

Management by exception? The Taylor Review and workforce management

Good Work: The Taylor Review of Modern Working Practices, reviewed by Sian Moore and Kirsty Newsome

Good Work: The Taylor Review of Modern Working Practices champions work flexibility defined in terms of worker preference or choice (referred to as 'the British way'). Emphasis throughout the report is placed upon the necessity for the UK to 'encourage flexible work', highlighting the virtues for both employers and employees. Indeed, flexible working, the review claims, has a positive impact on productivity, worker retention and the overall quality of work. In this commentary, we draw on research evidence from workers on non-standard contracts to question these claims. We interrogate the notion of worker preference for flexible work (or non-standard contracts) by focusing on two key areas highlighted in the report, autonomy over working time and work–life balance. In doing so, we expose the way that the Taylor Review's narrative and aspirations for good work ultimately vindicates labour market segregation and fails to fully comprehend the power dynamics at play in the contemporary workplace. Our evidence reflects how structural processes constrain labour market participation. With a view to the focus of this journal, we also explore the role of technology in extending the management prerogative over workers on non-standard contracts, thereby regulating fragmented, episodic and desynchronised work. In particular, we consider the use of workforce management software (WFM), focusing upon two sectors with large numbers of workers on non-standard contracts: electronic monitoring in homecare and GPS technology and algorithms in logistics and parcel delivery.

According to the Taylor Review, it is particular groups within the labour market, 'carers, women, those with disabilities and older workers' who choose flexibility as the basis of their labour market participation 'enabling them to balance work around other priorities' (2017: 15). The Review promotes job design, but the inclusion of women as a homogenous and undifferentiated category flies in the face of decades of gender equality legislation and organisational practice that has aimed to facilitate work–life balance for both female and male workers. The inclusion of disabled workers similarly shifts the onus from employers to make reasonable adjustments onto the individual worker to adapt to organisational demands

as a 'trade-off' for labour market participation. The celebration of worker preference means that the Taylor Review can evade the possibility of discrimination at the levels of the organisation and labour market (beyond a discussion of organisational discrimination on the basis of maternity).

The Taylor Review asserts that 'people look for work that suits their individual lifestyles and preferences' (2017: 28) which casts flexible work as preference. Our research refutes the notion of 'choice' and provides evidence of the pressures experienced at work from one-sided flexibility and simultaneously at home with escalating hardship resulting from low-paid, episodic and unpredictable work. Research for the Low Pay Commission based on interviews with 36 workers in the retail, social care, delivery, hotels, sports and leisure, and security sectors in London, South Yorkshire and the South West found little evidence that flexibility provides autonomy or work-life balance (Moore *et al.*, 2017). Such work is characterised by non-standard contracts—zero hours (ZHCs), minimum (guaranteed) hours (MHCs) and bogus 'self-employment'. Our research reveals that in the face of unbridled employer power, workers do not have control over their working time. ZHCs offered flexibility for some workers, including students, those with other jobs or those who are looking to supplement their pensions. However, worker case studies revealed uncertainty about contractual status amongst those on ZHCs and MHCs with variability in hours leading to confusion over permanence. Contracted hours bore limited relationship with the actual hours worked by the case study workers. Those on MHCs in retail were expected to state their wider availability and to 'flex-up' as required. Workers on both MHCs and ZHCs were assumed to be available to the employer and a number of workers felt that they were continually on call. Under ZHCs and MHCs the scheduling of hours and days of work varied from week to week with shifts arranged only days in advance and changed at short notice. On-demand working meant that workers could be sent home if there was insufficient work, but also may work extra hours or back-to-back shifts to cover for staff shortages. It is this instability that workers found problematic. Some of the case study workers wanted more hours and others did not want to take on the extra hours if it meant that they could be called upon to work at short notice. As the Taylor Review acknowledges, for workers on ZHCs the capacity to be 'dismissed' through the withdrawal of hours engendered insecurity. Workers expressed fears about rejecting work and had a clear understanding of their dependence on the employer. In homecare and

hotels, workers reported waiting around between visits or shifts engendering 'episodic work'. Amongst both ZHC and MHC workers there was a desire for permanence and more predictable hours. In retail, MHCs appeared to restrict employment rights to contracted hours only, rather than total hours worked.

