks they say 'you have to pay it.' With the rubbish salary you have to pay.

These examples show how powers of immigration enforcement can silently trickle down from state agencies to employers through multiple and mundane interactions, creating systemic forms of servitude which defy simplistic portrayals of 'modern slavery' as rooted in the moral flaws of individual – and stereotypically foreign - criminals.⁹⁹

4.3. LIMITED ACCESSIBILITY OF JUDICIAL REMEDIES

It is not only recent migrants who often face difficulties understanding their rights and claiming them in courts. As discussed in Section 2, the legal differentiation between the rights enjoyed by different

⁹⁹ ANDERSON, *Us & Them?*, op. cit., 137-158.

categories of workers and the numerous, highly contested criteria used to distinguish them from one another tends to generate considerable legal uncertainty around the rights and duties of different parties to a contract of employment.¹⁰⁰ This problem is particularly acute in casual arrangements such as zero hours contracts, which are common among younger workers:

For young workers in general I think the biggest issue they have raised in UNITE is the use of zero hour contracts, or versions of that form of insecurity, which mean that young people don't have minimum standards that normally would be expected in employment. They don't know when they are going to work, how long they are going to work, or how the pay relates to what they are doing. And even in places where it is a bit better than this, their situation is still a lot more complex than other workers. (Diana Holland, Assistant Secretary for Transport, Equalities and Food at UNITE The Union).

Agency work, self-employment and even registration as a private company are other ways for companies to complicate and weaken workers' legal status:

The way the Agency Workers Directive has been responded to and introduced - instead of providing the protections that it should and the possibility of equality that it should, in many cases it has resulted in employers seeking ways to avoid these rights, such as forcing people to become self-employed if they want to do the work. In some parts of the haulage industry, they have even required every worker, if they still wanted to do that job, to register themselves as a limited company, so the worker became a limited company in their own right, but the work that they are doing is the same work they'd been doing as an employee before. And it was all to get round of the protections of the law (Diana Holland).

In this context, employers' willingness to uphold workers' rights crucially depends on the latter's capacity to bring them to court in case of disagreement on their status – in other words, on their access to justice.¹⁰¹ Access to justice is a broad concept that encompasses such aspects as the length and language of procedures, which are of special importance to migrants, but also affordability, which is key for the protection of all precarious workers. As we have seen in Section 3, this last requirement was seriously undermined with the passage of the LASPO Act 2012 and the 2013 Fees Order. When the legal aid cuts came into force in April 2013, the yearly number of funded cases dropped by 46%, from 925,000 to 497,000. The EHRC warned that cases of sex discrimination linked to maternity or pregnancy were likely to be abandoned because of financial impediments¹⁰², and interviews with providers of legal services revealed that many had had to cut back on pro bono activities due to

¹⁰⁰ CLARK, *Unpaid Britain*, op. cit., 38-39.

¹⁰¹ ROSE, E. et al., 2017. *Inaccessible justice: What happens to workers who don't pursue employment claims?* University of Strathclyde and Citizens Advice Scotland, available at: https://pureportal.strath.ac.uk/files-asset/66523066/Rose_etal_2017_What_Happens_to_Workers_Who_Don_t_Pursue_Employment_Claims.pdf.

¹⁰² EHRC, 2016. *Legal aid reforms and women's access to justice*, 10-11, available at: https://www.equalityhumanrights.com/sites/default/files/cedaw_follow-up_report_march_2016_update.pdf.

financial precarity.¹⁰³ Margaret Healy, who has been promoting the rights of domestic workers since the 1970s and advises their Waling Waling campaign, saw these changes from up close:

It's far more difficult to get a solicitor. In the 80s and 90s, we would have two or three solicitors coming to the centre practically every Sunday. Now they can get one or two once a month. [...] I remember going out near Hounslow or somewhere, to solicitors, and there was a very nice solicitor there, he was doing a lot of pro bono. He told me that he couldn't survive as a company of solicitors expecting to be paid for their migrant or refugee work, expecting to be paid the amount... They just couldn't function. Because of the delays in payment and also questioning the charges and all of that.

The Fees Order, which specifically targeted employment litigation as a way of reducing burdens on business, had similarly wide-ranging effects. It grouped employment claims in two categories, A and B, according to the median value of awards. Type A claims, with a median award of £600, attracted an issuing fee of £160 and a hearing fee of £230, whereas the cost of Type B claims, with a median award of £5016, rose to £250 to lodge a claim and £950 to reach hearing stage.¹⁰⁴ From one quarter to the next, the volume of claims received by ETs fell by 73% and did not recover while the fee was in force. Low-value cases were particularly affected by the drop, plausibly since claimants saw little incentive in spending a sizeable proportion of their expected award in judicial proceedings.¹⁰⁵ Apart from the direct cost of losing on an award, a qualitative study identified more long-term negative impacts of abandoned claims, such as a sense of disaffectedness about employment rights and lesser re-employment prospects after unfair dismissals.¹⁰⁶

Marissa Begonia summarises the double-bind created by unpaid wages and judicial fees:

How are they going to pay the solicitor? And this employment tribunal, it is not free. They have to pay a solicitor. They have to pay in court. There is no legal aid. So if they never received a salary, how could they possibly fight and claim their unpaid wages?

While the 2012 and 2013 laws made provision for legal aid and fee remissions in the case of very low earners, the thresholds and cumbersome procedures in practice left them out of reach of many who might have needed them.¹⁰⁷ Like welfare and residence conditionality, legal fees thus converted employment rights in an inaccessible luxury for precarious social categories such as young persons and migrants.

¹⁰³ AMNESTY INTERNATIONAL, 2016. *Cuts that hurt: The impact of legal aid cuts in England on access to justice*. London, 8-9, 20-23, available at: https://www.amnesty.org.uk/files/aiuk_legal_aid_report.pdf.

¹⁰⁴ MANGAN, D., 2013. Employment reforms to boost the economy. *Modern Law Review* 42(4), 409-421.

¹⁰⁵ ADAMS, A. and PRASSL, J. 2017. Vexatious claims: Challenging the case for employment tribunal fees. *Modern Law Review* 80(3), 412-442.

¹⁰⁶ ROSE, E. et al., 2015. *Employment Tribunal fees : Effect on clients of Citizens Advice Bureaux*. University of Bristol/University of Strathclyde, 3, available at: https://pureportal.strath.ac.uk/filesasset/62580733/Rose_et_al_2015_Employment_tribunal_fees_effect_on_clients_of_citizens.pdf.

