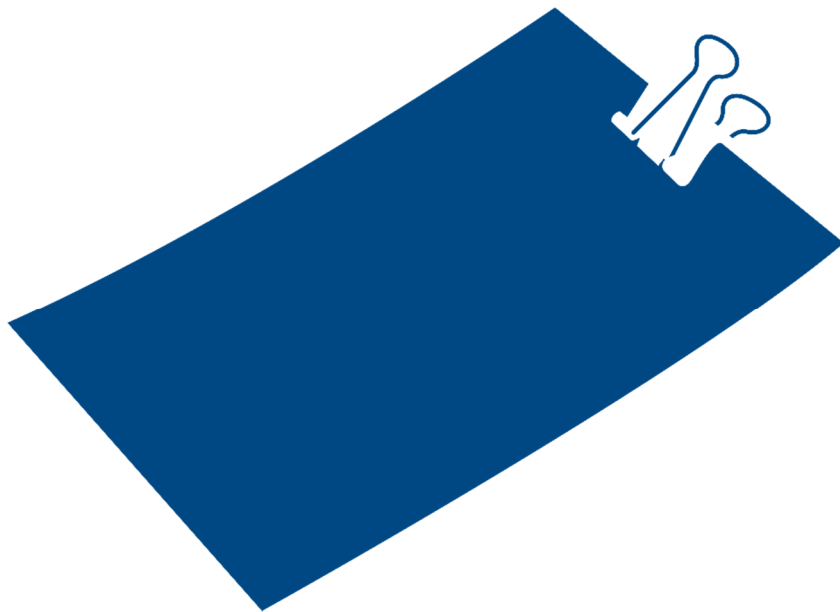


Good work in Broxtowe

Improving employment in
the light of the Taylor
Report



Published September 2017

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Introduction

Work is in the headlines – and it is an important topic for people in Broxtowe.

Most of us spend a large proportion of our time working, and rely on the income to pay the bills. We need security of income. When things go wrong – such as not being paid correctly – we need simple, effective remedies.

The Taylor Report, published in July 2017, presents a detailed analysis and set of recommendations to promote “Good Work”. Citizens Advice Broxtowe has produced this report to comment on the issues raised by *Taylor*, and to highlight the impact on our clients.

Nationally, Citizens Advice has made recommendations in relation to *Taylor*, and has commented that the review is a decent first step towards a fairer jobs market.¹

The debate in relation to *Taylor* and work can easily get bogged down in disputes over the benefits of a “flexible” employment market, definitions of terms such as the “gig economy”, or questions about whether most people on zero hours contracts are happy with them. Within this report, we have focused on real examples of the problems faced by ordinary people, which illustrate that remaining with the status quo is not an acceptable option.

Many of the rights of individuals in work depend on their employment status – whether “employed”, “self-employed” or “worker”. Rights to National Minimum Wage and holiday pay, for example, do not apply to the genuinely self-employed. Deciding whether someone is really an employee, or a worker, or self-employed, can be a difficult exercise. Enforcing the related rights can often be problematic.

Large numbers in the workforce today are no longer engaged directly, but through agencies or other intermediaries. As a result, the individual worker no longer has a direct



"From the decision to take action against your employer to winning or losing the case against them, the odds are often stacked against the worker. This has to change if we are to effectively police fair and decent work"

(Taylor report p57)

¹ <https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/media/press-releases/taylor-review-a-decent-first-step-towards-a-fairer-jobs-market-says-citizens-advice/>

contractual relationship with the end employer, and individuals can be unclear on their rights, the terms of payment, and how to pursue any concerns.

Individuals in work need security of income, so that bills can be paid. When there is no guaranteed level of work, this can result in debts building up, rent being unpaid, and makes handling benefit income more difficult.

Our report sets out:

- An overview of *Taylor*
- The experience of Citizens Advice Broxtowe in relation to work enquiries
- Detailed client case studies which illustrate the specific problems certain clients face
- How specific *Taylor* recommendations could have a positive effect for our clients

Executive Summary

Our experience indicates that there is a significant minority of individuals who suffer seriously adverse consequences from unacceptable practices at work. There is also evidence that some Broxtowe residents are struggling with the impact of zero-hours contracts.