The Taylor Review is committed to 'allowing workers more autonomy over the content and pace of their work' as leading to well-being and productivity (2017: 14). For so-called 'self-employed' workers, despite the autonomy that dependent self-employment would appear to offer, in all cases, on the criteria adopted in recent Employment Tribunal cases (ET 2016a), there were at least some elements of dependence, which would qualify workers for worker status. For so-called self-employed delivery workers, logistics technology not only provides the capacity to electronically track and trace the movement of goods but also the movement of remote labour. In our sample, delivery workers were classified as 'self-employed', yet the technological surveillance of their work belied this. Personal digital assistants (PDAs) or handheld devices (HHDs) are used throughout all stages of the supply chain; managers are able to track on-screen the precise location of parcels in real time through GPS, whilst drivers capture customer signatures providing automated proof of delivery for both parcel delivery companies and their clients (with phone technology built in to prove delivery in some cases). One 'lifestyle courier' working from home noted the capacity for surveillance of her own work performance through the HHD provided to the couriers to record delivery and challenged her 'self-employed' status:

We even have compliance officers to make sure that you are using the HHD; where are you?, what are you doing? The HHD is a machine [that] actually shows them where you are at any given time and what you've done and what you've got to do. I've had a call before I'd finished my round about a parcel I have delivered in the first hour as to where that parcel is because the customer can't find it. They're that close behind you into what you're actually doing. It's like being on camera all of the time and you have constant telephone calls. So no, I don't feel like I'm self-employed. (Janice, SWLogistics1)

In line with this, the Employment Tribunal ruling of November 2016 found that a CitySprint bicycle courier should be classed as a worker and entitled to holiday pay, with CitySprint's

assertion of couriers as self-employed described as ‘window dressing’ (Employment Tribunal, 2016b). Here the control exercised by the company, the fact the claimant was tracked by GPS technology and wore a company uniform, along with her lack of control over pay, were considered germane. She was considered to have no real right to appoint a substitute (to take her place when she was not available for work) in practice, with little autonomy over the performance of the services performed. Overall, the surveillance of self-employed drivers and home couriers through technology, along with the control exercised by the companies through depot managers, appears to be consistent with worker status as declared in the Employment Tribunal judgements outlined earlier.

The concept of worker's preference for flexibility was central to Uber's unsuccessful attempt, in October 2018, to overturn the Employment Tribunal decision that confirmed drivers' status as workers. The company stated that defining drivers as workers could deprive them of the ‘personal flexibility they value’¹ — the preference of the Uber drivers taking the case through an independent trade union was for worker's rights. The Taylor Review calls for clarity on employment status and consequent changes in the law that provide a test based on the extent of control over work — ‘ultimately, if it looks and feels like employment, it should have the status and protection of employment’ (2017: 36). At the same time, it rejects moving from a three-tier to a one-tier category of employment that would entail the extension of employment rights to ‘workers’, on the basis that this fails to reflect the ‘increasing casualisation of the labour market’ (2017: 35) — a ‘Gordian knot’ indeed.

The Taylor Review lauds investment in time and effort in good management relationships, both between individuals and at a collective level, with workers having ‘a voice’ in the workplace (2017: 50). However, our research found that under non-standard contracts the roles of management and HR may be largely concerned with the scheduling of work and the monitoring of working time and performance. The Taylor Review highlights the introduction by Tesco of an app through which workers can ‘take control of their work schedules’ to manage their hours, overtime, shifts, holidays and leave ‘giving them more opportunities to work additional hours at a time and location that suits them’ (2017: 93). Following Uber's

¹ <https://www.theguardian.com/technology/2018/dec/19/uber-loses-appeal-over-driver-employment-rights><https://www.theguardian.com/technology/2018/oct/30/uber-challenges-ruling-on-drivers-rights-at-court-of-appeal-london>

unsuccessful challenge, one of the claimants suggested that the company was ‘hiding behind technology’ in arguing that its app meant that it was merely an agent between drivers and passengers.² Our research suggested that technology in the form of WFM software is central to contractual differentiation in its ability to regulate desynchronised work and can substitute for the costs of supervision and management with rotas received through smartphones. In our sample, security workers bid for shifts (through a smartphone app or online) via an electronic cloud-based workforce management system promising employers cost control and the visibility and surveillance of workforces specifically within ‘very low-margin’ sectors, generally contracted-out services. WFM systems provide worker selection, work scheduling and time and attendance tools linked to payroll functions. The systems offer compliance with regulations relating to pay, holidays, pensions and working hours specifically for hourly paid staff. In one of the national retail companies in the sample, a time and attendance system created weekly employee schedules in line with complex time and attendance rules. Capturing attendance may be via biometrics or GPS and these systems track the real-time locations of workers.

