

# **Submission to the Business, Energy and Industrial Strategy Committee's Inquiry**

## **'Post-pandemic economic growth: UK labour markets'**

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## Summary

This submission to the consultation builds on several past and ongoing research projects that focus on **several sectors of the economy**: agri-foods industries, nursing, education, the arts).

In terms of **geographic coverage**, the findings relate to the UK-wide picture, or to several regions (eg., Cambridgeshire, Essex, Kent).

The **key contributions and proposals** in this submission relate to:

- i. The state of play in the UK labour market pre-and post-Brexit and the impact of the covid-19 pandemic on recruitment, skills shortages and the growth of the labour market;
- ii. Workers' rights and protections;
- iii. Employment status and modern working practices since the Taylor Review 2017.

## 1. Introduction

We are a multidisciplinary team from Anglia Ruskin University encompassing expertise in employment relations, law, economics, sociology and social policy.

We have completed several **interdisciplinary research projects**, and the findings and results from these projects are especially relevant for the matters raised by this Inquiry and constitute the scientific basis for our consultation response. These studies include (in chronological order):

- Planning and Preparing for Later Life: Evidence Scoping Review (2017-2018);<sup>1</sup>
- The Impact of Migration in the Fenland Area, Cambridgeshire (2018-2019);<sup>2</sup>
- Nurse migration from the Philippines to the UK (2018-2021);<sup>3</sup>
- Age Discrimination in Labour Market: The View of HR Professionals (2019-2020);<sup>4</sup>

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<sup>1</sup> Drydakis, N., Preston, C., Forwood, S., Ellen-Hughes, S., Burch, S. (2018). Planning and Preparing for Later Life: Evidence Scoping Review (2017-2018). London: Centre for Ageing Better (UK).

<sup>2</sup> Greenfields, M., Smith, D., Dagilyté, E., Ramadan, S., Bright, J. (2019) The impact of migration in the Fenland area: a scoping report. Project Report. Rosmini Centre, Wisbech, UK. Available at: <https://arro.anglia.ac.uk/id/eprint/704980/>

<sup>3</sup> Undertaken by Dr David Smith and Dr Nicola Gillin. For publications, see

Gillin, N. and Smith, D. (2021) 'Filipino nurses' perspectives of the clinical and language competency requirements for nursing registration in England: A qualitative exploration', *Nurse Education in Practice*, 56, October, <https://www.sciencedirect.com/science/article/pii/S1471595321002596?via%3Dihub;>

Smith, D. and Gillin, N. (2021) 'Filipino nurse migration to the UK: understanding migration choices from an ontological security-seeking perspective', *Social Science and Medicine*, Vol. 276, May, <https://doi.org/10.1016/j.socscimed.2021.113881;>

Gillin, N. and Smith, D. (2020) 'Overseas recruitment activities of NHS Trusts 2015 – 2018: Findings from FOI requests to 19 Acute NHS Trusts in England' *Nursing Inquiry*, Vol. 27, Issue 1, pp. 1-10. <https://doi.org/10.1111/nin.12320>

<sup>4</sup> Paraskevopoulou A. (2020), Age discrimination in the labour market: the view of HR Professionals – project completed.

- Migration Research into Ethnic and Culturally Diverse Groups in Essex (2020);<sup>5</sup>
- The Art of Integration (2020-2021);<sup>6</sup>
- Gross Disposable Household Income Per Capita Growth (2021-2022);<sup>7</sup>
- Collective Labour Voice in the Post-Covid Gig Economy (2021- ongoing);<sup>8</sup>
- Older EU Migrants and Access to Public Services and Support Post-Brexit: pilot project (2022-ongoing).<sup>9</sup>

While some of these projects do not explicitly focus on the post-pandemic situation, they uncovered the relevant skills gaps and other trends that predate the pandemic, but which are relevant for this consultation. Therefore, we included the data and the findings from such projects that help answer the consultation questions.

In addition, our consultation response also draws on **other data and literature analysis** that is pertinent to this Inquiry.

## 2. The state of play in the UK labour market post-Brexit and the impact of the covid-19 pandemic on recruitment, skills shortages and the growth of the labour market

Our research indicates that employers are experiencing the following challenges:

1. Reinstating the sense of ‘belonging’ in post Covid workplaces. Working from home has been an isolating experience for some workers.<sup>10</sup>
2. Diversity and Equality: improvements on equality and diversity are needed to avoid post Brexit discriminatory practices based on race, ethnicity or religion.<sup>11</sup>
3. Social dialogue: According to the World Economic Forum (2020),<sup>12</sup> gig workers were most affected by the pandemic leading to precarious work and life conditions.

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<sup>5</sup> Schneider, C., Paraskevopoulou, A., Noble, A., and Preston, C. (2020) *Migration Research into Ethnic and Culturally Diverse Groups in Essex*. Cambridge: Anglia Ruskin University. Unpublished – project funded by Essex Council and Rainbow services.

<sup>6</sup> Paraskevopoulou, A. (2021) *The Art of Integration* – Funded by Anglia Ruskin University, project completed.

<sup>7</sup> Drydakis, D. (2022) *Gross Disposable Household Income Per Capita Growth (2021-2022)*. European Centre of Expertise (ECE) in the Field of Labour Law, Employment and Labour Market Policies. Brussels: European Commission.

<sup>8</sup> Noble, A. and Paraskevopoulou, A (2022) *Collective Labour Voice in the Post-Covid Gig Economy* (Pilot Project funded by Anglia Ruskin University – Ongoing).

<sup>9</sup> Currently ongoing, funded by ARU. Principal Investigator is Dr David Smith, Co-Investigators: Professor Margaret Greenfields and Dr Eglé Dagilytė.

<sup>10</sup> Schneider, C., Paraskevopoulou, A., Noble, A., and Preston, C. (2020) *Migration Research into Ethnic and Culturally Diverse Groups in Essex*. Cambridge: Anglia Ruskin University. Unpublished.

<sup>11</sup> Schneider, C., Paraskevopoulou, A., Noble, A., and Preston, C. (2020) *Migration Research into Ethnic and Culturally Diverse Groups in Essex*. Cambridge: Anglia Ruskin University. Unpublished.

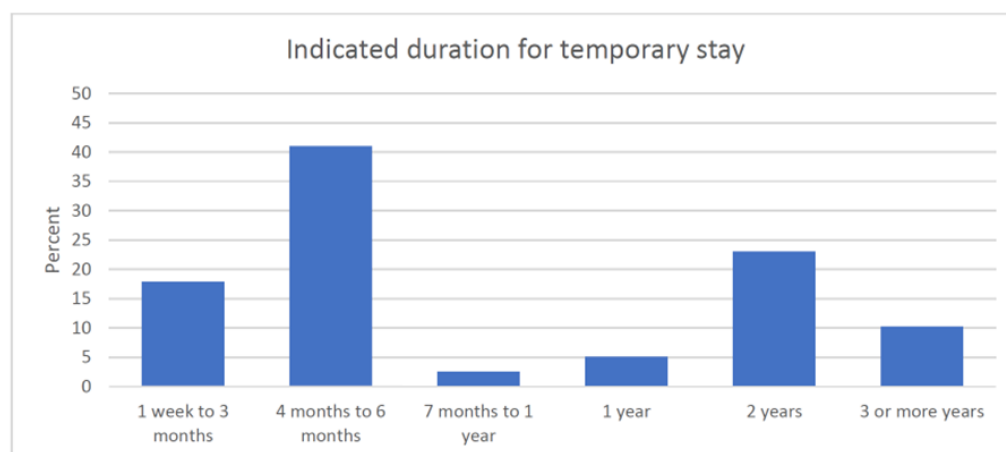
<sup>12</sup> Moulds, J. (2020) ‘Gig workers among the hardest hit by coronavirus pandemic’, The World Economic Forum

## 2.1 What impact has the UK's departure from the EU had on the flow of workers into and out of the UK? Are there particular sectors or skill sets that are most impacted?

