

## **TAYLOR REVIEW**

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Response to Matthew Taylor's Review of Modern Employment Practices

**Chartered Institute of Personnel and Development (CIPD)**

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## **CONTENTS**

Introduction to better work	p3
Security, pay and rights	p5
Progression and training	p7
Finding the appropriate balance of rights and responsibilities for new business models	p9
Representation	p11
Opportunities for under-represented groups	p13
New business models	p17

## INTRODUCTION TO BETTER WORK

### The state of work in the UK

The UK labour market has many strengths and unemployment may be back to levels last seen 30 years ago, but wages are stagnating, economic productivity is flat-lining, mental health problems are at an all-time high, and social inequality is ever widening, a major factor in which is the polarisation of the labour market into what has been called ‘lousy’ and ‘lovely’ jobs<sup>1</sup>.

Beyond the external factors shaping the labour market and the nature of jobs, employers have a major role to play in improving outcome for workers through good workplace practice. Yet, employer-sponsored training and Government funding for lifelong learning are declining, the UK has a high proportion of low paid and low skilled jobs, and less than a third of those in work say their job offers them significant opportunities to progress<sup>2</sup>. The expectations of workers are often unmet, resulting in low engagement and low productivity. Organisations and individuals are in a vicious circle of ever eroding trust, and so too often in work relationships obeying employment law is seen as all that needs to be done.

The role of employer practice is even more apparent as the formal workplace contract is thinning out. Only two thirds of people feel secure in their job, with older and low skilled workers in routine jobs having seen a significant fall in job security over the past 20 years. In the CIPD research 7 in 10 gig workers agreed that people like them don’t have the same financial safety net as traditional employees. This suggests workers in less secure contracts might have little to no support in the periods of unemployment or once they leave the labour market—even if contingent work suits their circumstances right now.

We also need to make a sustained attempt to go beyond minimal legal compliance and focus on long-term mutual investment in order to build work and employment relationships that create value for individuals, organisations, the economy and society. Relationships based solely on the exchange of investments and promised return are not enough to create sustainable value for all, as the regular failure of current business models indicates. Instead, we need to aspire to the kinds of relationships in which both businesses and workers look to achieve shared economic and societal goals in the longer term.

In the context of changing working practices, CIPD is calling for a better understanding of what “work” and “job quality” mean today, a greater accountability of employers, and a shift towards a more balanced power dynamic in the employment relationship.

### Setting an aspiration for job quality in the UK

Discussion of the quality of jobs or work usually relates to extrinsic aspects of work that can be standardised and compared. The minimum standard provided for by employment regulation defines the basic foundation from which work and job quality can be improved. As a minimum standard this must be mandated for, but it should not act as an aspiration. Instead a clear articulation of modern high quality work should be considered.

There are a number of concepts which already exist, such as the ILO Decent Work construct for emerging economies, or similar ideas of Good Work and Meaningful Work. These concepts should be critiqued before implementation given their overlap and complexity, a task which the CIPD is currently undertaking in partnership with the Warwick Institute for Employment Research. There are many areas in which the construct overlap, such as employment security, pay and pensions, education and training, working hours, health and safety, forced labour and employee representation. A debate as to which aspirational standard is most appropriate should be encouraged as a result of the Taylor Review.

We believe work should provide us all with the opportunity to fulfil our own needs and potential in ways that suit our situations throughout our lives.

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<sup>1</sup> Goos, M. and Manning, A., (2007) ‘Lousy and Lovely Jobs: The Rising Polarization of Work in Britain’, The Review of Economics and Statistics, Volume 89, Number 1, pp.118-133.

<sup>2</sup> McKay and Simpson (2015), British Social Attitudes Survey 2015 Report  
[http://www.bsa.natcen.ac.uk/media/39061/bsa33\\_work.pdf](http://www.bsa.natcen.ac.uk/media/39061/bsa33_work.pdf)

To achieve this, we need a wider concept of good work that incorporates more personal aspects of job quality, such as job satisfaction, fairness, trust, autonomy, interest, and social connection. Subjective experiences of work are vital aspects of working life, but are often neglected because they are not encapsulated by external measures, such as pay and working hours. Other facets of work can be assessed in objective terms but doing so gives an incomplete view. For example, well-being can be measured by accident rates or sickness absence, but a fuller view would also include pressure and stress. Equally, voice can be gauged by levels of employee representation, but this ignores factors like the openness of managers to listen and take on board workers' views.

To achieve this kind of better work, we need **better governance** and **greater voice**.

### Better governance for better work

Put simply, organisations exist to generate value, but the key question is for whom? The ways in which businesses operate today are designed to meet the needs of their major stakeholders, and for many of them the shareholder/owner dominates. While emphasising the value created for the principal financial backers appears sensible, focusing only on their short-term interests at the expense of other stakeholders undermines the sustainability of the entire organisation and can destroy value for wider society. This is particularly important for knowledge-based businesses where value is created by people using their knowledge and skills.

A fundamental issue here is that in the very organisations that are driven primarily by human capital, the knowledge, skills and potential of people, appreciation and understanding of the relationship between people and value creation is poor. Whilst modern organisations are more aware of their responsibility to multiple stakeholders, with environmental and social considerations on the increase since the early 1990s, the narrative on workforce risks and opportunities continues to be absent or of low quality. Evidence suggests that is partly due to a lack of capability in organisations to articulate people value in anything other than crude financial terms, and partly because the discourse and narrative emerging from the boards of big business does not understand and appreciate the value created with people as well as for people.

Organisations must be encouraged towards and accountable for greater transparency about the relationships between people and other types of capital in business models. This includes a better understanding of the value of their people to the success of the organisation, as well as the outcomes delivered by the business to people and other organisational stakeholders.

### Greater voice for better work

If work is to create value for all stakeholders in the round, as well as ensuring minimum standards of job quality, it must enable workers to shape the relationships they have with their employer. However, the traditional forms of influencing employment relationships are not always available in the emerging business models. Trade union influence has generally waned over recent decades; it is not clear that it has been replaced by other forms of worker influence. Moreover, the remote or isolated nature of work for some atypical workers means that they lack mechanisms of expressing voice, such as in the case of Uber drivers who do not have line managers to speak to, or freelancers who cannot participate in employee surveys or suggestion schemes. The very real danger is that work and employment relationships could become skewed, with a power balance that clearly favours employers and leaves individuals with 'take it or leave it' deals.