Such systems state that they aim to balance worker preferences with business needs, but more blatantly seek to match variable demand to labour availability (including the quality of labour in terms of measured performance) — flexible shifts that deliver ‘enough hours at the right time’. Data gathered on the systems are used to predict peak periods of demand and one asserts it can match staffing down to 15-minute intervals. Underpinned by labour analytics all systems claim to ‘challenge low productivity’ (Taylor Review 2017: 6), but central to this are lower labour costs; they claim to protect businesses and contract delivery from ‘margin erosion’, under- and over-delivery and inappropriate employee selection. The systems exercise control over the workforce and regulate behaviour — ensuring that workers are compliant with attendance times, alerting management when they are not. Digital workforce management systems promise ‘management by exception’, only in the event that workers do not behave to plan, a function that apparently frees managers to manage the business rather than monitor employees. Remote workers in our sample—in delivery, homecare and security — reported that they rarely saw a supervisor or manager. WFM

² Ibid.

systems with real-time dashboards and monitoring stations can effectively observe workers 'without impacting their day more than is required'.

A key component of WFM systems is the ability to monitor scheduled versus actual service or product delivery and, related to this, several WFMs claim to substantially reduce overtime costs. The use of non-standard contracts can allow employers to redefine elements of the working day as 'non-productive' time and thus without the remit of paid work — technology is used to regulate these boundaries and reconfigure paid and unpaid working. This reconfiguration can redefine work in both quantitative and qualitative terms. In our sample, homecare workers reported that integrated computer-telephone technology was used to record service user visits. Electronic monitoring tracked the real-time location of homecare workers and thus missed, late and over-running visits, but also where scheduled visits were cut short. In homecare pay can be on the basis of contact time only (where workers are in client's homes) — with travel time between clients, supervision training and staff meetings unpaid (Hayes and Moore, 2017; Moore and Hayes, 2017) — meaning care workers may dip below the National Living Wage (NLW) when time and pay are averaged out. Homecare workers in our sample also reported the episodic nature of work, where there is so-called 'down-time' or 'waiting time' during the day where workers may not be able to go home and must wait between visits, effectively available to the employer. One recalled that on the most recent Sunday she had worked she saw seven clients, the first at 8.00 a.m. and the last between 8.50 and 9.20 p.m. Her client contact time over that 13.5-hour period (excluding travel from home to first client and back home after last client) was 4.5 hours, with a gap (no contact hours) from 12.30 to 4.00. Her comment suggests the notion of unpaid availability.

For self-employed delivery workers, pay is on the basis of delivery only. The PDA can be used to monitor not only non-deliveries, but also 'down time' or apparently unproductive working time. This means that delivery workers absorb the costs of non-delivery, but also preparatory and route-planning work, sorting, scanning, loading and unloading parcels and administrative work connected with delivery, along with responding to customer queries. In addition to GPS navigation systems, increasingly parcel delivery companies are using telematics technology which has the capacity to dictate more effective delivery routes through satellite navigation. For Levy (2015), such technology abstracts labour from its local and biophysical contexts operationalising job performance as a set of metrics governable by remote parties' orders.

The use of navigation systems and route planners was starting to remove drivers' discretion to plan their daily routes, effectively constraining their autonomy in the labour process, reconfiguring a driver's pick-ups and drop-offs in real time. As Levy (2015) describes for fleet management systems used to track drivers, real-time monitoring removes the ability of workers to reconstruct their time, which may be to demonstrate or manufacture compliance. Electronic monitoring (EM) thus undermines informal worker power as well as their formal autonomy at work.

The dynamics of surveillance of work cannot be severed from the surrounding political and economic environment (Zureik, 2003). While dependent self-employment is located within the political economy of logistics, and ZHCs in homecare in the political economy of care under austerity, the national institutional frameworks advocated in the Taylor Review promote differential contracts both legally and fiscally (Behring and Harvey, 2015). Non-standard contracts sustain low margin sectors and supply chains based on the pay of hourly paid workers. While the Taylor Review warns that 'employers must not use flexible working models simply to reduce costs and must consider the impact on their workforce in terms of increased sickness rates and reduced productivity' (2017: 42), there is no recognition that non-standard contracts are integral to the flexibility they celebrate. Overall, there is little evidence that such contracts facilitate the choice or autonomy championed by the Taylor Review, rather there is a reification of labour market segregation. Contractual status facilitates desynchronised work meeting peak demands with technology regulating attendance and behaviour and removing unproductive working time from the remit of paid labour. Despite emphasis on 'routes to progress in work' for those on lower incomes (Taylor, 2017: 6), labour market segregation is reproduced and the clear lack of training and career progression in flexible jobs reinforces divisions. In delivering a 'one-sided view of flexibility' non-standard contracts do not meet aspirations for quality jobs that 'increase participation rates, productivity and economic performance'. As such, the Review cannot square the circle of promoting good work for all while championing flexibility for particular groups in the labour market.

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Sian Moore
University of Greenwich
University of Sheffield
Kirsty Newsome