¹⁰⁷ AMNESTY INTERNATIONAL, *Cuts that hurt*, op. cit., 23-28; MINISTRY OF JUSTICE, 2017. *Review of the introduction of fees in Employment Tribunals. Consultation on proposals for reform*, available at: https://consult.justice.gov.uk/digital-communications/review-of-fees-in-employment-tribunals/supporting_documents/Reviewofintroductionoffeesinemploymenttribunals.pdf.

4.4. SELECTIVE UNDERENFORCEMENT

Not all workers who bring a case against their employer and are awarded financial compensation automatically receive their money. In a survey conducted in 2013 with 1200 successful claimants in England, Wales and Scotland, only around half declared they had been paid in full, whereas 16% had been paid in part and another 35% had not been paid at all. Even more strikingly, 14% of claimants failed to fully recover their due despite taking enforcement action, a cumbersome procedure which consists in lodging a second complaint that enables state officials to coerce employers into paying the award. When asked about the reasons for non-payment, 37% of claimants cited employer insolvency, but half of these believed they were trading again. Other reasons included simple refusal to pay (29% of respondents), the impossibility of locating the employer (17%) and lack of capacity to pay (10%). Those who had given up enforcing their full award explained their decision by a lack of awareness of this opportunity (24%), a desire to avoid the hassle (19%), lack of money (15%) and time (12%), employer bankruptcy (11%) and scepticism about the effectiveness of the action (9%), among other factors.¹⁰⁸

These systemic failures reflect a broader gap in the enforcement of employment rights and the sense of impunity it generates among non-complying organisations, especially when the sums due are relatively small and can plausibly be attributed to technical issues, mistake of law or genuine oversight. Unlike insolvencies involving large amounts of money, such practices can often be sustained over a long period without alienating workers or attracting the attention of law enforcement agencies.¹⁰⁹ An activist who took part in the Occupy movement witnessed them when his Portuguese partner came to live with him in the UK:

When she arrived, she looked for work in the UK. Almost everybody was employing migrant workers below the minimum wage, five pounds an hour in a café or a restaurant. So she did that for a while, and in one place they actually asked her to work for less than five pounds an hour. And she left. I think there isn't much enforcement of the laws that actually exist regarding the minimum wage with migrants.

Breaches of employment regulations are also facilitated by the limited resources devoted to enforcement agencies, which come into plain view when compared to the lavish funding of worker-shackling Immigration Enforcement. In 2015-2016, when Home Office expenditure on immigration control (excluding the border force and visa services) rose to £463 million, HMRC relied on a meagre budget of £13.2 million to enforce the national minimum wage and national living wage across the UK. In 2016-2017, the GLAA supervised working conditions for close to half a million vulnerable workers with a budget of £4.8 million and 70 staff. The EAS enforced regulations on 18,000 agencies employing

¹⁰⁸ BEIS, 2013. *Payment of tribunal awards.*, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/253558/bis-13-1270-enforcement-of-tribunal-awards.pdf.

¹⁰⁹ CLARK, N., *Unpaid Britain*, op. cit., 43-45.

1.1 million workers with £500,000 and 11 inspectors.¹¹⁰ In 2017, the UK government had one labour inspector per 20,000 workers, which was half the ratio recommended by the ILO.¹¹¹

Rosa Crawford describes how the austerity agenda was used to delegitimise and further restrain labour market enforcement in the years following the financial crisis, in ways that exacerbated the exploitation of young parents, migrants and other vulnerable workers:

You had a government that was actually deregulating the labour market, making it easier for businesses to exploit workers. From about 2013 or 2014, they were cutting from things like the GLA, the minimum wage checks, things that ensure the law was followed. We always had the view that the law was too low in terms of the actual enforcement that was required as most of the labour market doesn't have these requirements for checks, or licenses or standards. It's only very insecure sectors which were associated with trafficked labour and things like agriculture and fisheries. But construction, care, cleaning, none of those has any licensing requirement, so it's very unlikely that bad employers are going to have any checks. And the government has been cutting the funding for the checks that are required. The whole agenda was one way, exploitation was obviously going to increase, and within that particularly the exploitation of migrant workers, young workers, women with caring commitments.

Since some enforcement functions in the area of health and safety fall on local authorities rather than state agencies, local government budget cuts also had negative repercussions on working conditions, as Diana Holland explains:

In 2012 I was the lead negotiator for the fuel tanker drivers, at a time when they reached a crisis in the industry. The drivers were saying 'the standards in this industry are being undermined to such a degree that we are fearing for community safety.' And one of the reasons why that was the case was that the inspections that used to be carried around environmental health, in local authorities, were no longer carried out the way they had been before because of cuts. And so when drivers were carrying out serious and dangerous operations, for instance loading fuel in a supermarket service station, they no longer had confidence that the environment was safe for them or for the general public. And this is all about cuts.

Underenforcement of labour standards stemming from cash-strapped governments not only worsens existing inequalities among different categories of workers but also tends to let the worst workplaces off the hook. As the Director of Labour Market Enforcement explains, for instance, inspectors will often focus their activities on employers who keep good financial records, which make it easier to identify any irregularities. They also tend to intervene in a reactive rather than proactive way, going to the

¹¹⁰ METCALF, D. 2017. *United Kingdom labour market enforcement strategy – Introductory report*, 20-27, available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/629872/l_abour-market-enforcement-strategy-introductory-report.pdf.

¹¹¹ Personal communication by David Metcalf at the Unpaid Britain report launch, Conway Hall, London, 30 November 2017.

places where complaints frequently arise.¹¹² This raises the question of what happens in less well-run businesses where low union representation makes it more difficult for workers to mobilise.

4.5. DECLINE OF UNION MEMBERSHIP

Together with courts, legal advisors and enforcement agencies, trade unions offer vital opportunities for workers to learn about and vindicate their rights, including by paying tribunal and solicitor fees for their members. They can also intervene in emergency situations to free workers from highly abusive relationships, as Marissa Begonia highlights:

We shelter [abused domestic workers], give them money for travelling. And then we bring clothes, because most of them have no clothes, only the clothes they're wearing, and they're even barefooted because they had to run away. When we rescue them we have to go into the house or just wait for them outside. Because they don't know what's going to happen. So we need to respond urgently to the needs of the individual. The service is ongoing so they know where to go, but of course finding a job is very hard for them. Most don't have a passport and they don't know when their visa is going to expire because their visa is attached in the passport.