One source of labour pre-Brexit/pandemic was the European Union nationals. However, **in the few years leading to Brexit, new arrivals from the EU to the UK had been reducing.** In the year to March 2019, new National Insurance number (NINO) registrations were down 12%, with only 419,000 new registrations from EU nationals, reflecting changing migration and labour sourcing patterns and Brexit uncertainty.<sup>13</sup>

In 2018, in terms of intention to stay in the UK pre-Brexit, the vast majority of respondents from EU member states in the Fenland study (73%), who use information, advice and guidance (IAG) services, indicated that they were intending to remain in the UK on a permanent basis, and a clear spike in EU migration to Fenland can be noted in 2018.<sup>14</sup> The largest number of respondents who indicated that their stay in the UK was 'temporary' intended to depart within two years of first entry to the country.<sup>15</sup>

**Chart 11: Indicated duration for temporary stay**



However, the situation nationally may be different today, and the migrants' intentions may have changed since the arrival of COVID19. Today, there is much evidence that post-Brexit and post-COVID **many Central & Eastern European (CEE) migrants have returned to their countries of origin**, sometimes after decades of living and working in the UK and with children born in the UK.<sup>16</sup> This has created significant labour shortages in several sectors most notably in the **food**

<sup>13</sup> See p 152 in Greenfields, M. et al. (2019) The impact of migration in the Fenland area: a scoping report. Project Report. Rosmini Centre, Wisbech, UK. Available at: <https://arro.anglia.ac.uk/id/eprint/704980/>, citing the Department for Work and Pensions (2019) National Insurance Numbers Allocated to Adult Overseas Nationals: Registrations to March 2019. GOV.UK

<sup>14</sup> See Table 4.1. and Chart 3 in Greenfields, M. et al. (2019) The impact of migration in the Fenland area: a scoping report. Project Report. Rosmini Centre, Wisbech, UK. Available at: <https://arro.anglia.ac.uk/id/eprint/704980/>.

<sup>15</sup> See Table 26., Ibid.

<sup>16</sup> Among Lithuanian nationals returning back to Lithuania, Brexit is mentioned as one of the reasons to return to Lithuania [https://www.renkuosilietuva.lt/file/repository/Ataskaita\\_IOM\\_grizusieji\\_migrantai\\_202011\\_1.pdf](https://www.renkuosilietuva.lt/file/repository/Ataskaita_IOM_grizusieji_migrantai_202011_1.pdf) There has been an increase of Lithuanian nationals arriving to Lithuania since COVID-19: there were 20,412 people returning in 2019, rising to 20,804 in 2020 and to 23,712 in 2021; see <https://www.renkuosilietuva.lt/lt/naujienos/pernai-daugiau-lietuviu-grizo-nei-isvyko-rodod-naujausia-statistika/91>

**and drink sector** where there are an estimated 500,000 job vacancies.<sup>17</sup> Similarly, the Confederation of British Industry (CBI) members reported significant shortages of roles in the **logistics, food & drink, retail & hospitality, construction and manufacturing** sectors.<sup>18</sup>

In Fenland, the 2018 study shows that the EU migrant workforce characteristics were already changing prior to Brexit and COVID19 in three main ways. Firstly, in terms of nationality, a fall in the supply of Polish nationals was widely noted by interviewees, along with a trend towards social mobility among many Polish workers who have remained and moved into mid-level and supervisory positions. Interviewees observed that there had been an increase in Lithuanians and Latvians and more **recently an increase in Bulgarian and Romanian workers**.<sup>19</sup>

A second trend identified in the interviews was a **decline in the skills and language levels of the more recent migrant workers**, with many having low literacy levels in their own languages and no or very minimal English skills. This was noted to be a consequence of having largely exhausted the supply of better skilled EU workers and impacted on firms who need to spend more training them, which has also led to problems filling mid-level supervisory as well as more skilled roles.<sup>20</sup> Finally, the arrival of more 'older' workers, often recruited from rural areas of their countries of origin, was also attributed to the decline in skills and English language levels of more recent arrivals and which was also related to difficulties recruiting younger and higher skilled workers from the EU. In the Fenland study "one employer noted a recent trend of fewer EU nationals but more non-EU nationals coming in for work in recent years and commented that this was a potential source of labour post-Brexit."<sup>21</sup>

Difficulties recruiting from EU workers in the years prior to 2016 was also observed in sectors such as **nursing** where a similar shift away from EU recruitment and towards non-EU countries, particularly the Philippines and India, was identified amongst NHS Trusts prior to Brexit. NHS Trusts noted that this was due to diminishing returns from EU recruitment drives, high attrition rates among EU nurses and anticipation of the English language tests that were introduced for EU nurses in July 2016.<sup>22</sup> The trend of falling nurse recruitment from EU countries and rising numbers from non-EU sources has continued over the past five years. Since 2016 EU nurses have declined by 5% (28,864 nurses), whilst the number of nurses from outside of the EU has continued to rise. The expansion of the non-EU overseas workforce has seen significant growth in the past year alone, with the non-EU nursing workforce now standing at 113,579 nurses, an increase of 23.1% since last year.<sup>23</sup>

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<sup>17</sup> National Farmers Union (2021) Food chain labour shortages: What you need to know, 8 September. Available at: <https://www.nfuonline.com/updates-and-information/food-chain-labour-shortages-what-you-need-to-know/>

<sup>18</sup> CBI (2021) 'A Perfect Storm: CBI insights on Labour market shortages and what to do about it' <https://www.cbi.org.uk/media/7159/20210906-a-perfect-storm-cbi-latest-labour-market-insights.pdf>

<sup>19</sup> See p 140 in Greenfields, M. et al. (2019) The impact of migration in the Fenland area: a scoping report. Project Report. Rosmini Centre, Wisbech, UK. Available at: <https://arro.anglia.ac.uk/id/eprint/704980/>

<sup>20</sup> See p 141 Ibid.

<sup>21</sup> See p 143 Ibid.

<sup>22</sup> Gillin, N., Smith, D. (2019). Overseas Recruitment Activities of NHS Trusts 2015–2018: Findings from FOI Requests to 19 Acute NHS Trusts in England. *Nursing inquiry*. 27(1): e12320.

<sup>23</sup> Nursing and Midwifery Council [NMC] (2022). The NMC register. 1 April 2021 – 31 March 2022. Available at: <https://www.nmc.org.uk/globalassets/sitedocuments/data-reports/march-2022/nmc-register-march-2022.pdf>

Prior to Brexit, recruitment agencies for **seasonal agricultural workers** reported “considerable concern over restrictions on freedom of movement, especially for low-skilled workers, and the possible introduction of a work-visa system and the impact of these changes on labour supply.”<sup>24</sup> Employers from the Fenland study felt that the outcome “would depend on the nature of the settlement and exit arrangements made between the UK and the EU, particularly as this pertains to the Seasonal Agricultural Workers Scheme (SAWS) and the post Brexit immigration system more generally.”<sup>25</sup> One employer mentioned the pilot SAWS as providing some mitigation to labour shortages, but pointed out that the scheme would need to be expanded beyond its ... cap of 2500 workers.”<sup>26</sup>

## 2.2 Which sectors are experiencing the most acute shortages of workers since the pandemic?

Labour shortages are felt right across the economy, with job vacancies between March and May 2022 rising to a record 1,300,000.<sup>27</sup> 45% of employers report problems hiring workers, with the healthcare (54%), the voluntary sector (49%) and education (49%) reporting the most difficulties filling vacancies.<sup>28</sup> As discussed below, labour shortages have particular regional impacts due to the heavy reliance on seasonal migrant labour in sectors such as agriculture.

### The agri-foods industry

East Anglia’s farming industry has been heavily reliant on EU migrant labour since 2004. Many of the migrant workforce have historically been employed in horticulture, agriculture, food packing and processing which are among the lowest paid sectors of the economy.<sup>29</sup> The data collected in Fenland area (Cambridgeshire) by the Rosmini Centre Wisbech between September 2018 and very early January 2019 from 220 respondents from twelve different nationalities/countries of origin indicates that there are high concentrations of **factory work and food production among the migrant population in Fenland**:<sup>30</sup>

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<sup>24</sup> See p 142 in Greenfields, M. et al. (2019) The impact of migration in the Fenland area: a scoping report. Project Report. Rosmini Centre, Wisbech, UK. Available at: <https://arro.anglia.ac.uk/id/eprint/704980/>

<sup>25</sup> See p 146 Ibid.

<sup>26</sup> See p 146 Ibid.