Having a voice is essential not just at the moment of entering an employment relationship, but as it progresses, too. This is important because what constitutes good work for one person at one point in their life may differ at another period or for another person. Part-time and variable hours work are an obvious example. They will likely be a key indicator of bad work for someone looking to establish a career and secure a mortgage, but may suit very well a worker approaching retirement who has paid off their mortgage. Other contextual factors influencing job quality include occupations, education and skills, and labour markets. Across these, what people desire and expect in work—and the ways in which they can best contribute to the economies and societies they live in—can vary.

Employment policy should support a balanced power dynamic between employers and workers to support individuals in retaining control over the ways they work. Overall, we believe current UK

employment regulation broadly strikes a good balance between flexibility for employers and protection for workers. But as new form of working develop and policy priorities change, this is a characteristic that could change unfavourably. Thus, ensuring that this balance is maintained and power doesn't accrue to the employer needs continual attention. Over recent years the UK government has moved against both 'no-fault dismissals' and exclusivity clauses for zero-hours contracts. Such moves need to be continued, to keep in check the tendency to develop policy that unfairly strengthens employers' hands.

Employers themselves are key agents too, and the work environments they create through people management practices make a huge difference to people's ability to shape their working lives, both in terms of the relationship with their employer and the opportunity to make autonomous decisions about the ways they carry out their jobs. Thus, there is also an important role for leadership, education, and professional bodies like the CIPD to set the standards of good employment practice.

## SECURITY, PAY AND RIGHTS

*To what extent do emerging business practices put pressure on the trade-off between flexible labour and benefits such as higher pay or greater work availability, so that workers lose out on all dimensions?*

*To what extent does the growth in non-standard forms of employment undermine the reach of policies like the National Living Wage, maternity and paternity rights, pensions auto-enrolment, sick pay, and holiday pay?*

The temporary or ad hoc nature of much gig economy activity means that many participants have little income security from this type of work, while ambiguity over many individuals' employment status creates confusion over eligibility for the National Minimum Wage in some instances.

However, CIPD research on the gig economy<sup>3</sup> research suggests there are some key factors that need to be considered when assessing gig economy work, including that most gig economy workers have another job or another source of income and see their gig economy work as supplementing their finances.

### Income security

Overall, only a quarter of gig economy workers say that the gig economy work they do is their main job, while nearly six in ten (58%) are permanent employees. Gig economy workers who say they are living comfortably are more likely (31%) than those reporting they are in financial difficulty (20%) to say that the gig economy work they do is their main job.

More than half of gig economy workers say that their gig economy work over the previous 12 months brought in 20% or less of their total income, with less than 10% saying that gig economy work brought in 75% or more of their annual income. This picture also came through strongly in interviews with gig economy workers, with some treating gig work as an additional source of income while they continue to work in 'traditional' employment, or as a supplement to their pension for example. Other interviewees had someone else in their household in employment and earning a steady income or are studying and view gig economy work as a flexible way of earning money while they study or bring up children.

Another point that should not be overlooked is that, for many people, working in the gig economy is a choice rather than a last-resort option in lieu of not being able to find more traditional employment. The most common reason cited by gig economy workers for working in the gig economy is that it allows them to boost their income, with a third saying this is the case, with a quarter (25%) of gig economy workers reporting that their gig economy work enables them to achieve an end goal such as buying a car or going on holiday.

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<sup>3</sup> CIPD (2017) *To gig or not to gig? Stories from the modern economy*. London: Chartered Institute of Personnel and Development. Available at: <https://www.cipd.co.uk/knowledge/work/trends/gig-economy-report>

Just 14% of respondents say they are only working in the gig economy because they can't find a traditional job with an employer. This does not mean that gig economy work is without its problems, however, as many interviewees would like more gig economy work than they are currently getting. This was again reflected by the survey, which found that just one in four (26%) of gig economy workers say they get enough work on a regular basis working in the gig economy, with those living comfortably more likely to say they get enough work (38%) compared to those that say they are in financial difficulty (10%).

## Pay

One reason for this is likely to be the high level of competition for work across different types of gig economy activity, for example UK 'clickworkers' have to compete for work with people from all over the world, including in countries where the cost of living is much lower. Evidence<sup>4</sup> suggests that the number of private hire drivers in England and Wales has increased in recent years, with some of the growth likely to be driven by the emergence of companies such as Uber, meaning there is less work to go around. This helps explain the low average income from gig economy work reported by gig economy workers, with our survey suggesting that the median average hourly rate that gig economy workers receive is between about £6 per hour and £7.70 an hour depending on the type of service or work they are engaged in. This may reflect that many gig workers will have significant waiting times between engagements and may well take into account significant expenses, such as fuel, car finance costs and insurance when calculating their income. For example, one Uber driver interviewed estimated his total monthly income as £2,800, but this fell to about £1,750 after all his expenses, having worked on average 50 hours a week.

Despite the typically low earnings reported by gig economy workers, they remain on the whole satisfied with their income from this type of work, with 51% saying they are satisfied and 19% dissatisfied with the level of income they receive from their gig economy work. This is significantly higher than the level of satisfaction with pay reported by all workers, where 36% are satisfied and 35% are dissatisfied. This is very likely to reflect the fact that gig workers' motivation and expectations around the level of reward they receive are very different from workers in more traditional forms of employment.

Most gig workers regard their gig work as a useful boost to their income rather than something they must rely on to pay the rent or mortgage. Nonetheless, a significant minority of gig workers are not happy with the rewards they receive from working in the gig economy, and there remains ambiguity about eligibility for employment rights and the National Minimum Wage for some participants.

## Rights

A number of gig economy workers interviewed suggested that while they are classified as self-employed, they feel like they are treated like workers because of the level of control being exerted by their platform provider. The survey found that fewer than four in ten gig economy workers say they feel like they are their own boss. There was also a strong feeling among gig economy workers interviewed that there needs to be more clarity over employment status and associated rights. Gig economy businesses need to ensure they are not trying to have their cake and eat it by cutting costs through using self-employed contractors while at the same time trying to maintain a level of control and performance management more appropriate for a traditional employment relationship.