In many of the most problematic workplaces, however, organising such interventions has been made increasingly difficult by the long-standing and ongoing decline of union membership. In 2016, around 6.2 million UK employees were affiliated to a union, a 4.2% decrease on 2015 and a 50% drop since the peak of 1979 (just before the restrictive legal changes introduced by the Thatcher administration). While the downward trend can be observed in most economic sectors, current rates of unionisation vary considerably, paradoxically reaching their lowest point where precarity is concentrated. In 2016, only 13.4% of private sector employees were affiliated to a union, compared to 52.7% for their public sector counterparts. While 38.4% of professionals were unionised, this figure dropped to 21.2% for other employees. Those working for large employers (over 50 staff) had a 15% advantage in union affiliation and 33% advantage in union presence in the organisation, which tends to yield indirect benefits for non-members due to standard conditions set out in collective agreements. Perhaps the most telling indicator of the negative correlation between precarity and unionisation was pay: about three times as many employees earning between £2000 and £4000 per month were affiliated (35.2% against 12.3% for those earning less than £1000). Unionisation rates in the accommodation and food sector, renowned for its exploitative conditions, stood at a measly 2.5%.¹¹³

Key informants differed widely in their views on the reasons for such paradoxes. An activist representing young mothers affected by poverty laid most of the blame on union officials, citing their unwillingness to engage with the most vulnerable:

¹¹² Personal communication by David Metcalf, 30 November 2017.

¹¹³ BEIS, 2017. *Trade union membership 2016: Statistical bulletin*, 23-24, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/616966/trade-union-membership-statistical-bulletin-2016-rev.pdf.

I would say that compared to other countries, our unions are not that radical. Our smaller unions are, but in terms of big unions, they've lost more membership than they've gained in the past 30 years, and the reason they have is because they're not organising, really, with people that are in the depths of poverty, or in the worst housing conditions. They organise kind of white-collar workers, upper working-class or the like. But they're not organising those people at the bottom, let's put it that way.

The representative of a think tank with considerable political influence in the field of poverty and social security also alluded to the role of ideology, but from a diametrically opposite perspective. He felt that unions had become too closely linked to political parties (namely Labour) and detached from their core mission of defending workers' legal rights:

I think there's something quite interesting around the union movement at the moment in that fewer and fewer people are joining unions. I think part of the problem is because actually they've lost their legal focus and become political. So actually if you're a member of a union, you're donating to a political party and a political ideology rather than donating to the legal support you need for employment. And I think that might well be driving some of the decline because people are like, 'Well I kind of - I want the union and the combined voice and the bargaining power and the legal support, but I don't necessarily want to support this given candidate or this party.' So I think that's quite an interesting tension they got there.

While acknowledging the internal rigidities that hampered unions' capacity to mobilise workers, Rosa Crawford highlighted that the structural shift away from secure, long-term employment relationships had made it much more difficult to sustain a sense of commitment to workplaces and professions:

There are big challenges, not just in the private sector but also in the public sector, where people on very insecure contracts don't feel like the union is going to be there in the long term, because they're not going to be in employment for the long term. Then there's also the fact that they're on very low pay, so they have difficulty paying union dues themselves. There's the nature of the work, since those on zero hour contracts are only in the workplace for a few hours each day or a few hours each week. How do you know that they're going to be there to organise and bring them to a meeting, or how do you even get them in the same place as the directly employed workers to discuss? [...] The challenge around insecure work is such a key challenge because unions were based around a structure that people joined on a fairly stable contract and being a union member made sense because you were going to be there in the long term, and you saw your place within the workplace. Among our union membership, we want people to see it's part of their identity and they need to be actively involved. But if people are like well, I'm just struggling, I'm not here in the long run, then it's going to be really difficult.

Compounding these difficulties, explains Diana Holland, is a legal framework that leaves union officials at the mercy of recalcitrant employers:

At the moment we have these circular arguments with employers where they say 'we will recognise you as a union if you can persuade enough people to join', but then they make

it very difficult, if not impossible, to even speak to the workers or to have access in a proper, open and fair environment. Or they just blatantly threaten you with legal attacks if you raise anything, if you try and talk to workers either on the employer's premises or outside, when they won't let you in so you are forced to be outside.

Caught in the cross-fire of ideological opposition, employment casualisation and legal restrictions, unions have become increasingly unable to bridge the gap between law in the books and law in practice for precarious workers. As the next section will show, however, they remain a central focus of the struggles being waged against economic injustice.

5. STRUGGLES FOR JUSTICE

Workers, and citizens more generally, rarely adopt an entirely passive attitude toward the individuals and structures that shape their living conditions. On the contrary, perceptions of injustice can act as powerful drivers of social change, spurring people to come together and oppose what they see as an affront to their dignity and rights. At the same time, differences in social position, experiences and goals may generate diverging conceptions of justice and of the adequate means to achieve it. Drawing on our interviews, we thus proceed to map out such perceptions with respect to economic relations and their governance during the last decade.

5.1. *UNDERSTANDINGS OF INJUSTICE*

While economic injustice is often captured through a few catch-all concepts such as 'precarity' or 'exploitation', participants' accounts provide a glimpse of the variety of forms it may take and the complex networks of relationships in which it is embedded. In the most typical cases, feelings of injustice arose out of a disconnection between the amount of work done and the financial compensation received. As the advocate for the rights of young mothers recalls, 'in the UK most people that live in poverty also work'. The fact that full-time work at the national minimum wage is not sufficient to lift people out of poverty, despite its rise and rebranding as a 'living wage' ('the national minimum wage is not a living wage, especially in London') was signalled as particularly problematic by Rosa Crawford. Several respondents mentioned the difficulty of covering travel costs to get to work, attend interviews or mobilise. Since they rarely received holiday pay, taking time off work was a risky luxury that could sometimes cost them their position.

For live-in domestic workers, the loss of their job also entailed loss of their home and, at least in the short term, their belongings. This illustrates the particular subordination generated by the overlapping of various forms of dependency in a single relationship. The link between precarious working and limited access to housing comes in other guises as well. Working without a formal contract and getting paid in cash can make it difficult to prove the existence of an employment relationship, which is often necessary to secure social housing or privately rented accommodation. After unsuccessfully asking her informal employer to confirm her position, one young mother we spoke to was instructed by her local council to move to a cheaper area far from her family and friends, an order

she was resisting at the time of writing. Informality further worsened her precarity by making it difficult for her to claim maternity pay.