<sup>27</sup> Office for National Statistics (ONS) (2022) Labour Market Overview: UK June 2022. Available at: <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/uklabourmarket/june2022>

<sup>28</sup> Chartered Institute of Personnel Directors (CIPD) (2022) Labour Market Outlook: Spring 2022. Available at: <https://www.cipd.co.uk/knowledge/work/trends/labour-market-outlook>

<sup>29</sup> Office for National Statistics, 2019. EARN03: Average weekly earnings by industry [WWW Document]. URL <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/averageweeklyearningsbyindustryyear03> (accessed 10.17.19).

<sup>30</sup> See p 83 in Greenfields, M. et al. (2019) The impact of migration in the Fenland area: a scoping report. Project Report. Rosmini Centre, Wisbech, UK. Available at: <https://arro.anglia.ac.uk/id/eprint/704980/>

**Table 11: Type of Employment undertaken: by age range**

	Age range					Total
	18-30	31-40	41-50	51-60	>61	
Not specified	19	4	8	2	3	36
Care Home	0	1	0	0	0	1
Construction Work	1	1	0	0	0	2
Conveyer Worker	0	0	0	1	0	1
DHL - Logistics	0	0	0	1	0	1
Driver	0	0	1	0	0	1
Factory	2	4	0	2	0	8
Factory and Field Work	0	0	1	0	0	1
Factory Work	25	19	19	17	4	84
Factory Work - Team Leader	1	0	0	0	0	1
Field Work	1	1	1	1	0	4
Food Production	5	4	3	2	1	15
Fork Lift Driver	0	1	0	0	0	1
Hairdresser	0	1	0	0	0	1
Head Chef	1	0	0	0	0	1
Hotel Night Porter	0	0	1	0	0	1
Housekeeper	0	1	0	0	0	1
Housekeeper	0	0	0	1	0	1
Land Worker	1	0	0	0	0	1
Lathe Operator	0	0	0	1	0	1
Line Leader	0	1	0	0	0	1
Line Operative	6	9	5	4	2	26

Generally, Fenland has more than twice the national proportion of businesses in agriculture, forestry and fishing and a relatively high proportion of Wisbech's economic activity falls under the 'agri-food' sector, which is supported by a cluster of associated and ancillary businesses.<sup>31</sup>

Due to the dependence on migrant labour in some of these sectors, business associations, employers and recruitment agencies have voiced significant concerns over the impact of Brexit on meeting future workforce requirements.<sup>32</sup>

A fall in the supply of migrant workers locally was observed in the interviews with employers, agencies and benefits/employment advisors<sup>33</sup> in the 2018 Fenland study. This was reported to predate the referendum in 2016 but has possibly been exacerbated by it. Other factors mentioned which potentially impact labour supply include the weak value of sterling and improving economic and labour market prospects in continental Europe at the time.<sup>34</sup>

<sup>31</sup> See p 138 in Greenfields, M. et al. (2019) The impact of migration in the Fenland area: a scoping report. Project Report. Rosmini Centre, Wisbech, UK. Available at: <https://arro.anglia.ac.uk/id/eprint/704980/>

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

One employment agent also noted a **fall in the number of field workers**, which was part of a more general labour shortage experienced in the region and nationally. They also noted that a shortage of workers in **unskilled positions** will impact on jobs higher up the scale, and eventually will affect entire businesses and UK employees further up the occupational hierarchy.<sup>35</sup>

Back in 2018, employment status, either working for an agency or in full-time employment, appeared to have a profound impact on intention to settle permanently, with far lower numbers of individuals who were unemployed seeking to settle in the UK.<sup>36</sup> CEE migrants without dependents more often expressed a wish to work on a temporary basis or to stay in the UK post-Brexit.<sup>37</sup>

In 2018, the employers in the agricultural and food production sectors employing migrant workers noted the fluctuating demand for labour, with agency workers often used when needs were higher:<sup>38</sup>

*The company will increase the number of workers from an agency to cover any peaks in production / harvesting.*

*Not seasonal but more peaks and troughs throughout the year and the week. Busier in March to October and at the end of the week rather than the start of the week.*

Two employers indicated the months when labour supply was the lowest: between March-October and in December.<sup>39</sup> These may align to other more lucrative seasonal opportunities or indeed holiday seasons when migrant workers perhaps return 'home'.<sup>40</sup>

One employer that provided a wide range of benefits and full package of training and information to their employees reported they did not need to recruit actively for permanent positions, as they were a sought-after employer.<sup>41</sup> Nevertheless, at peak season they might request up to another 100 agency staff who were migrant workers.<sup>42</sup> Therefore, we anticipate that the use of agency workers will continue to be in demand in agricultural and food production sectors in the future, especially as some agencies have 3000+ migrant workers on their books – both in the UK and abroad.<sup>43</sup>

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<sup>35</sup> See p 139 in Greenfields, M. et al. (2019) The impact of migration in the Fenland area: a scoping report. Project Report. Rosmini Centre, Wisbech, UK. Available at: <https://arro.anglia.ac.uk/id/eprint/704980/>

<sup>36</sup> p 111 Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> p 128 Ibid.

<sup>39</sup> p 129 Ibid.

<sup>40</sup> Ibid.

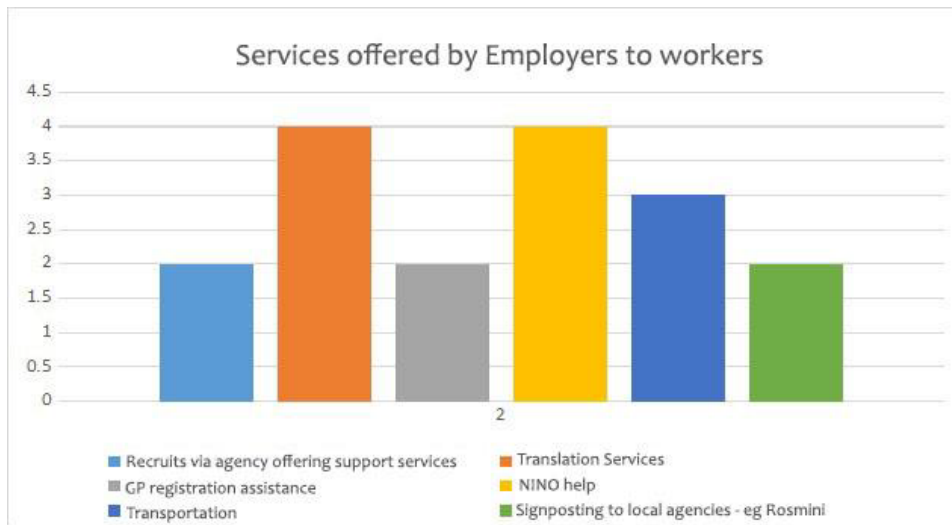
<sup>41</sup> pp 128, 131 Ibid.

<sup>42</sup> p 128 Ibid.

<sup>43</sup> Ibid.



To try and attract more workers,<sup>44</sup> employers and agencies were increasing wages and the quality of accommodation<sup>45</sup> and were shifting from temporary to permanent contracts.<sup>46</sup> The Fenland study also found that there were employers that provided substantial employment support (eg., assistance with obtaining National Insurance numbers, with GP registration, translation, transportation, renewal of passports, promoting and publicising the EU Settlement Scheme,<sup>47</sup> signposting to local agencies that can advise about living and working in the UK). Such employers tended to retain 80-90% of the regular workforce<sup>48</sup> and struggled less with recruitment.<sup>49</sup>



Similarly, the trade association representative [in the Fenland study] noted a trend of improving pay and conditions for workers in order to retain workers prior to Brexit.<sup>50</sup>

As with nursing (below) post-Brexit/Covid has seen a rise in non-EU workers and fall in EU agricultural seasonal workers. In 2021, 20,000 seasonal work visas were issued to Ukrainian nationals alone - 67% of the total.<sup>51</sup>

<sup>44</sup> p 139 Ibid.

<sup>45</sup> pp 164-165 Ibid.

<sup>46</sup> pp 146, 148 Ibid.

<sup>47</sup> pp 143-144 in Greenfields, M. et al. (2019) The impact of migration in the Fenland area: a scoping report. Project Report. Rosmini Centre, Wisbech, UK. Available at: <https://arro.anglia.ac.uk/id/eprint/704980/>

<sup>48</sup> p 130 Ibid.