The issues include:

1. Not receiving National Minimum Wage – for example due to being treated as self-employed, where the strong indications are that they should be treated as employees
2. Finding it confusing and difficult to pursue rights
3. Being unable to enforce rights – even where Tribunal awards are granted, employees can find it difficult to obtain payment
4. Confusion and complexity with regard to intermediaries such as agencies, including uncertainty around the rates of pay, deductions, and how to address problems

Often individuals are too worried about losing a job to pursue their rights, which illustrates the need for strong and active enforcement, and better ways for workers to be protected.

Based on our experience at Citizens Advice Broxtowe, we believe that many of the *Taylor* recommendations would be particularly beneficial to residents of Broxtowe. Specifically:

- The right to a written statement of employment particulars from day one for all workers
- A higher rate of NMW for workers on non-guaranteed hours (ie zero-hours workers)
- Agency workers to receive more transparent information regarding pay and the identity of the employer
- Enforcement of payment of holiday pay by HMRC
- Government enforcement action for unpaid Employment Tribunal awards
- A presumption of employee/worker status (with safeguards)

We urge local stakeholders and influencers, in Broxtowe and beyond, to support change, and to work towards implementing the following Citizens Advice recommendations:

- The types of employment and people's rights at work should be clear and transparent
- The system of employment rights and protections should be accessible and responsive, ensuring rights adapt to changing labour market practices
- A broad and long term commitment by government and employers is needed to create stable and decent jobs
- The establishment of one "Fair Work Authority" – currently several agencies (including HMRC, Employment Agency Standards Inspectorate, and Gangmasters and Labour Abuse Authority) have responsibility for enforcing employment rights and standards

Taylor Report - Overview

Matthew Taylor was asked by the Government to conduct a review to consider the implications of new forms of work on worker rights and responsibilities, as well as on employer freedoms and obligations. His report² was produced in July 2017. It sets out seven broad principles to address the challenges facing the UK labour market. It also includes a large number of detailed specific recommendations which could affect work significantly.

Some of the recommendations which would be beneficial for our clients in Broxtowe are:

- Changes affecting employment status – making the definitions clearer, redefining the boundaries to make it harder to manipulate, and introducing a presumption in favour of employment/worker status; introducing an obligation to provide a written statement of rights and basic employment information on day one for employees and workers
- Related to zero-hours contracts, a review to consider a higher level of NMW for non-guaranteed hours, and a right to request guaranteed hours after 12 months
- Agency workers: more transparent information to agency workers on starting, regarding their pay and employer; a right to request a direct contract after 12 months; repealing the law which allows agencies to operate so that agency workers are opted out of equal pay rights; larger employers obliged to report on use of agency services & how many requests they have had for permanent/guaranteed hours
- HM Revenue & Customs to enforce holiday pay rights for the low paid (and possibly also enforce wider pay rights)
- Government action to enforce payment of unpaid Tribunal awards



A Citizens Advice report in 2015 found that there could be as many as 460,000 mis-categorised as self-employed.

Taylor also suggested a review of Employment Tribunal fees, and that individuals should be able to get a Tribunal determination of employment status without paying

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf

fees. Since the report was published, the Supreme Court has ruled that the Tribunal fee system was unlawful, and the Government has agreed to respect the judgment.

Citizens Advice Broxtowe – Work Enquiries

Citizens Advice Broxtowe deals with an extensive range of enquiry areas, advising clients who attend our offices in Eastwood and Beeston.

In the year to 31 March 2017, over 700 enquiries were received by Citizens Advice Broxtowe in relation to employment.

Included within the enquiries relating to employment are cases regarding grievances at work, pay errors, redundancy rights, holiday pay and numerous other aspects. A number of the problems faced by our clients are reflected in the issues covered by *Taylor*.

Employment problems tend not to occur in isolation. Typically, clients visiting Citizens Advice to discuss an employment issue will often also need advice on benefits and debt. Sometimes this is due to the loss of work and the financial problems that follow; it also reflects the difficulties that some employees face with uncertain work income and the interaction with the benefits system.

As part of our research into the impact of work issues, we have also undertaken a survey, details of which are set out at Appendix I.

We have set out below seven case studies which illustrate some of the specific problems which need to be addressed. These are all real-life examples seen by Citizens Advice Broxtowe.

Broxtowe Case Studies

Please note that these case studies have been anonymised.