Activists and trade unionists more often situated economic injustices at the structural level of laws and policies. Apart from the conjunctural setbacks couched in the language of austerity, they denounced the lesser minimum wage applicable to young workers and the multiplication of migration controls that provided a fertile ground for racial discrimination. Many complaints were directed at the administrative fees that transferred the cost of state regulations to those who are bound by them, not only in ETs but also to obtain professional licenses or renew visas. Margaret Healy framed such fees as part of a system that ‘works for those that have’ under the Conservative government: ‘The hypocrisy and the crookedness of people in power, and then how the small person who hasn’t very much doesn’t get away with anything, even parking fines’. For the young mother activist, economic injustice flowed less from the particular party in power than from the capitalist system itself, which all parties in Parliament aimed to ameliorate rather than dismantle.

The financial crisis per se did not figure prominently in respondents’ preoccupations except as a pretext for cutting back on public services. The Occupy activist described the crash as the culmination of long-standing problems in the financial system and the bail out of banks as the perfect example of the privileged treatment offered to the rich, especially when contrasted with the cuts in public services intended to equalise society. For young mothers, pregnancy and the birth of their child was a much more significant trigger of economic challenges than the 2008 crisis. Elina illustrated the economic impact of parenthood by narrating how she suddenly had to spend most of her budget on food and think twice about the necessity of all her purchases. For domestic workers the turning point was the change in their residence status from temporary to permanent. Several respondents also set current problems in an international and historical context, for instance by highlighting the need for a global governance of the financial system or the persisting heritage of Thatcher-era deregulation.

While most respondents were highly critical of the current economic situation, the think tank representative submitted that perceptions of inequality had become inflated by media reports on executive bonuses and narrow conceptualisations of poverty that focused on material deprivation at the expense of other dimensions such as family breakdown, inadequate training or drug addiction. From his point of view, the policy problem was not so much austerity or precarity but the behavioural patterns that posed obstacles to individuals’ incorporation into the labour market. This contrasted with the perspective of young mothers, who saw separation from family members and lack of access to training as a result of poverty. However, there were also interesting parallels in their criticism of undeserving welfare recipients ‘sitting on their backside watching EastEnders drinking lager’, without any interest in looking for jobs or improving their life.

What is clear from our interviews with young mothers and domestic workers is that the sense of economic injustice (justice as distribution) cannot be disentangled from feelings of disrespect (justice as recognition) and domination (justice as representation). A domestic worker described how prospective employers drove past her when she came to meet them with her headscarf, and her irritation at being carelessly rejected after travelling long distances. Similarly, a young mother who worked as a teacher was frustrated by her employer’s limited appreciation of her contribution:

I've been working there for two years and every time we have a meeting, I have to point out things that need to be done. To be honest, even if I didn't go into maternity leave, I was going to leave that place because when you don't feel appreciated in the place that you're working at, your views are not valued in that place... Whatever input you bring, no one takes it into account.

As this quote shows, misrecognition is often bound up with limited power to make decisions, an issue that was directly addressed by the Occupy activist:

In the further education college that I was part of, we always felt that decisions were coming from the top and we had little say in how our work was organised. Not just issues such as pay, but how we organised our department, that kind of thing. And I felt it was demotivating to always feel that the active decisions, you know, the consequences of decisions, you don't have a say in making them.

People living precarious lives also found their personal autonomy curtailed by power imbalances that allowed not only employers but also job centre officials to mistreat them with impunity. Verbal abuse or harassment was mentioned as a key manifestation of this:

At the job centre, you can feel - I think when I go inside the job centre and I'm on benefits I feel intimidated. I don't feel like I'm treated as a genuine human being. They make you feel shame for things that you don't have control in your life (young mother of two).

Invasion of privacy was a preoccupation for Elina:

When I go to the job centre, people can hear all your information, your personal details. Where's data protection? [...] I went to the manager and I said 'this isn't right, this is against human rights. You can't be sitting there and somebody's listening, what is this, my details and everything. I don't feel comfortable discussing my life in front of strangers.' And the manager asked 'would you like to come in some other place to speak to me.' And I said 'this ought to be normal practice, not exclusion out of these rules', you know? Lots of people don't know their rights and everything, so they never ask for this. I know my rights, that's why I asked for it. Why do I have to sit like this? I can't discuss my things in front of this, what do they call it, work coach or something. I don't have to discuss this in front of a complete stranger, why?

Another constraint on individual autonomy was the impossibility to control one's use of time due to the imposition of appointments or unpredictable working hours, which made it difficult to plan childcare or other activities.

5.2. IDEALS OF DISTRIBUTIVE JUSTICE

When asked about their vision of an economically just society, many respondents referred to the centrality of access to decent work, but they disagreed on what it entailed. Affordable, high-quality education and training was considered a key priority, both as a way of increasing overall productivity

(a point emphasised by the think tank representative) and enabling workers to choose a profession that fitted their skills and interests (as highlighted particularly by young mothers). In this sense, a common trope was the need to reform an education system perceived as old-fashioned and unresponsive to the labour market:

I think there's quite a wide consensus that our skills base needs to change. I think that's fairly cross-party and I suspect that will happen. In terms of opposition, a lot of it will probably come from schools themselves, in that schools are very wedded to the way they do things. They're more academically focused, and some of what needs to change is in academia. [...] The small charity I was at, the guy that runs it was saying actually, some of these guys should probably have started work at 14. They would have got a lot more from a job than they ever got from school. They left with no qualifications anyway, so it was basically irrelevant. [...] Maybe we should think about vocational skills. We've run 'round tables' for most of our projects, and one of the things that came up a couple of times, we had some big employers who were sitting around and they were saying 'I don't need someone with five diplomas. I need someone who comes in on time, shakes my hand, does a good day's work and goes home.' And they're not being taught that at school (think tank representative).

Another point of agreement among respondents was the effective enforcement of statutory rights, in particular the minimum wage, on the basis that 'work must always pay'. This being said, the think tank representative had a positive view on the initiatives taken around modern slavery ('rather than getting traffickers on technicalities, let's make modern slavery a named crime rather than low wages or something like that and getting them through a side route'), which Rosa Crawford characterised as 'patronising', 'completely uninformed' and an attempt to mask the general undercutting of labour rights. Domestic workers put greater faith in free access to tribunals and long-term residency. Margaret Healy also insisted that they should be recognised as workers and that all workers should be covered by the same laws, echoing calls by trade unionists to close the legal loopholes created by the variety of employment statuses:

There should be rights for all workers, not certain rights that apply just for employees but not for workers, and certain rights that only apply after a period of time. There should be rights for everybody from day one, and the same rights regardless of employment status so that nobody can then be treated unjustly and unfairly. We have too many experiences where the way to get round the rights is to change the status of the worker and make them more insecure. And that is bad for them but it also undermines standards for everybody else. [...] It should be made unlawful to employ people on zero hours contracts, people should have guaranteed hours and pay (Diana Holland).