## Pensions and other benefits

If more people are going to be employed in the so-called gig economy how are they going to be able to build up a pot of money (through the workplace and through the state) that will help them to retire from work? Or, for that matter, save enough to help should they face a period of illness or unemployment?

The response will depend in part on how people are employed. For some, they are already in employment and gig-working is a way of supplementing their main source of income. In such circumstances, through their main source of work, they will have access to a workplace pension

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<sup>4</sup> <https://www.gov.uk/government/statistical-data-sets/taxi01-taxis-private-hire-vehicles-and-their-drivers#history>

(subject to age and income). Here, the issue is whether these individuals are saving enough and what can be done to boost their contributions (such as auto-escalation). In addition, they will also be eligible to the new state pension, subject to how long they contribute national insurance payments, sick pay and unemployment benefit.

For those people whose main source of income comes from working in the gig economy, then the situation becomes more complex and depends on the relationship with their employer. If it is a workplace, then if they as an employee or worker they could be automatically enrolled (subject to age and earnings). They should also be able to build up an entitlement to a state pension (subject to their national insurance record).

However, if it is through an online platform, then they won't be automatically enrolled by their employer into a workplace pension as they don't have an employer. They may still be able to contribute to the state pension and build up an entitlement, if they earn enough to pay national insurance and for long enough to get the full new state pension.

For some self-employed, being able to claim the full state pension may be enough to help them retire. However, for others it may not. In these circumstances what can be done? One option is to encourage retirement saving through tax relief. However, the problem with this voluntarist approach is that a gig economy worker may not get around to taking the advantage of tax relief even if it is generous.

Another approach is to make it compulsory for all individuals to contribute to a retirement savings vehicle irrespective of their employment status. Subject to income and age, employees could do this through a workplace pension while gig workers could either join an existing pension provider or join a provider created by the government and receive the same amount of tax relief on their contributions. Employers that use gig workers would also be required to make a contribution.

Finally, for those who get work through a website, those individuals or companies that buy goods and services from a gig worker would have to pay a charge which is then used to fund that individual's retirement fund.

A similar situation also exists regarding the risk of becoming ill or unemployed. For instance, all individuals could be required to take out insurance against these risks through an insurance company (or one or more mutual funds set up by the state) and employers would one way or another contribute.

## **PROGRESSION AND TRAINING**

*How can we facilitate and encourage professional development within the modern economy to the benefit of both employers and employees?*

Employers in the UK are training less and investing less in their employees than they were two decades ago. Recent research<sup>5</sup> has shown that the proportion of people receiving off-the-job training in the UK has fallen by 17% between 1995 and 2012, with the training rate down from 73% to 56%. The same research highlighted an even starker fall in the volume of workplace training – with the number of training hours per week declining by 44 per cent from 1997 to 2009. These figures are backed up by data on employer investment in training, with estimates from the EES (Employers Skills Survey) revealing a real terms cut of 14.5% in training investment per worker between 2005-2011, and the CVTS (Continual Vocational Training Survey) showed a similar picture with a fall of 29% in training cost per employee in the UK over the 2005-2010 period. This has all led to a decline in our position internationally, explored in our recent report on the state of the UK's skills system<sup>6</sup>.

Whilst training has seen an overall collapse across workforce—effecting all sectors, geographies, occupations and all sizes of businesses—workers on atypical contracts face an even more

<sup>5</sup> Green, F., Felstead, A., Gallie, D., Inanc, H. and Jewson, N. (2016) The Declining Volume of Workers' Training in Britain. *British Journal of Industrial Relations*, 54: 422–448. doi:10.1111/bjir.12130

<sup>6</sup> CIPD (2017) From 'inadequate' to 'outstanding': making the UK's skills system world class [https://www.cipd.co.uk/Images/from-inadequate-to-outstanding\\_2017-making-the-UK-skills-system-world-class\\_tcm18-19933.pdf](https://www.cipd.co.uk/Images/from-inadequate-to-outstanding_2017-making-the-UK-skills-system-world-class_tcm18-19933.pdf)

challenging environment. Research by UKCES<sup>7</sup> found that workers on temporary and zero-hours contracts are less likely to receive training than those on 'normal' contracts and more likely to pay for their own training. Our own survey found that gig economy workers overall cited more obstacles to being able to develop new skills in the future than other workers. However, one of the most important issue affecting all respondents' views in this respect is their financial circumstances. More than six in ten (61%) workers who report they are finding things quite or very difficult financially say it is unlikely they will be able to afford to invest in their own skills development, training or learning, compared with 25% of respondents who say they are living comfortably or doing alright.

If we are to facilitate and encourage professional development for the workforce as a whole, as well as those in atypical contracts, there is clearly a need to find mechanisms to incentivise both employers and individuals to invest in lifelong learning, as well as mechanisms to overcome barriers to learning, in particular, lack of finance and insufficient information of the types of training and the return on investment for different courses. On the individual side financial incentives have been used in a number of countries, including the UK, to encourage participation in learning. In the US for instance, they have piloted Lifelong Learning Accounts (LiLAs), an employee/employer co-investment model with evaluation evidence showing that they lead to greater take-up and investment in training and better matching of skills development between individual and business need.

One of the biggest obstacles to raising the demand for and the effective utilisation of skills is leadership and management and HR capability. Not enough businesses have the capability to ensure that they manage and develop people and design jobs to ensure staff put their skills to good use. Raising the leadership and people management capabilities of businesses and encouraging the adoption of high performance working practices therefore has a critical part to play in raising the demand for skills. HPW practices can be defined as a set of complementary work practices (covering more than 35 practices) that cover three broad areas: high employee involvement practices, such as self-directed teams, sharing company information; human resource practices e.g. job redesign, mentoring, sophisticated recruitment processes, continuous skills development programmes; and, reward and commitment practices, such as flexi hours, job rotation and financial commitments. According to the UKCES<sup>8</sup>, only a minority of UK businesses can be classified as a HPW practices employer in the UK; one in ten (12%) employers adopt 14 or more HPW practices.

Leadership and people management is a particular problem in SMEs who lack anything other than a rudimentary level of HR capability. Until this is addressed, the chances of increasing SME investment training initiatives are limited. The CIPD, in partnership with the JP Morgan Foundation, has piloted the provision of HR support to SMEs in a number of locations, with evaluation evidence highlighting the positive role that face-to-face advice, facilitated by strong local institutions, can play in helping to create a 'supportive skills eco-system' at the local level.