<sup>49</sup> p 140 Ibid.

<sup>50</sup> p 146 Ibid.

<sup>51</sup> <https://migrationobservatory.ox.ac.uk/press/migration-statistics-show-uks-dependence-on-ukrainian-seasonal-workers-and-more-than-100000-visas-issues-for-bno-passport-holders/#:~:text=After%20Indian%20nationals%2C%20Ukrainians%20were,%2C%2067%25%20of%20the%20total.>

## Nursing

The nursing workforce shortage has been considered a crisis for many years now.<sup>52</sup> One of the stated means of achieving the government's ambition to expand the registered nurse workforce in England by 50,000 in 2024 is through increasing international recruitment.<sup>53</sup> Yet the NHS is already heavily reliant on overseas nurses to meet its workforce needs with only 56% of the nurses who joined the register in 2021 having trained in the UK.<sup>54</sup>

Apart from the ethical issues of relying upon sustained recruitment drives in lower-and-middle income countries leaving their own countries with insufficient supplies of nurses and medical staff, and that continued recruitment does not address 'the hole in the leaking bucket'<sup>55</sup> i.e., attrition in the nursing workforce and the factors that drive this e.g., stress, burnout, low pay and difficult working conditions<sup>56</sup>, there are additional issues of precarity that come with an over-reliance on overseas recruitment to meet UK labour force needs.

The Philippines currently contributes the largest number of overseas nurses to the NHS<sup>57</sup>, yet in 2020 the Philippines government enacted drastic measures to retain its healthcare workforce by enforcing a deployment ban, preventing its nursing workforce from leaving to work abroad.<sup>58</sup> This had a marked impact on overseas recruitment in the NHS during 2020, with the overseas joining figures reaching almost zero in the summer of 2020<sup>59</sup>, leading to a backlog and delay in overseas registrations when restrictions on movement were loosened. This event serves as a reminder of the precarity of the global nursing workforce supply chain in times of crisis and how vulnerable an over-reliance on overseas nurses is to sudden and drastic policy measures of sending countries' governments.

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<sup>52</sup> Royal College of Nursing [RCN] (2021) Nursing Workforce Shortages in England: 21 Missed Warnings. Available at: <https://www.rcn.org.uk/-/media/Royal-College-Of-Nursing/Documents/Policies-and-briefings/UK-Wide/Policies/2021/BR-0521.pdf>

<sup>53</sup> Department of Health and Social Care [DoHSC] (2022) 50,000 Nurses Programme: delivery update. Policy paper. Available at: <https://www.gov.uk/government/publications/50000-nurses-programme-delivery-update/50000-nurses-programme-delivery-update#international>

<sup>54</sup> Royal College of Nursing [RCN] (2022). UK Staffing for Safe and Effective Care: State of the nation's nursing labour market RCN biannual report February 2022. Available at: <https://www.rcn.org.uk/-/media/Royal-College-Of-Nursing/Documents/Publications/2022/February/010-108.pdf>

<sup>55</sup> Imison, C. (2016) Can we solve the nursing workforce crisis? Nuffield Trust comment, 21 November 2016. Available at: <https://www.nuffieldtrust.org.uk/news-item/can-we-solve-the-nursing-workforce-crisis>

<sup>56</sup> House of Commons Health and Social Care Committee [H&SCC] (2021). Workforce burnout and resilience in the NHS and social care. Second Report of Session 2021–22. Available at: <https://committees.parliament.uk/publications/6158/documents/68766/default/>

<sup>57</sup> Nursing and Midwifery Council [NMC] (2022). The NMC register. 1 April 2021 – 31 March 2022. Available at: <https://www.nmc.org.uk/globalassets/sitedocuments/data-reports/march-2022/nmc-register-march-2022.pdf>

<sup>58</sup> Ortega, Y. Y., Diño, M. J., & Macabasag, R. (2022). Clocking out: Nurses refusing to work in a time of pandemic. *Social science & medicine* (1982), 305, 115114. <https://doi.org/10.1016/j.socscimed.2022.115114>

<sup>59</sup> Nursing and Midwifery Council [NMC] (2022). The NMC register. 1 April 2021 – 31 March 2022. Available at: <https://www.nmc.org.uk/globalassets/sitedocuments/data-reports/march-2022/nmc-register-march-2022.pdf>

**An emphasis on strengthening the existing workforce through an increased focus on retention**, despite its perceived complexity<sup>60</sup> when compared to solutions that, at face value, appear to be relatively quicker and more achievable but do not address the root causes of the nursing workforce crisis, would be a welcome inclusion in any post-pandemic recovery plans.

## Education

The school representatives who took part in the interviews in the 2018 Fenland study have both experienced difficulties recruiting teaching staff and consequently, also may struggle to meet the needs of many of their pupils who do not have English as a first language. Where possible, they have recruited from overseas and also **employ bi-lingual staff** to support children of migrant workers.<sup>61</sup>

With regard to recruiting teaching staff from the EU, a skilled work visa system post-Brexit has been introduced, in which there will be no cap on numbers and no requirement for a labour-market test. The initial minimum salary requirements of £30,000 would have made it harder to recruit from EU countries because the threshold was higher than many teacher salaries, which for England [excluding London] and Wales range between £23,720 - £35,008.<sup>62</sup> Therefore, the current minimum salary requirement for "£20,480 or the relevant minimum rate for teachers in England, whichever is higher"<sup>63</sup> seems more appropriate.

### 2.3 Have there been structural changes in the labour market post-Covid?

An important structural change in the labour market, **the move away from permanent standard contracts of employment towards more 'gig-economy' work**, existed before COVID but has grown and will continue to grow during the post-COVID recovery period. The most recent statistics available record that 6.07 million people (around 14.7% of the working population) worked in the 'gig economy' at least once per week during 2021 and this figure was expected to increase to 7.25 million by the end of 2022.<sup>64</sup>

The same recent study also found that 48% of gig economy workers in the UK also have a full-time 'standard' job as well as their 'gig' work and for 71.5% of workers their 'gig' work makes up less than half their total income.<sup>65</sup>

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<sup>60</sup> Department of Health and Social Care [DoHSC] (2022). 50,000 Nurses Programme: delivery update. Policy paper. Available at: <https://www.gov.uk/government/publications/50000-nurses-programme-delivery-update/50000-nurses-programme-delivery-update#international>

<sup>61</sup> pp 152-153 in Greenfields, M. et al. (2019) The impact of migration in the Fenland area: a scoping report. Project Report. Rosmini Centre, Wisbech, UK. Available at: <https://arro.anglia.ac.uk/id/eprint/704980/>

<sup>62</sup> Hilpern, K., (2018). Deal or no deal – what does Brexit mean for schools? The Good Schools Guide.

<sup>63</sup> <https://www.gov.uk/guidance/recruit-teachers-from-overseas>

<sup>64</sup> Fennell, A. (2022) *Gig Economy Statistics UK* StandoutCV Industry Report June 2022. Available at [Gig Economy Statistics UK | June 2022 Industry Report \(standout-cv.com\)](https://standout-cv.com) (Accessed 1 July 2022)

<sup>65</sup> Ibid.

The most recent statistics on employment rates from ONS indicate a small (0.2%) increase in the employment rate to 75.6% in the UK between February and April 2022, but still below pre-pandemic levels.<sup>66</sup> The number of full-time employees reached a record high, but this was offset by a decrease in the number of part-time employees.

Interestingly, according to these statistics, the number of 'self-employed' workers fell during the COVID-19 pandemic but increased over the quarter under review.<sup>67</sup> This seems partly to contradict earlier findings of increases in some parts of the 'gig' economy, where workers are often classified as 'self-employed'.<sup>68</sup> The statistics are based on the HMRC adopted definition of employment as paid work under a contract of employment<sup>69</sup> but the 'gig economy' is a sector of the labour market where 'misclassification' of those in work as 'self-employed' is notorious, as demonstrated by the recent Supreme Court decisions.<sup>70</sup> The implications of recognising gig economy workers as employees or workers rather than self-employed, are considered further in the context of protection of worker rights below.

## 2.4 What more can the Government do to ensure that employers are able to recruit people with the right skills for the job, including the effective use of apprentices?