Underlying these claims is that 'worker' is not only a contested legal status that needs to be recognised because it has important rights attached, but also a social status that brings respect. In other words, acknowledging someone as a worker is about recognition as well as redistribution.

Decent pay in the public sector was also defended on utilitarian grounds as a way of increasing aggregate demand and stimulating growth: 'When you have a process of austerity, people are paid

less, there is less demand in the economy and there is an overall economic decline. It affects the private sector as well, because who are you going to sell your goods to?' (Rosa Crawford). This emphasis on demand shifts the analysis of labour market processes from the characteristics of individual workers, which are central to the discourse of skills, to the relationship between workers and employers and their relative influence on the determination of working conditions. According to the Occupy activist, labour and corporate law should allow for greater levels of 'workplace democracy', whereby working conditions would be set in a collaborative manner: 'Everybody who works in an organisation and contributes toward its success, whether it is public or private, should have a say in the running of the organisation, including issues like pay, how the profits are shared and so on.' Interestingly, both the Occupy activist and the think tank representative raised the risk of tokenistic representation of workers on company boards, but the former viewed this risk as a reason to increase their numbers whereas the latter rejected such arrangements altogether. For models of workplace or industrial democracy, respondents looked at cooperatives and German laws which made collective agreements legally binding across whole economic sectors. For the Occupy activist, workplace democracy also encompassed the protection of union activities, for instance by protecting the anonymity of members or obliging employers to include a meeting with union officials as part of employees' induction.

Respondents pointed out that changes should not only take place at the level of 'hard' laws but also 'soft' public norms and discourses. Margaret Healy advocated valuing not only the contribution of domestic workers but cleaners and carers in general, as well as all workers that tended to be stigmatised by characterising them as low skilled and contrasting them with high-skilled professionals: 'If you haven't got the cleaners in the hospital, then the surgeons can't do their work.' At the same time, she stressed that economic rights and decent conditions were essential prerequisites for such tasks to be valued, in part because it motivates workers to take them seriously. More broadly, she added, there should be a recognition that much wealth was passed down from generation to generation after being obtained unjustly through exploitation and violence in the UK and abroad. In a similar vein, the think tank representative put forward cultural change as a way of accommodating female breadwinners ('you are dealing with millennia of culture of male breadwinner and female non-breadwinner') and stimulating critical attitudes toward large executive bonuses. He also viewed social purpose statements as promising drivers of corporate change.

In the eyes of the Occupy activist, cultural change driven by media and government discourses would offer part of the solution to trade union decline:

It's partly the fault of the media. There's been a very hostile atmosphere for unions, for people going on strike. It's always negative coverage in the press, from politicians. When I was working, the Labour government actually refused to support our strikes in education. It was the Milliband government at the time. So I think it's the whole cultural, social atmosphere that needs to change for people to feel more comfortable when joining a union. To feel that it's a strong right that they have and not just something that some activists, you know, some sort of militant people do.

Negative attitudes toward migrant workers was another issue that was linked to cultural discourses, and the education system was described as a source of racism but also a possible remedy to it, especially if migration was included in national history courses (Elina).

Unconditional social security in the form of basic income emerged as controversial. The think tank policy advisor rejected it on work ethic grounds:

One of the worries of this universal basic income is that it strips away everything else about work. It says that work is about money. As long as we've all got enough money, it doesn't matter so much. Actually, if you've ever lost your job and not had a reason to get up in the morning, you realise that work is so much more than money, it's about dignity and identity and purpose. When you meet people who have never had a job, all they want is the opportunity to get a job. And it's not that they want money; they kind of want everything else as well. So I feel like it just loses the point of work and the sort of philosophical reasons why it's a good thing for humans to work.

Conditionality could thus be defended as a way of 'jolting' people in the right direction, 'to realise that they can do something'. Without rejecting the work ethic per se, the Occupy activist had a sharply different view on its relationship with paid employment, identity and dignity:

I tend to think that people want to give a meaning to their life through work, whatever form that would take. It might be unpaid work, it might be paid work... Universal basic income could give some people the ability to do unpaid work, volunteering, charitable work. There may be some people who would just lie around and not do much, but I think that is a small price to pay for making sure that everybody has enough to live in dignity. On the whole I think most people want to work, want to contribute, want to be part of society, want to be well thought of by other people.

This participant also cited the elimination of the stigma associated to benefits and administrative savings as important arguments in support of basic income. Diana Holland manifested interest in the idea but expressed some concerns about its practical implementation:

We're very open to looking at how that could work in an ideal world, but I think at this time with this government we are extremely concerned that universal basic income may well mean that we lose out financially and that it could only be a divisive issue. There are also specific issues around how to deal with proper rights for women to have equality at work. If there was more pressure for women, for example, to be with their family rather than to play a part in the workforce at the same time. Rather than an opportunity for families together to decide how they'd rather look after children and combine working and caring, the pressure may be on women who aren't in the paid workforce. And I think that would be sort of turning the clock back, which would be extremely damaging. So there's an opportunity for something better, but a lot of safeguards are needed to stop it from being a divisive move.

While this position emphasised the opportunities for mothers to participate in the labour market, ideals of childcare took other forms as well. For the young mothers who had made the decision to stay at home with their children, what mattered was the right not to be in employment and resort to commodified childcare:

Honestly, if it weren't for the pressure of work I think no one would send their kids at a very early age. I used to work in a childcare setting and I saw babies literally three

months, four months old! I would not do that. I need to work, but I would not do that and compromise my relationship with my son and send him early to a nursery. I see that time from zero to just before school as the most important time that children spend with their parents. You shape them, you shape their relationship at that early stage, so if you're going to send them early to nursery or childcare, you're losing a lot of that quality time. I'm not against childcare, they're doing a really good job, especially when you have parents who are working. And I said to you, I don't mind sending my children when I find the right job. I will send my baby then, but sending them from an early age is – that's what I think is a disadvantage. You lose quality time with them, and the bonding with them.

In this account, work outside the home ceases to be a source of identity and dignity and rather becomes a threat for the mother, her child and the emotions that bind them.