Another way the Government can work with businesses nationally to improve their leadership and management capability is through promoting much better workforce or 'human capital' reporting by businesses. The type of information collected should cover diversity, recruitment and turnover, investment in training and development, as well as measures of employee engagement and wellbeing. This type of information can help business leaders understand the skills and capabilities of their workforce better, as well as the types of programmes and investments that might help them raise productivity. However the current quality of human capital reporting in the UK is poor, with previous CIPD research citing the lack of consistency on metrics collected, analysed or reported both internally and externally<sup>9</sup>. i

Recommendations:

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<sup>7</sup> UKCES (2014) Flexible Contracts: Behind the headlines

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/302989/flexible-contracts-final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/302989/flexible-contracts-final.pdf)

<sup>8</sup> UKCES Employers Skills Survey 2015

<sup>9</sup> CIPD. (2014) *Managing the valuing your Talent: A new framework for human capital measurement*. London: Chartered Institute of Personnel and Development. Available at: [https://www.cipd.co.uk/Images/managing-the-value-of-your-talent-a-new-framework-for-human-capital-measurement\\_2014\\_tcm18-9266.pdf](https://www.cipd.co.uk/Images/managing-the-value-of-your-talent-a-new-framework-for-human-capital-measurement_2014_tcm18-9266.pdf) [Accessed 15 April 2017]

- Ensure future industrial strategy has a stronger focus on boosting the quality of people management capability and identifying and matching skills across the economy, working in partnership with the UK Productivity Council, Investors in People, employers, professional bodies, unions and Growth Hubs and Local Enterprise Partnerships at a national, sector and local and level.
- Build effective HR capability for SMEs at the local level to support and encourage them to improve their people management capability and increase investment in their workforces. Government should allocate £40m
- a year for the next three years to all Local Enterprise Partnerships (LEPs) to help them establish high quality HR business support services for SMEs to enable small businesses to raise the quality of their people management and encourage them to invest more in the skills their people.
- Increase the level of lifelong learning by tackling financial barriers to uptake through personal learning accounts. Government should pilot a revised version of the Individual Learning Accounts, but with much greater scope for co-investment between employer and employee, combined with a high quality careers advice offer. Government should act as co-investor for low income self-employed.
- To ensure that the apprenticeship levy counteracts the long term decline in employer investment in training the next Government should adapt it into a more flexible training levy. This would decrease the risk of employers rebadging existing training as apprenticeships or reducing investment in other valuable forms of training.
- The Government should support efforts to increase investment in skills, improve people management and development practices and boost productivity by setting voluntary standards in human capital reporting. The Government can use its convening and communication powers to build a partnership with business, professional bodies and the investment community to catalyse action on this key agenda.
- The Government should lead by example and improve the quality of human capital reporting and transparency over organisational culture in the public sector.

## **FINDING THE APPROPRIATE BALANCE OF RIGHTS AND RESPONSIBILITIES FOR NEW BUSINESS MODELS**

*Do current definitions of employment status need to be updated to reflect new forms of working created by emerging business models, such as on-demand platforms?*

The question of employment status—particularly if someone is self-employed or a ‘worker’—has long caused confusion for individuals and businesses. The category of ‘worker’ can be particularly ambiguous and the most difficult status to define, with its definition contained across different employment rights. If the ‘worker’ category is retained, it should be more clearly and consistently defined in statute. The category of ‘employee’ could also be more fully and clearly defined.

‘Worker’ is a useful category that can cater for the more flexible ways of working and new business models that are emerging. However, there may be a case for workers to be automatically classified as ‘employees’ after two years’ continuous work for one organisation. The legal boundary between ‘employee’ and ‘worker’ is often blurred. Currently, ‘workers’ benefit from many of the same employment rights as ‘employees’, although they are excluded from a number of key rights including maternity, paternity, adoption leave and pay and unfair dismissal. As the latter right is only available (unless on automatically unfair grounds) to employees after two years in continuous employment, employers would not be under much additional regulatory burden if people employed by them for longer than two years were to assume ‘employee’ status.

The lack of alignment in how employment status is tested/defined for employment and for tax purposes is contributing to the confusion: currently, an individual could be classified as self-employed for tax purposes while being simultaneously defined as a ‘worker’ for employment rights. We need a serious consideration of the feasibility of a uniform cross-government test, or set of tests, across tax and employment rights, as recommended by Julie Deane OBE in her independent Self-Employment Review. A public consultation is needed to examine the options more fully and the opportunities for aligning employment status across employment, tax and benefits.

It's clear that some companies, such as new digital platforms, are falsely categorising people as self-employed. We believe that much greater clarity is needed at the point when a company engages an individual for work. A high-profile 'Know Your Rights' campaign, Government-led and supported by key employment and professional bodies could help to de-mystify employment status and encourage transparency at the point of engagement. We also believe that there should be an amendment to the Employment Rights Act 1996, requiring employers to provide all workers with a written copy of their terms and conditions after two months of employment. Currently, this right extends only to employees.

Another option would be to shift the burden of responsibility for employment status from individual to company, making employed status the default option. Such a regulatory change would not solve the problem in itself and could have unintended consequences, as many self-employed people work on that basis out of choice. However, if some individuals are being wrongly classified as self-employed this needs to be tackled and there should be a public consultation to look in-depth at the options for clearer rules on employment status. Further, the current system for enforcing employment status and associated rights relies primarily on an individual taking a claim to an employment tribunal. Relying on case law to determine employment status is not a satisfactory or efficient option. The process is costly and lengthy, and the outcome affects only a handful of individuals. Therefore, there should also be a full consultation on the employment tribunal fee system as the Government's post-implementation review and consultation suggests a change to the remission fee system only and not the level of fees charged.

Even if it were possible to clarify issues around employment status, this would not in itself guarantee better protection for individuals. There is little point in conferring additional rights on workers if there is evidence that existing protections are not being observed by some enterprises, either through ignorance or intent. We therefore welcome the wider labour market enforcement strategy currently under development by Government and the establishment of the new Gangmasters and Labour Abuse Authority (GLAA). However, these developments will not achieve the step change in the role of enforcement in tackling abuses of workers' rights across the UK economy unless the new Authority has the resources it needs to proactively monitor compliance and investigate high-risk sectors.