### The agri-foods industry

In terms of future planning, migrant workers in the agricultural and food production sectors are more likely to stay working with the same employer or agency longer, if the employment offers good working conditions, reasonable pay and support with personal needs and regulatory requirements while living in the UK. Therefore, the Government may wish to consider policy solutions that would **enable employers to provide attractive pay, good working conditions and additional support services for migrant workers**, to attract and retain good workers in these nationally significant industry sectors.

Additionally, the Government should **listen attentively to the proposals re migration policy adjustments previously voiced by the agri-food sector**. In August 2021, the agri-foods cross-industry report<sup>71</sup> put several practical solutions to the Government, both short-term and long-term on how to alleviate labour shortages. In terms of the immediate actions, they've asked for (1) Introduction of a 12-month Covid-19 Recovery visa that was also supported by the Mayor of London;<sup>72</sup> (2) Revision and expansion of the Seasonal Worker Pilot Scheme; and (3)

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<sup>66</sup> Office for National Statistics (2022) 'Employment in the UK'. Quarter Feb 2022-April 2022. Available at [Employment in the UK - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/employment-in-the-uk) (Accessed 1 July 2022)

<sup>67</sup> Ibid.

<sup>68</sup> Scarfe, R. (2021) 'Update: How is the coronavirus crisis affecting gig economy workers?', *Economics Observatory*, 2 March 2021. Available at: [Update: How is the coronavirus crisis affecting gig economy workers? - Economics Observatory](https://www.economics-observatory.com/updates/how-is-the-coronavirus-crisis-affecting-gig-economy-workers/) (Accessed 1 July 2022)

<sup>69</sup> *Employment Rights Act 1996 c. 18, section 230(1)*

<sup>70</sup> 'Pimlico Plumbers Ltd v Smith' [2018] UKSC 29; 'Uber BV v Aslam' [2021] UKSC 5

<sup>71</sup> <https://www.nfuonline.com/archive?treeid=152097>

<sup>72</sup> <https://www.london.gov.uk/press-releases/mayoral/mayor-of-london-calls-for-covid-recovery-visa>

Increased research and statistics on the impact of ending free movement with the involvement of the Migratory Advisory Committee (MAC).

It is a positive development that the **Seasonal Agricultural Worker Scheme (SAWS) extended up to end of 2024**,<sup>73</sup> and it would be advisable to re-assess whether a longer extension may be needed past this date.

The longer-term proposals from the agri-foods cross-industry report<sup>74</sup> included:

- (4) promoting the sector as a career choice;
- (5) using a more coordinated approach to training among the industry, central and regional government, to ensure future workers are trained for the right locations;
- (6) reviewing and expanding on of the Kickstart scheme for under 25's;
- (7) adding relevant Food and Drink courses to the list of Level 3 adult courses eligible for the £95m Lifetime Skills Guarantee - to help to bridge the widening skills gap with overseas workers while working to attract and train home-grown workers;
- (8) review of immigration policy to support the sector in the long-term;
- (9) design greater incentives for apprenticeships;
- (10) extend the Youth Mobility Scheme visa<sup>75</sup> to cover European and other countries, eg the Ukraine.

The above proposals on **upskilling of the UK-born workforce** have merit, as the employers in the Fenland study noted “a reluctance among UK born workers to work in their employment sectors, emphasising the reluctance of such workers to accept the low pay and long hours associated with this work coupled with their occurring in often remote geographic locations.”<sup>76</sup> The observation on low working conditions is also supported by the Migration Advisory Committee (MAC) consultation on the impact on the UK labour market of the UK’s exit from the European Union,<sup>77</sup> with regular employer concerns “on the impact on productivity should employers be required to employ UK born locals.”<sup>78</sup>

The Government could also design and enable policies to **support the development of stronger work ethos of the local non-migrant British population**, starting from schooling age. The Fenland study found employers were having great difficulties filling vacancies from

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<sup>73</sup> Home Office, Department for Environment, Food & Rural Affairs, Kevin Foster MP, and The Rt Hon George Eustice MP. 2021. Industry given certainty around seasonal workers but told to focus on domestic workforce, news story, 24 December, viewed 5 July 2022, <https://www.gov.uk/government/news/industry-given-certainty-around-seasonal-workers-but-told-to-focus-on-domestic-workforce>

<sup>74</sup> <https://www.nfuonline.com/archive?treeid=152097>

<sup>75</sup> <https://www.gov.uk/youth-mobility>

<sup>76</sup> pp 146-147 in Greenfields, M. et al. (2019) The impact of migration in the Fenland area: a scoping report. Project Report. Rosmini Centre, Wisbech, UK. Available at: <https://arro.anglia.ac.uk/id/eprint/704980/>

<sup>77</sup> Migration Advisory Committee, 2018. Responses to the MAC consultation on the impact on the UK labour market of the UK’s exit from the European Union. Agriculture, forestry and fishing (SIC 1- 3)

<sup>78</sup> p 147 in Greenfields, M. et al. (2019) The impact of migration in the Fenland area: a scoping report. Project Report. Rosmini Centre, Wisbech, UK. Available at: <https://arro.anglia.ac.uk/id/eprint/704980/>

among UK born workers, noting the need for change of attitudes among 'local' workers to field and factory work as well as challenges around poor punctuality, absenteeism and low productivity among the UK born population.<sup>79</sup> Similar differences in attitudes with engagement were also noticed by the education providers. They noted absenteeism among their Eastern European pupils was low, compared to their English peers and pointed to the fact that by year 6 Eastern European pupils are often outperforming English pupils and predominate among the highest achieving pupils. The attitudes of non-UK born children to school, punctuality and attendance was contrasted favourably to the anti-school ethos of many of the UK born pupils, particularly as they get older and move into secondary school.<sup>80</sup>

Additionally, Government agencies could invest in social marketing to **raise awareness about job opportunities or training** - to reach the wider communities.

Another recommendation is to provide more **language classes** for migrant population to enable employability.<sup>81</sup> Findings from the *Migration Research into Ethnic and Culturally Diverse Groups in Essex project* highlight the need for accessible languages in relation to costs, venue and time; for example, it was suggested that more evening class will provide more options for working people. These findings mirror the results from the Fenland study.<sup>82</sup>

**Finally, enhanced communication and data sharing** between the various of organisations – from the voluntary, public and IAG sectors – is essential in order to improve access to services for the local people. This is the recommendation stemming both from the *Migration Research into Ethnic and Culturally Diverse Groups in Essex project* and the *Impact of Migration in the Fenland Area* scoping study.

## Nursing

The English language requirements consultation that is currently underway by the Nursing and Midwifery council (NMC)<sup>83</sup> is a welcome move, given that our research has found that existing **English language requirements** are excessively difficult, surpassing the needs and realities of clinical practice, and hence proving to be an additional barrier to overseas nurse recruitment.<sup>84</sup>

However, an overreliance on recruitment from overseas should be cautioned against, given the ethical issues of doing so and recruitment should adhere to ethical and direct recruitment practices to reduce the reliance on recruitment agencies some of whom are effectively trapping

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<sup>79</sup> p 181 Ibid.

<sup>80</sup> pp 155-156 and 188 Ibid.

<sup>81</sup> Schneider, C., Paraskevopoulou, A., Noble, A., and Preston, C. (2020) *Migration Research into Ethnic and Culturally Diverse Groups in Essex*. Cambridge: Anglia Ruskin University. Unpublished – project funded by Essex Council and Rainbow services

<sup>82</sup> Greenfields, M. et al. (2019) The impact of migration in the Fenland area: a scoping report. Project Report. Rosmini Centre, Wisbech, UK. Available at: <https://arro.anglia.ac.uk/id/eprint/704980/>

<sup>83</sup> <https://www.nmc.org.uk/registration/joining-the-register/english-language-consultation/why-are-we-looking-at-our-english-language-requirements/>

<sup>84</sup> Gillin, N., Smith, D. (2021) Filipino Nurses' Perspectives of the clinical and language competency requirements for nursing registration in England. A qualitative exploration. *Nurse Education in Practice*. 56: 103223.

overseas care workers in debt bondage.<sup>85</sup> Additionally, it should be accompanied by a serious commitment to exploring and **addressing the retention and attrition issues within the NHS workforce** that are placing increasing demands on the overseas recruitment pipeline.