5.3. MODES OF MOBILISATION

In one way or another, all interview participants had engaged in strategic action to tackle economic injustice and realise ideals of justice. The specific steps taken reflected the goals they pursued, the resources they had at their disposal and the broader conjuncture that shaped opportunity structures in specific times and places. Perhaps one of the most common and interesting feature was the complex relationship they maintained with the law. On the one hand, most participants had learned, invoked and even directly availed themselves of their legal rights in the course of their work or their activism, and willingly recognised their positive contribution to the protection of workers. On the other hand, a variety of experiences and observations had convinced them that the legal framework was insufficient to achieve justice. The young mother of two, for instance, had reached this conclusion after seeking assistance from a solicitor to resist an eviction notice issued by her local council and being told 'exactly the same thing that was said by the council' namely that the only way to avoid eviction was to find a job: 'lawyers, what they do, they go by the Acts and laws that they have'. Rosa Crawford, despite acknowledging that 'the law is incredibly important because that's the framework we operate in', went on to observe that 'there's the legal rights, and then there's the unions, so it's what can we negotiate that's actually a decent work experience and working conditions.' Legal rights were a bare minimum that needed to be effectively enforced, but they did not amount to decent working conditions.

In some cases, the law was felt to be an impediment to mobilisation and solidarity. The Occupy activist described being arrested several times for participating in protests and being threatened with dismissal from his teaching position as a result. Margaret Healy expressed her frustration at being unable to provide assistance to a migrant domestic worker who was mistakenly arrested for working in a factory without authorisation:

They put her into a van and they brought her to the detention centre. And other domestic workers rang me. One of them said that she was in the detention centre, she was a genuine domestic worker, this and that. So I said 'we'll ring VMUK, and they'll ring the detention centre and find out why she's there and they'll get her a solicitor.' Which would be the normal thing to do. And she said 'they can't, I rang VMUK and they

can't ring.' And I said 'that's not possible, I mean, if they can't phone, you know, anybody can...' So she said she'd try again, so she rang and the staff person said 'no, she can't.' So I rang VMUK and I said you have to ring this person. I was on the management board at the time. She said 'oh, I can't.' I said 'why can't you', 'because under the immigration training you're not allowed to do that.' I said 'that's not possible', she said 'I'll ring my supervisor and get back to you.' She rang her supervisor and called me back within a couple of minutes and she said, 'it was true, I can't make that phone call.'

According to this respondent, regulations can constrain charities and prevent them from getting at the roots of problems, particularly when those roots are found in the law itself: 'you have to work with the system. You become a charity, you do good work, but are you effecting change? So for me, if the root cause of the problem isn't challenged and changed, then where's the point?'

Despite the constraints imposed by such regulations, activists found many opportunities to openly challenge laws and policies. Most fell within the scope of legally protected political freedoms, such as denouncing their impact on specific individuals, conducting research and publishing reports, distributing tracts, organising assemblies, manifesting near government buildings and holding representatives to account for their electoral promises. The mother of three children explains how publicly shaming the local authority had saved her from eviction:

They [a support group] posted my story on their Facebook, and the next day they called me from the Council, they said they would withdraw my offer so I wouldn't have to leave anymore. I told them as well, they're going to come with me to the meeting. They said don't come to the meeting anymore. In the Council they were very very nice to me. Usually they're not like that, but they were so nice to me.

Advocates for the rights of young mothers and migrant domestic workers both recognised the importance of personal experience as a source of practical knowledge, emotional involvement and persuasiveness, and made conscious efforts to mobilise people who had suffered as a result of unjust laws and policies. Marissa Begonia thus explains her attempts to mobilise those who have become undocumented as a result of visa restrictions:

It is important that we organise them, to give them some confidence, just keep going. And one day we'll win our campaign and eventually they can have proper documents again. Because that's what they need. So you organise them, you educate them, and that gives them hope. And they totally understand that they need to participate actively. I could tell them 'actually what I'm doing is not for me, it's all for you. But there are times when it has to be you, not always me.' There are times when I really need the voice, I take them with me wherever I go, like to lobby the Home Office, I have them with me. And they do the public speaking. I put them in front.

The fact that activists' target groups are in such precarious economic situations means that they need to strike a delicate balance between responding to the needs of individuals, which risks turning the organisation into a service provider, and campaigning for structural change, which may not figure among members' immediate priorities. Other challenges faced by activists in a precarious situation included paying the cost of travelling, protecting one's own privacy and family life while providing

shelter to abused workers, finding time in spite of work and family commitments, overcoming employer resistance and bridging divisions of race, migration status and sex, among others.

Both large trade unions interviewed had long-standing structures in place to represent women, BAME, disabled and other discriminated workers, which had allowed their specific issues to gain more visibility in union's overall policy. They had also taken steps to address sources of precarity that affected their members indirectly by increasing the supply of vulnerable workers, such as welfare benefit cuts or the large-scale recourse to zero hours contracts. Rosa Crawford gives the example of a successful campaign against the latter at Sports Direct, where union officials managed to access and mobilise workers by collaborating with their English language tutors:

These classes were formed for discussion about the bad workplace practice. And it was there that the tutor said this is something UNITE is doing, we are challenging these zero hours contracts, but you need to join us, get on board. And often they would say you don't need to join us, just support the campaign so that people know about it. It wasn't a problem if they couldn't pay the dues. [...] And that was very successful. It led to Sports Direct ending their compulsory zero hours contracts and it eliminated lots of problems with Sports Direct. It was a very successful community-based campaign that actually did get very precarious workers into the union and active and not afraid.

English language education, which can be understood as an investment in workers' skills and thus hardly objectionable from an employer's point of view, emerged as an avenue or even a cover for migrant domestic workers to take part in union activities. In a telling example, one of them confessed having concealed her participation in a large conference on workers' rights by presenting it to her employer as a reward for doing well in union-provided English classes. This points to a broader strategy for unions and other activists to highlight how economic justice can also be in the interests of employers or the larger society, which may be particularly effective when negotiating collective agreements or lobbying political representatives.

5.4. MUTUAL PERCEPTIONS AND ENGAGEMENT AMONG STAKEHOLDERS

Far from pursuing their goals in isolation from each other, the stakeholders interviewed showed a keen awareness of their wider social and institutional environment as well as the political opportunities it opened or foreclosed. To make sense of the complex mix of affinities, tactical alliances and hostilities that characterised their political struggles is to situate them in the hierarchy of political power. More particularly, actors' degree of independence from institutions can be expected to shape their propensity to pursue radical ideals of justice or settle for compromises and pragmatic alternatives.