In addition, there is a strong case to increase the resources available to Acas so it can work proactively with organisations to improve their working practices if they are in danger of falling foul of the law through a lack of resources or ignorance. This would also allow GLAA inspectors to refer organisations to Acas to work with them to improve working practices, which in many cases will be a better solution for all stakeholders than enforcement activity and fines.

There is also the need for better guidance for both traditional employers and new types of businesses using atypical workers which sets out the underlying principles of good work and responsible employment, as well as the HR and people management practices organisations need to think about when resourcing their business models to ensure flexibility works for all stakeholders

#### Recommendations:

- Launch a consultation to consider whether a clearer basis of demarcation is possible between 'employee', 'worker' and 'self-employed' that maps clearly across employment rights, tax and benefits
- Run a high-profile 'Know Your Rights' campaign, working with organisations such as Acas, Citizens Advice Bureau, trade unions and professional bodies, and set out information on the different types of employment status and the associated employment rights people should expect, as well as where to go if they have concerns or want to make a complaint
- Ensure the new Gangmasters and Labour Abuse Authority is given sufficient resources so it has the scope to meaningfully monitor and enforce compliance with existing employment rights across the economy where there are abuses and ensure people are not being falsely categorised as self-employed
- Increase the resources available to Acas so that it can work proactively with organisations to improve their working practices if they are in danger of falling foul of the law through a lack of resources or ignorance.

- Support the development of best practice guidance on atypical working, setting out the key principles of good work and responsible employment and the HR and people management practices organisation need to think about when resourcing their business models to ensure flexibility works for stakeholders.
- HSE should be given additional resources to ensure more employers meet their existing legal obligations to conduct a risk assessment for work-related stress and where necessary take action to prevent work-related stress. All employers have legal responsibility under the Health and Safety at Work Act 1974 and Management of Health and Safety at Work Regulations 1999 to minimise the risk of stress-related illness or injury to employees.

## REPRESENTATION

*Could we learn lessons from alternative forms of representation around the world, for example the Freelancers Union in New York which focuses on access to health insurance, or the California App Based Drivers Association which lobbies companies like Uber on behalf of drivers?*

Voice is the means by which workers communicate views on employment and organisational issues to their employer. It's the main way workers can influence matters that affect them at work. For workers, effective voice contributes toward innovation, productivity and business improvement. For workers, it often results in increased job satisfaction, greater influence and better opportunities for development<sup>10</sup>. The CIPD is undertaking a major new research initiative looking at the purpose and impact of voice in the workplace and the wider labour market, testing out whether our past assumptions still hold true<sup>11</sup>.

Voice therefore matters and it matters for those in the gig economy as much as it does for conventional employees. The CIPD's gig economy report<sup>12</sup> shows that many gig economy workers do not know where to turn if something goes wrong and they need to resolve a problem. However, while voice for employees is usually straightforward, it is more problematic for the self-employed and especially gig economy workers where the employment relationship can range from one of full independence to one of de facto dependence and control. Providing voice is therefore likely to be done through a range of institutional structures and means.

Representation of gig economy workers fall into three overlapping categories. Firstly, those represented by or associated with trade unions. In the UK this includes unions who have represented some gig economy workers for many years such as the BECTU section of Prospect who offer specialist packages of support and insurance; branches of established unions such as the GMB; and new union organisations such as the Independent Workers Union of Great Britain (IGWU-GB).

In Germany, the IG Metal union has set up a new portal to allow platform workers to compare rates worldwide<sup>13</sup>. The union has also taken the lead in co-ordinating unions in Austria, Sweden, Denmark and the US to issue the "Frankfurt Declaration" at the end of 2016 which sets out a number of campaign objectives or principles to ensure that crowd-workers had a work week of 35 to 40 hours with a minimum income (paid at least the minimum wage in each country), paid for injuries or sickness when working, employment protections against unfair dismissal, integration into social security systems, and the right to organise.

In the US both the SEIU and the Teamsters Local 117 signed the Frankfurt Declaration, but otherwise much of the attempted organisation appears to have in a handful of cities with particular companies, notably Uber and Lyft. In New York and California, Facebook based networks have been established for Uber drivers, with the latter supported by the Teamsters Trade Union, though it is not clear if these are very extensive. In New York, the existing trade union for conventional cab-workers is vehemently hostile to Uber. Recent attempts have been made to legislate to support organisation for some gig economy workers, notably in Seattle (contested by the Chamber of Commerce)<sup>14</sup> and in the 1099

<sup>10</sup> <https://www.cipd.co.uk/knowledge/fundamentals/relations/communication/voice-factsheet>

<sup>11</sup> <https://www.cipd.co.uk/news-views/news-articles/future-employee-voice>

<sup>12</sup> CIPD (2017) *To gig or not to gig? Stories from the modern economy*. London: Chartered Institute of Personnel and Development. Available at: <https://www.cipd.co.uk/knowledge/work/trends/gig-economy-report>

<sup>13</sup> <http://www.faircrowdwork.org/en/politik-recht>

<sup>14</sup> <https://www.fastcompany.com/3042081/what-does-a-union-look-like-in-the-gig-economy>

Self-Employment Organising Act introduced into Congress by Californian Democrats<sup>15</sup> which appears to have little chance of being enacted.

Although some of these initiatives have a global flavour to them and the CIPD gig economy report shows that some gig economy workers face direct competition from lower wage economies, there appears to be little connection between social media networks for gig economy workers across the globe<sup>16</sup>.

A second route is through professional trade associations. In the US the best known is the Freelancers Union<sup>17</sup> (FU) which claims a membership of 350,000 and as well as offering advice and campaigning on behalf of independent workers, it also offers collective and bespoke health and work related insurance deals. Membership is free and the FU says it is developing what it calls a “new mutualism”. In the UK the Independent Professional and Self-employed Workers (IPSE) has a similar role and offers a similar range of services, though it charges fees and membership is 22,000. It has recently helped provide a health insurance deal for Uber drivers.