## The Arts

Our research indicates that it would be recommended for the Government to provide more support for the arts and the artists in order to preserve Britain's key role in the arts and culture in post Brexit period, especially as the artists as many have been unable to sustain themselves during Covid.<sup>86</sup> In more detail, the research found that support can be provided in terms of **funding schemes** open to artists and cultural workers in general that experienced hardship as a result of the pandemic. Interviewees in *The Art of Integration* study also mentioned support to better understand and **develop the online infrastructure** to help artists disseminate their work digitally. The pandemic showed some opportunities but also exposed pre pandemic inequalities. The post pandemic digital or in-person interaction with arts needs support to become more inclusive and to **engage with wider sections of the population**. Finally, support can also be provided to help artists overcome any **emotional and mental health** issues they may have encountered because of loss of income during the pandemic.

### 2.5 What are the skills and training needs of different sectors over the coming months and years? Are there particular case studies that underpin priority policy objectives from the Government (for example, in the energy industry)?

The Fenland study "participants identified a 'mixed bag' of approaches to workforce planning post-Brexit, with many firms adopting a variety of strategies depending on the nature of their industry and resources available. It was reported that some larger companies are investing more in [artificial intelligence and] automation to reduce reliance on labour. <...> This was not seen as a viable [short-term or medium-term] approach for many though, due to the uncertainty resulting from over-reliance on supermarkets to buy their produce and a lack of investment available."<sup>87</sup>

Other future-proofing options that the employers were considering back in 2018 included:<sup>88</sup>

- "relocation to countries with plentiful supplies of labour";
- looking "further afield for workers and recruit people with lower skills - this will however impact on overheads re: training, and higher wages for multilingual supervisory staff";

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<sup>85</sup> Business and Human Rights Resource Centre (2022) UK: Investigation finds migrant care workers charged thousands in illegal fees to recruitment agencies. Available at: <https://www.business-humanrights.org/en/latest-news/uk-investigation-finds-migrant-care-workers-charged-thousands-in-illegal-fees-to-recruitment-agencies/>

<sup>86</sup> Paraskevopoulou, A. (2021) *The Art of Integration*. Same finding is highlighted in the Arts Council funded research: Bradbury A, Warran K, Mak H W & Fancourt D. (2021) *The Role of the Arts during the COVID-19 Pandemic*. London

<sup>87</sup> p 145 in Greenfields, M. et al. (2019) *The impact of migration in the Fenland area: a scoping report*. Project Report. Rosmini Centre, Wisbech, UK. Available at: <https://arro.anglia.ac.uk/id/eprint/704980/>

<sup>88</sup> pp 45-46 Ibid

- putting “more resources into providing training, as the skills levels of new workers arriving [numeracy, literacy and English language] continues to decline.”

Some employers relocated or closed down their units in order to save costs leading to higher unemployment in the local community.<sup>89</sup>

### 3. Artificial Intelligence (AI) and technology in the workplace

Our research indicates that the increased use of technology and automated systems constitute **barriers for older migrants** seeking employment or accessing services.<sup>90</sup>

#### 3.1 How are companies monitoring workers and setting performance targets through algorithms? Is this practice widespread? To what extent are employers using algorithms in recruitment? How well does existing regulation protect workers from the risks posed by AI and algorithms in the modern workplace

Studies from the USA raise concerns of inherent direct and/or indirect discrimination in the use of algorithms for recruitment of workers<sup>91</sup> and/or the use of ‘rating’ systems for workers by customers/clients to determine future employment.<sup>92</sup> There are very few studies in the UK on this point, but the issue is currently being considered by Employment Tribunal in the cases of *Manjang v Uber Eats UK Ltd* and *Raja v Uber BV*<sup>93</sup> – both pending.

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<sup>89</sup> Schneider, C., Paraskevopoulou, A., Noble, A., and Preston, C. (2020) *Migration Research into Ethnic and Culturally Diverse Groups in Essex*. Cambridge: Anglia Ruskin University. Unpublished – project funded by Essex Council and Rainbow services.

<sup>90</sup> Schneider, C., Paraskevopoulou, A., Noble, A., and Preston, C. (2020) *Migration Research into Ethnic and Culturally Diverse Groups in Essex*. Cambridge: Anglia Ruskin University. Unpublished – project funded by Essex Council and Rainbow services; Smith, D., Greenfields, M., Dagilytė, E., Dadswell, A., Ghosh, G. (2022) *Older EU migrants and access to public services and support post-Brexit*. Cambridge: Anglia Ruskin University. Ongoing - project funded by Anglia Ruskin University.

<sup>91</sup> Noble, S.U. (2018) *Algorithms of Oppression; how Search Engines Reinforce Racism* New York: NYU Press ISBN 978-1479837243; Kleinberg, J., Ludwig, J., Mullainathan, S. and Sunstein, C.R. (2020) ‘Algorithms as Discrimination Detectors’ 117(48) *Proceedings of the National Academy of Sciences* 30096-30100. doi: <https://doi.org/10.1073/pnas.1912790117>

<sup>92</sup> Cunningham-Parmenter, K. (2022) ‘Discrimination by Algorithm: Employer Accountability for Biased Customer Reviews’. To be published in *UCLA Law Review* [Preprint]. doi: <http://dx.doi.org/10.2139/ssrn.4044072>

<sup>93</sup> Butler, S. (2021) ‘Uber facing new UK driver claims of racial discrimination’. *The Guardian*, 6th October, online. Available at: [Uber facing new UK driver claims of racial discrimination | Uber | The Guardian](https://www.theguardian.com/technology/2021/oct/06/uber-facing-new-uk-driver-claims-of-racial-discrimination) (Last accessed 8 July 2022)



## 4. Workers' rights and protections

### 4.1 How can the Government improve employment rights, following Brexit and the covid-19 pandemic?

Main 'improvement' to employment rights will be **not to remove or reduce protections already embedded in the law, including those which derive from the EU following Brexit**. Despite assurances to the contrary, this seems a real possibility in the light of recent announcements from the Government on reviewing retained EU Law.<sup>94</sup>

On more positive improvements in employment rights, the Government should **engage more with trade unions and other worker representatives** in dialogue about future improvements. This has already proved to be beneficial in improving health and safety issues during and as the economy emerges from the COVID-19 pandemic period, although it was necessary to resort to judicial review proceedings to bring about the necessary improvements.<sup>95</sup>

Improvements could also be made by **adopting fully the provisions of the EU's Directive on Transparent and Predictable Working Conditions**<sup>96</sup> beyond those already implemented before the UK's departure from the EU.<sup>97</sup> This would enable improved coverage of employment rights for large groups of workers whose current position in relation to those rights is unclear.<sup>98</sup>

The need to strengthen worker rights is becoming more urgent in the face of Government reforms to judicial review<sup>99</sup> and proposed changes to the Human Rights Act 1998.<sup>100</sup> Such reforms are likely to restrict the ability of workers and their representatives to seek extensions of employment protections. Comment has already been made that health and safety protections were only extended to workers as a result of judicial review proceedings brought by a union representing gig economy and precarious workers.<sup>101</sup>

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<sup>94</sup> TUC (2022) 'TUC demands assurances hard-won workers' rights are not on the line in Rees-Moggs' "reckless" post-Brexit plans' *TUC News listing* 1 June. Available at: [TUC demands assurances hard-won workers' rights are not on the line in Rees-Moggs' "reckless" post-Brexit plans | TUC](#) (Accessed 1 July 2022)

<sup>95</sup> 'R(On the application of the Independent Workers Union of Great Britain) v Secretary of State for Work & Pensions' [2020] EWHC 3050; Hobby, C. (2021) 'Workers' Rights: A Public Health Issue (*R(On the application of the Independent Workers Union of Great Britain) v Secretary of State for Work & Pensions*)' 50(3) *Industrial Law Journal* 467-491. doi: <https://doi.org/10.1093/indlaw/dweb015>

<sup>96</sup> Directive(EU) 2019/1152 of the European Parliament and of the Council of 20<sup>th</sup> June 2019 on transparent and predictable working conditions in the European Union. [EUR-Lex - 32019L1152 - EN - EUR-Lex \(europa.eu\)](#)

<sup>97</sup> [The Employment Rights \(Miscellaneous Amendments\) Regulations 2019 \(S.I. 2019/731\)](#)

<sup>98</sup> Georgiou, D. (2022) 'The New EU Directive on Transparent and Predictable Working Conditions in the Context of New Forms of Employment' *European Journal of Industrial Relations* (Online). doi: <https://doi.org/10.1177/09596801211043717>

<sup>99</sup> *Judicial Review and Courts Act 2022, c.35*. The Act received the Royal Assent on 28<sup>th</sup> April 2022. The enacted version of the Act is viewed as a 'watering down' from some of the more radical changes to the judicial review system originally proposed.