At the top of the pyramid, the think tank advisor described his mission as gathering the best ideas coming from the 'front line', made up of some 400 charities scattered across the UK, and translating them into recommendations for political representatives of all parties. In practice, however, he found it easier to work with the Conservative government than with the Labour opposition: 'we're supposed to be non-party political, but I think we really are struggling with the Labour party at the moment because their answer to everything is to throw more money at it. That's

just not the answer.' He also criticised charities for their dependency on public funding, which he perceived as undermining their creativity and effectiveness in times of scarcity:

If you go to a charity sector meeting now, there is absolutely no hope. There is absolutely no vision. They are not thinking about how to create things. Actually, our chief executive went to a meeting at the end of last year and slightly challenged the room: 'the charitable sector is where the best ideas come from. It's where the creativity should be. It's the front line. You're working with people, and yet, you're all telling me it's dreadful. You won't do anything, and it just feels like you've lost your vision.' And he almost got booted off the stage. And I do get that. They have seen big funding cuts. But equally I think, the reason it's hurt them so badly is they've slightly lost their sense of vision and excitement and doing innovative stuff.

Trade unions and affiliated domestic workers, in contrast, combined a highly critical attitude toward the Conservative government's agenda of austerity and immigration control with hope in Labour's capacity and willingness to reverse it under Jeremy Corbyn: 'We have this promise from the Labour Party that when they are in power they're going to help us', says a migrant domestic worker. 'I think he's genuine', adds Margaret Healy. Marissa Begonia, who shares her optimism, nonetheless expects the struggle to continue after the eventual formation of a Labour government:

We are already in the manifesto of the Labour Party, so... There is already a commitment to restore the rights of migrant domestic workers. But of course, let's say they get into the government. It's not going to happen unless we lobby them again and again. Putting that in the manifesto of Labour, that's a big step. But we don't know how long it will take for Labour to be back in the government, so while we have this kind of government we still have to keep going.

The most significant long-term alliance reported by participants was the one that bound migrant domestic worker activists and trade unions, which had taken shape some three decades earlier and solidified through multiple forms of logistical and political cooperation. When invited to explain the persistence of this relationship, activists emphasised the personal commitment of strategically placed officials of the union as well as the reciprocity that had enabled the building of trust and mutual respect.

While migrant domestic workers had forged a strong partnership with unions and the left-wing political establishment, young mothers and their supporters were much more critical of both, which they classified together with Conservatives among the supporters of capitalism (see above). This can partly be understood as a consequence of the fact that the policies they opposed, mainly linked to social housing evictions, had been implemented by Labour-run councils. However, their position at the margin of the political spectrum had left them with little option but to rely on the support of informal campaigns and individual citizens, as an activist explains:

The hot thing to talk about in our country is the Labour Party. And there is a discussion where people are saying, 'oh, Jeremy Corbyn's got good intentions. He wants to build houses. He understands.' And yet he's in the Labour Party. And what we see is the most vicious housing policy, and it's coming from Labour councils. That's the same in different bits of the country. So I suppose there's a difference in thought about the

Labour Party - about if you should do everything you can to get Labour elected, and then hope for the best after that, and see if they fulfil some promises to do a little bit here and a little bit there. Or you say actually, the Labour Party is not going solve our problems, and the only way we're going to win is by fighting on the street. And so it's siding with the anti-austerity campaigns, and the housing campaigns, and actually making sure, in one sense, that you're not tied to any of these organisations, because they would put conditions on their support. If you ask the Labour Party to support the campaign they would say stop criticising the local Labour Party, stop criticising members of the Labour Party that are having an effect on the local community. So I think actually, for me, that's the battle. The battle is to show people that actually housing and poverty is not going to be solved by the Labour Party. It's going to be solved by people getting active, and sounding their voice on the street, and demanding change. And of course, if you're talking about why poverty, etc., we're talking about capitalism. And so that's tying capitalism to housing, and if we can say that capitalism can't provide housing, and what we have in parliamentary politics is all capitalist parties, they are not going to provide housing. So it's a bigger type of question.

In the discourse of Elina, this critical stance toward the ideology of institutional stakeholders transmuted into a much broader skepticism toward the possibility of rescuing transformative politics from the scourge of personal ambitions, which did not spare grassroots activists:

People, you know, they're dividing themselves. I want to be in charge! No, I want to be in charge! And their ambition sometimes becomes too much. Even these politicians, they have their ambitions, but they know how to get together and do things. But activists it's like, ambitions are too much! They don't know how to get together, and even through this ambition, do things! One is pulling the blanket on one side, the next one is pulling the blanket on the other side, and at the end of the day that's why everything falls! I was thinking for myself, there's so many activists there, people going to demonstrations and everything, so why is nothing changing? Because they can't get together. [...] So it's kind of sad, because politicians are bad and everything, they do nothing. But activists they're doing in the wrong way sometimes.

From a general satisfaction with the government in power to a distrust of all politically engaged citizens, these discourses highlight the many divisions which may hamper the pursuit of common ideals in matters of economic justice, but also the coalitions that can sometimes be formed around shared visions and lasting friendships.

5.5. EXPECTATIONS FOR BREXIT

Beyond the contested prospect of a more worker-friendly Labour government, respondents' expectations for the immediate future were dominated by Brexit, which was overwhelmingly viewed as a symptom and a driver of economic injustice. On the side of symptoms, respondents were nearly unanimous in blaming anxiety about immigration, fuelled by government and media rhetoric, for the Leave vote. In turn, this anxiety was seen as stemming from perceptions of economic competition in a context of decreasing protection for workers:

The Brexit results, actually, there is a complete correlation between income and the vote to leave. So for every sort of thousand pounds less you earn, you were 1% more likely to vote leave. And the areas where people voted to leave were often low-skilled work areas, quite poor areas, low incomes. And there is a slight feeling there that high immigration leads to an oversupply of labour, and whether or not they're more employed or less employed, there is a perception that it's helping to drive down wages. I think it's more complicated than that. I think there is a big question of employers and the amount of their investment and things like that. But there is something at play there that I think the general public feels quite - I think that's why they voted Brexit, basically. It feels like an oversupply of labour is suppressing wages, and I don't know if they would ever quite express it like that but it is so stark, the correlation between the two, that it feels quite important (think tank advisor).

There was also broad agreement on the exacerbation of existing social divisions during the campaign and its immediate aftermath, not only in relation to migration status but also racial minorities and other stigmatised social categories:

There was increased hatred toward all these issues following the EU referendum, hate crimes on grounds of race, against people from particular countries and EU origin, and also in terms of sexual orientation and gender identity. There was also an increase in abuse and violence faced by women. [...] I don't see all of this as being a direct result of the EU referendum, but I still think that it's played a huge part in unleashing some of what was slightly contained before. And we've got an enormous task now, not just to make sure that we're negotiating and representing workers in terms of Brexit negotiations and all the other things that we normally deal with but also to rebuild, within communities and within workplaces, and deal with some of the divides that have been opened up by Brexit (Diana Holland).