The third route is through platform providers developing codes of conduct that increase worker voice. The German Crowd-Sourcing Association has recently issued a Code of Conduct supported by the IG Metal initiative and seven German platform providers and one UK provider (Bugfinders). This includes some specific commitments around fairness of contracts, including no penalty for refusal, establishing a “fair and neutral process” where complaints can be resolved, and some more general commitments around treating workers with respect, making work fulfilling and motivating, and opening up development opportunities through e-learning. Sharing Economy UK (SEUK) is the nearest UK equivalent and has also issued a code of conduct, but by comparison it has relatively little to say about the employment relationship between platform providers and workers.

All of these routes to improving voice are valid, appealing to different groups of gig economy worker at different times and in different circumstances. A mixture of effective trade union supported organisation, professional and mutual organisations, the development of codes of conduct by platform providers, and social media networks could over time significantly improve voice for gig economy workers. The last sentence in the Frankfurt Declaration neatly sums up a progressive approach to making work better in the gig economy:

*“we believe that information technology, shaped wisely, holds great promise for expanding access to good work. We look forward to working with workers, clients, worker organizations, researchers, journalists, platform operators, and other stakeholders to realize this promise”* .

In terms of current legal provisions for employee voice, we believe that the Information and Consultation of Employees regulations should be retained and Government should look at how they can be more meaningfully enforced.

As for employment tribunals, the Government’s recent review and consultation on fees only proposes limited changes to the rescission system and not fee levels. Given the reported 70% drop in cases, we have concerns that some people are unable to access justice. There is also a broader impact on management behaviour and employment relations: in 2005<sup>18</sup> our research showed that 51% of employers felt the risk of a tribunal claim has a strong influence on management behaviour; this proportion has dropped to 16% in 2017<sup>19</sup>, which points to a significant shift in the balance of power in the employment relationships. Our research also indicates that employers are in favour of a more fundamental review of the fee structure. We believe there should be a full review of employment tribunal fees to ensure all workers have access to justice.

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<sup>15</sup> <http://asmcd.org/members/a80/news-room/press-releases/gonzalez-proposes-new-workplace-rights-for-independent-contractors>

<sup>16</sup> <http://labour.oii.ox.ac.uk/variable-geographies-of-protest-among-online-gig-workers/>

<sup>17</sup> <https://www.freelancersunion.org/>

<sup>18</sup> CIPD (2005) *Employment regulation: burden or benefit?* London: Chartered Institute of Personnel and Development

<sup>19</sup> CIPD (2017) *Employment regulation in the UK: burden or benefit?* London: Chartered Institute of Personnel and Development. Available at: <https://www.cipd.co.uk/knowledge/fundamentals/emp-law/about/employment-regulations-report>

## Recommendations:

- Professional associations, trade unions, trade bodies such as Sharing Economy UK (SEUK) and individual organisations should work together to develop better ways of representing the views of gig economy workers, as well as robust codes of conduct and collective support packages in areas such as insurance and training and development.
- Government should review ICE regulations to strengthen their enforcements and conduct a full review of employment tribunal fees
- Conduct a full consultation on the impact of employment tribunal fees to ensure that all workers have access to justice.

## OPPORTUNITIES FOR UNDER-REPRESENTED GROUPS

*How can we harness modern employment to create opportunities for groups currently underrepresented in the labour market (the elderly, those with disabilities or care responsibilities)?*

We welcome the Review's focus on groups that are currently underrepresented in the labour market. These groups face different challenges in terms of entry into the labour market, staying in work and in career progression. From a social justice perspective, this inequality of opportunity places an unfair and unnecessary socio-economic cost on these groups.

There is also a risk and cost to society and the economy more broadly of not taking action. At a time when the workforce is ageing, productivity growth is stagnant, and employers face restrictions on their access to talent from across the EU, creating more inclusive resourcing strategies is becoming an even greater imperative for UK employers. And with the uncertainty that the post-Brexit world brings over the next two years for people's work and home lives, employers will have to work harder to achieve an inclusive working environment.

We believe that modern employment practices by their nature offer more flexibility which creates greater opportunities for groups currently underrepresented in the labour market. Flexible working is a critical aspect of workplace inclusion. The provision of flexible working can help people with a wide range of different circumstances both 'get in' and 'get on' in employment, for example older workers, women, carers and those with health conditions who either don't want to or are not able to work the traditional 9 to 5.

One reason people may leave traditional employment is if it doesn't cater for their needs, for example due to a lack of flexibility about how, when and where they work. In traditional employment, over the past 15 years, flexible working provision has increased, but the range of flexible working arrangements offered remains narrow, largely restricted to part-time working and flexi-time, and actual uptake has changed little. CIPD research on the gig economy<sup>20</sup> found that gig economy workers are much more satisfied (60%) than other workers (44%) when it comes to the amount of flexibility they have to decide their working hours and are less likely to be dissatisfied (13% vs 26%).

However, more flexibility can mean less job security. Half (50%) of gig workers agree that people working in the gig economy make a decision to sacrifice job security and workers' benefits in exchange for greater flexibility. Among the case study interviewees for our gig economy research there were mixed feelings about the gig economy, with many saying that they like the flexibility but would like more work or support for training from government. In addition, our research found that nearly half of gig economy workers don't feel like they are their own boss, which brings into question how flexible this mode of working is in reality.

While the opportunities for flexible working in the gig economy are significant, what it does bring into question is whether security must always be sacrificed for greater flexibility. We believe that more can be done to strike a balance between the two, and no one should feel forced to undertake more insecure forms of work because they cannot access the kind of flexibility they need in other parts of the labour market.

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<sup>20</sup> CIPD (2017) *To gig or not to gig? Stories from the modern economy*. London: Chartered Institute of Personnel and Development. Available at: <https://www.cipd.co.uk/knowledge/work/trends/gig-economy-report>

In addition, to create a more inclusive economy we believe action is needed to catalyse employer action to promote more innovative working approaches within traditional employment which can cater for specific individual circumstances. Despite the potential benefits for both employer and employee (for example attracting from a wider talent pool and retaining staff), and the introduction of the right to request, many employers are either not offering flexible working arrangements or are not thinking innovatively enough about their offering to suit individual needs.

- Timewise found that only 8.7% of vacancies for jobs paid £20k+ are advertised as able to be done flexibly.
- Although many employers have policies on the flexible arrangements of job-sharing and term-time working, in practice these are hardly ever used
- Most flexible working is either part-time or flexi-time unless you are a middle or senior manager where you are more likely to be working from home or remotely.