<sup>100</sup> *Bill of Rights Bill* (2022) Parliament: House of Commons. Bill No 117. Available at: [Bill of Rights Bill - Parliamentary Bills - UK Parliament](#) (Accessed 7 July 2022).

<sup>101</sup> 'R(On the application of the Independent Workers Union of Great Britain) v Secretary of State for Work & Pensions' [2020] EWHC 3050

Although the current proposals for reform of the Human Rights Act 1998 are directed towards strengthening Parliament's sovereignty and removal of the perceived 'abuse' of the legislation by 'foreign criminals', **watering down many of the provisions of the European Convention on Human Rights is likely to have a negative impact on employment protections**. Recent decisions from the European Court of Human Rights have illustrated the importance of Convention Rights in relation to protection of workers' rights.<sup>102</sup>

Our research indicates that **legislative change**, that more closely assimilates the rights and protections of 'workers' with those currently enjoyed by 'employees' and provides for a more stable employer/employee relationship, will help to ensure better protection for this group workers, promoting further worker voice and engagement and helping workers out of poverty. Additionally, employers can also work with the Government and trade unions in order to improve work conditions.<sup>103</sup>

#### 4.2 How can the right balance be struck between the flexibility the UK economy needs and protections for workers?

The experience of the COVID-19 pandemic has highlighted that **'flexibility' cannot be used as a euphemism for exploitation** and achieved at the cost of basic protections against loss of health and livelihoods.<sup>104</sup>

However, the creation of measures to 'bridge the gap' between traditional and 'non-standard' workforces and greater assimilation of protections for those in the 'gig' and precarious labour market with those in more stable workforces should bring about the necessary and **fairer balance between the needs of employers and protection of workers**.<sup>105</sup>

#### 4.3 What can the Government do to improve protection for people in low-paid work and the gig economy?

Greater assimilation of **rights and protections for workers** in these forms of work with employees in **more stable and better paid employment** – see above.

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<sup>102</sup> For example, 'Špadijer v. Montenegro' Application No 31549/18, ECtHR Judgment 9 November 2021. Available at: [31549/18](https://hudoc.echr.coe.int/fre?i=001-217480) ('Bullying' of worker at place of work was a violation of Art 8 rights); 'Straume v Latvia' Application No 59402/14. Judgment 2 June 2022. Available at: <https://hudoc.echr.coe.int/fre?i=001-217480> (Dismissal of Chair of local union for raising health and safety concerns was a violation of Arts 6, 10 and 11).

<sup>103</sup> Noble, A. and Paraskevopoulou, A. (2022) *Collective Labour Voice in the Post-Covid Gig Economy* (ongoing)

<sup>104</sup> Korreck, S. (2020) 'COVID-19 and India's Gig Economy: The Case of Ride-Hailing Companies'. ORF Issue Brief No 377, Observer Research Foundation. Available at: [ORF-Issue-Brief-377-Pandemic-Gig.pdf \(orfonline.org\)](https://www.orfonline.org/pdfs/377-Pandemic-Gig.pdf) (Accessed 24 June 2022)

<sup>105</sup> Mahato, M., Kumar, N., and Jena, L.K. (2021) 'Re-thinking Gig Economy in Conventional Workforce post COVID-19: A Blended Approach for upholding fair balance' 13(2) *Journal of Work-Applied Management* 261-276. doi: <https://doi.org/10.1108/JWAM-05-2021-0037>

#### 4.4 What opportunities should be taken to capitalise on the UK's departure from the EU to differentiate between the EU and UK standards in some areas of workers' rights and protections?

The UK already has some areas of workers' rights and protections which enjoy a higher standard of protection than those mandated as minimum standards by the EU legislation upon which the UK regulations are based, such as in the area of worker paid annual leave and protection on the ('TUPE') transfer of an undertaking to a new employer (although the latter protection is only extended to those classified as 'employees', not to all workers). **These enhanced protections should be retained and, in the case of TUPE transfers, should be extended to all workers.** Whilst there are cogent arguments for strengthening existing domestic employment rights and protections which have never been part of or derived from EU legislation (such as removal of 'qualifying' periods of continuous employment and 'caps' on compensation in unfair dismissal claims), **the closer assimilation of 'worker' rights with those currently enjoyed by 'employees' only is a more pressing and urgent area of reform.**

#### 4.5 The Government announced, but has not yet published, a new statutory code to prevent unscrupulous employers using fire and rehire tactics. What should this new code include to be an effective deterrent against that practice?

In order to address this issue, **more than a 'code' will be needed** to prevent the actions of 'unscrupulous' employers. One possibility would be the imposition of a statutory implied term along similar lines to the one that was found to exist by the High Court when granting an injunction to prevent Tesco from employing such tactics to avoid a previously agreed 'retained pay' clause.<sup>106</sup> The finding of an 'implied' term by a court is dependent on the facts of the individual case the court is asked to adjudicate upon, so there would be insufficient certainty to permit this to be decided on a 'case-by-case' basis.<sup>107</sup> **A statutorily imposed implied term in all contracts of employment** to the effect that the employer was prevented from terminating the contract for the sole or main purpose of re-hiring the employee on less favourable terms would provide a strong deterrent to the employer and a measure of protection for the employee.

Alternatively, there should be an **amendment to the legislation to make dismissal for this reason 'automatically' unfair** for the purposes of unfair dismissal and **remove the qualifying period of continuous employment for bringing such claims.**<sup>108</sup> This would prevent employers from seeking to rely on the 'some other substantial reason' potentially fair reason for dismissal in such cases and targeting employees with short service periods, who are particularly vulnerable.

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<sup>106</sup> 'USDAW v Tesco Stores Ltd' [2022] EWHC 201 (QB).

<sup>107</sup> 'Marks & Spencer plc v BNP Paribas Securities Ltd' [2015] UKSC 72

<sup>108</sup> *Employment Rights Act 1996* c.18, sections 98A to s 107, sections 108(1) and 108(3)

#### 4.6 Are updates to employment law required to match the increased amount of work being undertaken from home?

No significant amendments to the law required on this point, but it would be beneficial to have a **clearer recognition that the worker's home is still a 'place of work'** and the legal provisions relating to health and safety, duties of care, hours of work, respect for privacy and family life, data protection, prevention of discrimination etc. are equally applicable to the employee as if s/he was undertaking work at the employer's premises or those of a customer/client.

### 5. Employment status and modern working practices five years on from the Taylor Review

#### 5.1 How are working patterns changing in the UK? To what extent is the gig economy growing and permanent full-time employment contracts in decline?

The full size and scope of the 'gig-economy' has always been difficult to measure due to conceptual difficulties in identifying this sector. Some recent statistics have been produced and discussed above, which show current and predicted future growth of the gig economy.<sup>109</sup>

At the same time, the Fenland study on the agricultural and food production industries indicates that employers and agencies in these sectors had been struggling to attract workers, so are reducing the number of zero-hours contracts, increasing wages and shifting from temporary to permanent contracts, aiming for a more continuous work supply to retain their workforce: "If you're not giving people 30 to 40 hours a week, you'll probably lose them".<sup>110</sup>

#### 5.2 What should the Government be doing five years on from the Taylor review of modern working practices to address the issues raised in that report?