Respondents identified a number of challenges that lied in the upcoming phase of post-Brexit reconstruction. According to the think tank advisor, negotiations with the EU were likely to monopolise the political and legislative agenda to such an extent that all other issues, including those related to economic justice, would take a back seat. A particular worry for the Occupy activist was that the employment protections conferred by EU regulations would be lost, a concern that was shared by domestic worker activists and trade unionists. Working time regulations were perceived as especially vulnerable to Brexit, but Diana Holland criticised regulation sceptics' vision of the UK as 'a bargain basement place which can undercut other countries within Europe.' Rosa Crawford also signalled the wide-ranging potential repercussions of EU workers' loss of rights:

At the TUC, we've been saying EU citizens' rights should have been out of the negotiations. It should have been something that the government said, 'we guarantee those rights. That's not part of the discussion. You are here, that's it, you have these rights.' Rather than a negotiation tactic. So we're saying the whole EU negotiations framework is one that's making EU citizens feel less secure in the country. Many members of the unions are coming and reporting that they are facing additional abuse, employers are using this as a means to exploit them and saying 'you're not going to be here long so you can't complain, or I'll go to the authorities.' Just racist abuse basically.

Feeling encouraged to do that because of the whole government's approach. So it's been really important for us to do a lot of lobbying and campaigning, and that's where we've been working a lot with civil society groups, also employer groups. Some statements we've got out with employers, but mostly, it's been a little bit more difficult. So the context around Brexit is one that's making all EU, well all migrants, but particularly EU migrants, in terms of their legal status, less secure.

Having witnessed from up close the employment consequences of immigration controls, Marissa Begonia was adamant that they should not be imposed on EU citizens, many of whom worked in UK households as unpaid au pairs:

Brexit will make it worse, because we are unsure really, everything is in limbo. [...] These au pairs, they work as nanny and housekeeper as well. We know they are being abused, because they are not sent to school to study but working around the clock. However I think the difference is that they are not on the visa system. [...] After Brexit, are we all going to be the same? Are they going to issue visas for EU nationals, because of Brexit? [...] The Home Office now is looking at the new immigration rules for EU workers. I was part of that meeting and my stance was 'you have already a very bad example of having this tied visa system for domestic workers. Don't do this to EU workers.'

Domestic workers who sent part of their wages back to their countries of origin faced the prospect of relative impoverishment as a result of the Brexit-driven fall in the value of the pound. On the other hand, the think tank advisor observed that this might improve the UK's international competitiveness, boosting exports and growth. On an optimistic note that contrasted with the general mood, he also expected tighter immigration controls to reduce the supply of labour and increase local workers' bargaining power, pay and other conditions.

6. CONCLUSION

The decade of austerity and increasing casualisation of employment relationships that has followed the 2008 crisis has brought to daylight deep tensions between economic justice and the ideology of the worker citizen, which presents work as a route out of poverty and a source of positive identification. While all respondents expressed some support for the worker citizen, for instance by describing union membership as an identity, highlighting the non-commodifiable dimension of the relationship between employer and employee, characterising work as a source of meaning and condemning the passivity of some welfare recipients, their experiences and views also problematised the exclusion of many people from the material and symbolic rewards of citizenship.

At the most general level, the ideal of the worker citizen has limited the opportunities of those working on non-standard contracts characterised by low wages, short termism and unpredictability of hours. Employers used the crisis and the language of flexibility to justify the multiplication of such arrangements, but trade unions portrayed them as an abuse of legal loopholes and a symptom of growing inequalities in bargaining power between employers and workers. They also rejected the association between flexibility and insecurity, arguing that the benefits of the former could be retained

without renouncing to decent overall working conditions. Insecure contracts have made it increasingly difficult for workers to plan their personal lives, including by jeopardising access to housing and straining family relationships. In a self-reinforcing cycle, it has made it more difficult for litigants to enforce their rights in courts, for unions to access and mobilise new members and for activists to maintain political struggles. Minimum wage increases and enforcement, stronger legal underpinnings for trade unions to bargain collectively, participate in corporate governance and take industrial action, state-funded vocational training and public awareness campaigns were mentioned as potential remedies for precarity, but Brexit was seen a Trojan horse for deregulation and further insecurity. More radical measures such as unconditional basic income, which directly conflicted with worker citizen ideals, appeared much more controversial.

For young mothers, post-crisis austerity offered a stark reminder that family-provided childcare was not considered as genuine work, worthy of legal protection and financial compensation. Cuts in welfare benefits disproportionately affected single parents, who were expected to take up paid employment ever more rapidly after the birth of their children. On the ground, this expectation was embodied by job centre officials whose exhortations to undertake work-related activities, backed by threats of benefit sanctions, were experienced as a time-consuming burden, a manifestation of disrespect and a violation of privacy. Those who attempted to escape the paternalistic coercion of the social security system through flexible employment instead found that insecure jobs that did not match their professional aspirations (in other words, that provided neither a route out of poverty nor a positive identity) were the best alternative on offer. The young mothers interviewed responded by resisting the commodification of their basic means of subsistence, such as housing, and by putting forward philosophies of care that valued the long-term bonds between children, their parents and other family members. For some, this could only be achieved by ending capitalism itself, and therefore by creating grassroots coalitions that would challenge this system's monopoly on parliamentary representation.

Like young mothers and other precarious social categories, migrant domestic workers struggled to be socially and legally recognised as workers, but this was mainly due to their radical exclusion from the status of citizen. Targeted by the anti-immigration rhetoric of austerity and Brexit, their renewable one-year visas were replaced with non-renewable ones that expired after six months, transforming their legal rights in hardly understandable and nearly unenforceable formalities. Drawing on their first-hand knowledge of the abuses committed behind closed doors against employees whose access to housing and the UK territory is subordinated to employers' goodwill, settled domestic workers and their supporters have allied with trade unions and the Labour opposition to regain their former rights to long-term residency. With current parliamentary discussions turning around the extension of short-term visas to EU citizens after Brexit, however, they face an uphill struggle. In institutional circles, the extreme exploitation of migrant workers has mainly been addressed through the lens of trafficking and modern slavery, leading to increased resources devoted to the identification and criminal prosecution of abusive employers. While opening some legal avenues for migrant domestic workers to extend their stay by denouncing the latter, this agenda has also perpetuated stereotypical representations of migrants as immoral others or helpless victims and provided opportunities for stricter immigration controls.

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