Our Employee Outlook survey<sup>21</sup> found that some of the main challenges to making flexible working arrangements a lived reality when in work are:

- Negative attitudes from senior managers and line managers
- Cultural attitudes to flexible working (and especially take up by men), including a lack of male role models that are taking up the offer
- An organisation culture which doesn't support a flexible working policy, for example an engrained working culture that places an emphasis on employees being seen at their desk, managers not supporting flexible working arrangements at a local team level, technology not supporting working away from the office.

Flexible working should be a strategic golden thread through Government's labour market policy with the aim of increasing the range of flexible working options employers consider and offer and create a step change in uptake across the labour market as a whole. Such a campaign needs to reach out to SMEs, given they account for around 60% of private sector employment in the UK.

Recommendations:

- Government should support innovative campaigns by sector bodies and social businesses to increase the range of flexible working options offered by employers and create a step-change in uptake across the labour market. Such campaigns should encourage employers to:
  - o Recognise the strong business case for increasing the use of flexible working, including the positive effect on recruitment, engagement and retention
  - o Review flexible working practices by consulting staff over the type of flexibility that would be of most benefit and balancing with business needs
  - o Train senior and line managers so they understand their role in shaping organisational culture and enabling more flexible ways of working
  - o Recognise individuals have different requirements and these will change over time. Flexible working will not work if its implementation is inflexible
  - o Reach out to their supply chain to encourage them to adopt progressive work practices which could help reach SMEs

### Employability skills

As well increasing the provision of flexible working across the labour market, we believe that more attention needs to be given to the provision and co-ordination of support services to help people struggling to access the labour market **improve their employability skills, boost their confidence and find work.**

In our experience, support does exist, but there's not a strong referral network. We believe there's a key role for Local Enterprise Partnerships to play in mapping and coordinating available local services, which could be of particular benefit to underrepresented groups. This activity could help tie LEPs' growth strategy more tightly with inclusion to support inclusive economic growth.

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<sup>21</sup> CIPD (2016) *Employee Outlook: flexible working*. London: Chartered Institute of Personnel and Development

CIPD's Steps Ahead Mentoring programme offers jobseekers one-to-one mentoring sessions to help them improve their employability skills, boost their confidence and find work. Across the UK, jobseekers are referred to Steps Ahead by JobCentre Plus Work Coaches and other selected partners. A pool of over 3,800 volunteer mentors help job seekers with CV writing, interview techniques, identifying skills, self-marketing and developing self-confidence. The programme is currently available to young job seekers (aged 18-24) on the majority of area, but we have also begun to roll it out to parent returners and older workers (aged 50+) in selected areas. Of the hundreds of people who have completed the programme since it originally launched as a pilot in 2012, nearly three-quarters have gone on to find work or work experience. We are keen to be able to roll out this valuable mentoring support to those groups in more locations.

Our recommendation:

- As part of their remit for economic growth, Local Education Partnership should play a key role in mapping and coordinating support services that can help individuals from disadvantage groups to improve their employability skills, boost their confidence and find work.

## Carers

Government, as an enabler, should encourage wider debate about the importance of supporting working carers and more actively promote the business case among employers so that they act now to avoid losing valuable working carers and older workers who will increasingly have eldercare responsibilities.

Government and other stakeholders have an important role to play in raising awareness and disseminating good practice guidance. For example, CIPD's (2016) research on working carers, *Creating an enabling future for carers in the workplace*, we highlight the growing trend of working carers, and what this means for organisations. We provide actionable recommendations on how can employers become more agile, and how they can provide support to their staff.

The evidence shows that freedom to act appropriately is both essential and preferred from the point of view of employers and employees. Principles and values that will foster the right behaviours and responses should be promoted to guide activity. This will enable employers to be agile in responding to changing needs and circumstances in ways that are helpful, appropriate and practical and in tune with carers' and business needs. A Eurofound study points out that measures to support work and care do not have to be 'expensive and onerous', but should 'contribute to making life easier and better for carers' (Eurofound 2015).

Government should also take heed of the impact on the financial independence of people who are informal carers. There are short- and long-term implications for their financial well-being. They are likely to have to face a reduction in immediate income (if they need to reduce their hours or give up work altogether) and their longer term capacity to build up pension provisions and savings for older age. At a national level, against the backdrop of the ageing population, poverty in old age is more rather than less likely to result, putting increased pressures on public provisions and services.

We recommend that Government actively encourages wider debate about the importance of supporting working carers and create a repository of good practice case studies showcasing how employees can accommodate working carers.

## Older workers

Employers need to offer appropriate and attractive employment propositions that enhance opportunities to remain in the labour force for longer. In the UK we already have the benefit of finely tuned and crafted policy thinking at government level in this area, but more focused and sustained action is needed by government and employers in key areas to create fuller working lives.

Individuals will have different motivations for choosing to remain in or leave the labour market and therefore a deeper appreciation of why people are staying or leaving work after 50 is needed to inform action to engage with them and make the most of their knowledge and experience. The emphasis must be on creating more fulfilling working lives, not just longer ones.

The HR profession has an important role to play in helping to embed cultural change in workplaces to create more fulfilling lives for people as they live and work for longer. Our 140,000 members are therefore ideally placed to create workplaces that can adapt to the needs of older workers.

There are various aspects of work which need deeper consideration to create meaningful opportunities for older people in the labour market:

- **Looking after people's health and well-being.** It's important that employers don't have preconceived ideas about older workers' health, while at the same time being aware that some workplace adjustments may be needed. People working in physically or psychologically demanding jobs are most likely to reach a point where they feel they cannot continue in their role, and employers should be prepared to reward their contribution and commitment by retraining or reskilling where possible.

The new Fit for Work service could support older workers and give workers with long-term health problems the support they need to stay in or return to work. In addition, the introduction of wider tax incentives could strengthen the incentives for employers to introduce health interventions to support healthy ageing (beyond that available through the Fit for Work service, when people are already likely to have been off sick for at least four weeks)<sup>22</sup>.