The Government has implemented some measures in response to the recommendations of the Taylor Report, but these have been very small in number and it is not clear how these are designed to address the issues identified by Taylor.<sup>111</sup>

The Taylor Review was criticised at the time of its publication for being unlikely to address the widespread deprivation of workers' rights within the gig economy and contemporary

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<sup>109</sup> Fennell, A. (2022) 'Gig Economy Statistics UK' StandoutCV Industry Report June 2022. Available at: [Gig Economy Statistics UK | June 2022 Industry Report \(standout-cv.com\)](https://standout-cv.com) (Accessed 1 July 2022)

<sup>110</sup> p 148 in Greenfields, M. et al. (2019) The impact of migration in the Fenland area: a scoping report. Project Report. Rosmini Centre, Wisbech, UK. Available at: <https://arro.anglia.ac.uk/id/eprint/704980/>

<sup>111</sup> Some examples include the extension of the right to receive a 'written statement' of employment terms as a 'day 1' right to all workers ([The Employment Rights \(Miscellaneous Amendments\) Regulations 2019 \(S.I. 2019/731\)](#)); removal of the 'Swedish Derogation' for Agency Workers ([The Agency Workers \(Amendment\) Regulations 2019 \(SI 2019/74\)](#)); and the introduction of the HMRC online 'CEST' Tool for indicating employment status (for tax purposes) (HMRC (2019) [Check Employment Status for Tax](#). Available at: [HMRC's employment status for tax tool](#) (Last accessed: 1 July 2022)).

workplace<sup>112</sup> and for the absurdly optimistic characterisation of workers in the gig economy as having a ‘choice’ about their working practices.<sup>113</sup>

These concerns appear to be borne out by the measures the Government has taken so far, and even those that are promised by **the long awaited and delayed Employment Bill**, now much reduced in both scope and status.<sup>114</sup> The Taylor Review highlighted areas in need of reform as, amongst other things, employment status, ‘Zero Hour Contracts’ and workers’ voice and representation.<sup>115</sup> Whilst some of the proposed new legislation seeks to address these issues, the excessive delay and, in the case of the proposed ‘right’ to demand a more stable working relationship, the absence of any mention of this measure from three Queen’s Speeches raises serious concerns about whether any of these proposals will be implemented. **The Government needs to implement the measures proposed with a great deal more urgency than it has shown so far.**

### 5.3 Are current legal definitions of employment status, in light of recent judicial rulings, still fit for purpose?

The legal definitions of employment status, despite their age and basis in common law, work reasonably well to identify ‘employees’, ‘workers’ and, by default, those who are ‘self-employed’. They are defined in simple terms and are relatively straightforward to understand and apply.<sup>116</sup> What causes the legal definitions to appear to be ‘unfit for purpose’ is the action of unscrupulous employers who attempt to circumvent the definitions through the written terms of the contract under which the worker is engaged. Such attempts to ‘re-define’ the employer/worker relationship often follow judicial rulings on employment status which are unfavourable to the employer.<sup>117</sup> Although courts and tribunals often see through such obvious attempts to circumvent the definitions, this is not always the case. **The prevention of attempts to amend contracts to circumvent the definitions should be the focus of any legislative change rather than the definitions themselves.**

If amendments to the definitions of employment status are required, one area of improvement might be to **remove the ‘mutuality of obligations’ element from the test** which courts and tribunals apply. This element has never formed part of the statutory definition of ‘employment’ or

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<sup>112</sup> Bales, K., Bogg A., and Novitz, T. (2018) “Voice” and “Choice” in Modern Working Processes: Problems with the Taylor Review’ 47(1) *Industrial Law Journal* 46-75. doi: <https://doi.org/10.1093/indlaw/dwx028>

<sup>113</sup> Briken, K. and Taylor, P. (2018) ‘Fulfilling the “British Way”: Beyond Constrained Choice – Amazon Workers’ Lived Experiences of Workfare’ 49(5-6) *Industrial Relations Journal* 438-458. doi: <https://doi.org/10.1111/irj.12232>

<sup>114</sup> *Employment Bill* (2021) Parliament: House of Commons. Bill No 45. Available at: [Employment Bill \(parliament.uk\)](https://www.parliament.uk/bills/2021-22/employment-bill). (Accessed 1 July 2022). After being introduced in 2019 as a Public Bill, the current version is now a Private Member’s Bill, to be dealt with ‘as and when Parliamentary time permits’. Given Parliament’s current legislative workload, it seems unlikely that time will be found in this Parliament.

<sup>115</sup> Bales, K., Bogg, A., and Novitz, T. (2018) “Voice” and “Choice” in Modern Working Processes: Problems with the Taylor Review’ 47(1) *Industrial Law Journal* 46-75. doi: <https://doi.org/10.1093/indlaw/dwx028>

<sup>116</sup> *Employment Rights Act 1996* c.18, section 230(1); ‘Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance’ [1968] 2 QB 497; ‘Autoclenz Ltd v Belcher’ [2011] UKSC 41

<sup>117</sup> Such as happened for Uber drivers in the wake of the EAT ruling in the ‘Aslam’ case and Deliveroo Riders shortly before the CAC decision challenged in ‘Independent Workers Union of Great Britain v Central Arbitration Committee and Rooffoods Ltd t/a Deliveroo’ [2021] EWCA Civ 962

'employee' and does not appear in any of the leading common law tests. It is an element which has become embedded into the legal test by repetition rather than on the basis of legal principle.<sup>118</sup> There have been recent attempts by the Court of Appeal to limit the scope of this test,<sup>119</sup> but its removal altogether from the test for employment status would significantly improve the ability of courts and tribunals to see the 'reality' of the worker/employer relationship.

#### **5.4 How have employee demands and employer offers of flexible working been affected by the pandemic? How should this affect Government plans and commitments around flexible working?**

It is anticipated that the experience of working from home during the height of the COVID-19 pandemic will lead to an increase in requests for more flexible working arrangements now that restrictions are easing. At the moment, the evidence for such increased demand is predictive or anecdotal.<sup>120</sup>

The Government has already completed a consultation exercise on the future of flexible working arrangements, although the results of that consultation have yet to be made public.<sup>121</sup>

#### **Responses to the anticipated increase in flexible working arrangements should include:**<sup>122</sup>

1. A legal duty on employers to publicise flexible working arrangements in job advertisements or state why such arrangements are not suitable;
2. 'Day 1' rights to take up the advertised flexible working arrangements, rather than have a qualifying period of employment;
3. Make flexible working arrangements the 'default' position, with employers having to justify such arrangements being unavailable as a proportionate means of achieving a legitimate aim, rather than the current vague and ambiguous 'business case';
4. Reduce time limits between requests for flexible working arrangements.

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<sup>118</sup> McGaughey, E. (2019) 'Uber, the Taylor Review, Mutuality and the Duty not to Misrepresent Employment Status' 48(2) *Industrial Law Journal* 180-198. doi: <https://doi.org/10.1093/indlaw/dwy014>

<sup>119</sup> 'HMRC v Professional Game Match Officials Ltd' [2021] EWCA Civ 1370

<sup>120</sup> ACAS (2021) 'New Study reveals half of employers expect more flexible working requests from staff after the pandemic is over'. *ACAS News and Announcements* 15 July. Available at: [New study reveals half of employers expect more flexible working requests from staff after the pandemic is over | Acas](#) (Accessed 1 July 2022)

<sup>121</sup> Department for Business, Energy and Industrial Strategy (2021) *Consultation: Making Flexible Working the Default*. Available at: <https://www.gov.uk/government/consultations/making-flexible-working-the...> (Last accessed 1 July 2022). This consultation closed on 1 December 2021.

<sup>122</sup> TUC (2022) *Making Flexible Working the Default: A TUC Report on public responses to the BEIS consultation on flexible working*. Available at: [Making flexible working the default | TUC](#) (Accessed 1 July 2022)

## 6. The impact of an ageing population on the labour market

### 6.1 How can the Government help maintain the employability of older workers who wish to remain in work? What are the barriers facing older people in the workplace, including pension aged workers, and how should these be addressed?

The results from *Migration Research into Ethnic and Culturally Diverse Groups in Essex* project indicates that the main barriers include stereotyping and age discrimination in the labour market which prevents older workers to find a job. Therefore, more effort is needed in tackling age discrimination in general. **Closer collaboration between different agencies** such as government bodies, employer organisations, trade unions, NGOs and other organisations will be able to strengthen existing inclusive policies. Finally, **more support is needed for older migrants to be able to access services**: support in terms of language and practical support with using technology.<sup>123</sup>

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<sup>123</sup> Schneider, C., Paraskevopoulou, A., Noble, A., and Preston, C. (2020) *Migration Research into Ethnic and Culturally Diverse Groups in Essex*. Cambridge: Anglia Ruskin University. Unpublished – project funded by Essex Council and Rainbow services.