- **Adopting a mid-life career review.** A key way in which government can take action to 'retain' and 'retrain' older workers is by providing a 'mid-life career review' for employed and unemployed people over 50, as recommended by Baroness Altmann CBE when Business Champion for Older Workers. To make them sustainable and effective, mid-life career reviews should be part of a broader infrastructure of information, advice and guidance available to everyone to support learning and development throughout life.

Employers need to ensure that older workers are not overlooked for training and that they receive development opportunities to progress their careers; providing older employees with opportunities to retrain and develop their skills is a vital part of ensuring that they continue to feel motivated and challenged in their role (CIPD and ILC-UK 2015).

Line managers need to be trained so that they have the confidence and competence to have an open and honest, ongoing dialogue with their staff at every stage of their career. For example, in Denmark, many companies hold conversations with their older employees about job content, working time, personal and professional development goals, strengths and development needs, future challenges, and thoughts on how the company can best support them.

- **Launching an 'Age Confident' campaign to build awareness and momentum.** Older workers can experience prejudice and stereotypical attitudes from employers, colleagues and society in general about their flexibility, health, ability to learn and their general skills and qualification levels. However, CIPD research shows that employers and employees appreciate the benefits of working in an age-diverse organisation.

Employers need to think about how to educate their workforce, and in particular line managers, to value older workers for their performance in the job, recognising their experience and expertise, while emphasising that older workers can be as flexible and eager to learn as their younger colleagues. Policies to support older workers need to be

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<sup>22</sup> In our 2016 research report on Creating longer, more fulfilling working lives, investigating how employers can best manage an increasingly older workforce in the context of their health and well-being and care responsibilities, a number of our employer case studies across the five countries in our European study provide employees, and specifically older workers, with tailored health and safety consultations and programmes.

implemented as part of a workplace culture that embraces diversity as a thread that runs through every facet of organisational life. One way of countering potential bias against older workers and fostering an age-diverse workforce is to encourage their involvement in mentoring younger workers. In this way, their skills and experience are appreciated and valued by both the organisation and younger colleagues, helping to nurture intergenerational learning and inclusivity.

## Disabled people

We need a considerable step change in employment practice relating to the management of people with a disability if we are to halve the disabled employment gap by 2020. A 2016 survey by PMI Health Group found that more than a third (37%) of UK workers believe disability is still a barrier to career progression, despite anti-discrimination legislation. So it's absolutely right that government (working with businesses) should consider the progression, as well as the recruitment and retention, of disabled people and people with health conditions at work.

In our response to the Work, Health and Disability Green Paper in February 2017<sup>23</sup>, we made a number of calls to Government to improve access to work for those with disabilities or long-term health conditions, as well as enable effective return to work after a period of absence. These include:

- **Launch a major, ongoing and well-resourced publicity and education campaign** to raise awareness and encourage a culture of inclusion among employers that is broader than, but aligned with the Disability Confident campaign. This campaign needs to challenge the often negative myths and misconceptions associated with disability and reflect a positive narrative in relation to the huge potential of this largely untapped source of talent.
- **Establish a 'one-stop shop' for employers** to make it easier to navigate the many sources of information, advice and guidance already available. Government should explore opportunities to partner with charities, primary health and occupational health professionals, trade bodies and others like the CIPD to ensure information, advice and guidance to employers available across the very wide spectrum of different health and disability issues.

## NEW BUSINESS MODELS

*How can government – nationally or locally – support a diverse ecology of business models enhancing the choices available to investors, consumers and workers?*

As their models evolve, businesses need to make deliberate decisions about their resourcing model, taking into account the flexibility they require alongside the needs of the people they employ and the people that provide services to them.

In particular, we believe that modern approaches to corporate governance are required to take account of new business models which are often less hierarchical in nature, with increased autonomy, and reduced sectoral standardisation. Modern organisations require governance and reporting frameworks that better demonstrate the extent to which human capital risks and opportunities are considered and managed.

In our response to the Department for Business, Energy and Industrial Strategy Corporate Governance Green Paper in 2016, the CIPD collaborated with the High Pay Centre to formulate a response which called for improvements in corporate governance. These included:

- All publicly listed companies to be required to establish a standalone human capital development sub-committee, chaired by the HR director, with the same standing as all board sub committees.
- Government should set voluntary human capital (workforce) reporting standards to encourage more publicly listed organisations to provide better information on how they invest in, lead and manage their workforce for the long-term.

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<sup>23</sup> [https://www.cipd.co.uk/Images/cipd\\_response\\_work\\_health\\_and\\_disability\\_tcm18-18298.pdf](https://www.cipd.co.uk/Images/cipd_response_work_health_and_disability_tcm18-18298.pdf)

- The FRC's recently announced review of the UK corporate governance code should consider whether a more principles-based should be adopted, placing greater emphasis on the importance of organisations' human capital investment and development

### Improving the standard of leadership and management in the UK

As well as paying attention to how new business models are evolving, we believe that Government should call out improving managerial quality as a national priority and work in partnership at a sector and local level with employers, trade unions and professional bodies to improve capability over time.

Raising the people management capabilities of businesses and encouraging the adoption of high-performance working practices have a critical part to play in raising the demand for skills. Such progressive people management practices include flexible working, job design, and training and development, which are key to supporting employee engagement and well-being, boosting inclusion and productivity.

Addressing these issues is a particular challenge for SMEs, which often lack anything other than a rudimentary level of HR capability. Until this is addressed, the chances of significantly increasing SME engagement in apprenticeships or other training initiatives are severely limited. Throughout 2015–16, the CIPD ran its People Skills programme, in partnership with the JP Morgan Chase Foundation, which piloted the provision of HR support to SMEs in three locations in England and Scotland. Evaluation of the programme identified the positive role that face-to-face advice, facilitated by strong local institutions, can play in helping to create a 'supportive skills eco-system' at the local level that can help SMEs to raise their ambition.

### Recommendations:

- Ensure future industrial strategy has a stronger focus on boosting the quality of people management capability and identifying and matching skills across the economy, working in partnership with the UK Productivity Council, Investors in People, employers, professional bodies, unions and Growth Hubs and Local Enterprise Partnerships at a local and sector level.
- Government should allocate £40m a year for the next three years to all Local Enterprise Partnerships (LEPs) to help them establish high quality HR business support services for SMEs to enable small businesses to raise the quality of their people management and encourage them to invest more in the skills their people.