1 Employment status, agency & limited companies

A couple were recruited by an agency with the promise of care home work. The agency arranged the work after a short period of training, but instead of paying the couple directly, the agency had set up limited companies and insisted on contracts being set up in the name of the limited companies. Although the nominal pay rate was National Minimum Wage (NMW), the agency made deductions for "administration/membership fees", and for the cost of setting up the limited companies, training and CRB checks.

Accommodation was provided at the care home for the couple, which they had been led to believe would be free of charge. After a couple of weeks, they were told there was a charge for the accommodation of £50/week each.

The work was as normal care home assistants, working under supervision. All payments were made direct to the couple following submission of timesheets. No PAYE or NIC was deducted. The couple have incurred significant accountancy costs to deal with the tax and legal aspects relating to the way that the agency set up the arrangements through limited companies.

Based on the information provided to us, the couple should have been treated as workers, but establishing this was likely to prove complex and involved. As workers, the deductions made, which took pay below NMW, were illegal, and holiday pay should have been paid.

The couple decided to look for other work, and they did not pursue their rights as workers due to the potential complexities and costs involved (including Tribunal fees which would have applied at the time).



"If workers cannot access the rights Parliament has given them then it is questionable whether these rights truly exist. The evidence shows that many exploited employees feel unable to use their current rights" (The Law Society: Better employment law for better work)

We have seen other similar cases where businesses have insisted individuals must operate through limited companies; this appears to be an attempt to circumvent both employment rights legislation, and tax/NIC accountability.

Illustrates the need for:

- Greater clarity regarding employment status
- An easier accessible way to establish employment status
- Stronger enforcement of worker rights
- More accessibility to enforce rights
- Employers to be obliged to undertake due diligence when hiring staff via agencies

2 Unpaid tribunal award

Our client pursued a case for compensation against his employer related to discrimination. This involved initially seeking to resolve issues directly with the employer, and as the issues could not be resolved then pursuing the issues through the formal Employment Tribunal route. The individual required regular support through the process due to his disability.

With our assistance, following initial hearings it was agreed in writing that a sum of money in compensation would be paid by the employer, and this was formally documented by the Tribunal.

Less than 50% of the agreed payment was made, despite the fact that the employer's business continued to operate. Our client pursued payment of the balance, trying High Court Enforcement (which involved payment of fees) as well as other methods, without success, so as a result has not received most of what should have been paid.

The process, time and effort involved have been stressful for the whole family.

Illustrates the need for:

- Independent enforcement of Tribunal awards

3 Zero hours insecure work

The client had been engaged through an agency to work on a production line, and had been working at the same end business for a number of years, typically five days per week (which is what the client wanted). Payment rates were at or just above NMW. Over a period of around a year from mid-2016 the level of work had been much less reliable, and sometimes she had only been required for one or two days per week. There were numerous occasions when she had attended for work

but was sent home after only a few hours as there was limited work available. She was only able to establish on a day-to-day basis whether work would be available – being texted the evening before to find out whether work was available the next day.

She had been able to receive Working Tax Credit previously which helped to supplement her low income, but this had stopped due to the reduced hours which made her ineligible for the benefit.

As a result of the reduced and unreliably fluctuating work income, she was struggling to manage financially, and was running into arrears with loans and overdraft.

Illustrates the need for:

- Protection for individuals on zero hours and similar contracts
- Better protections for agency workers

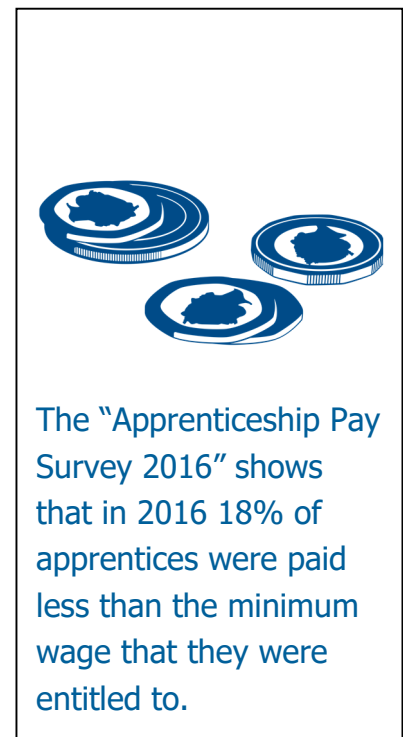
4 False apprenticeship

A local law firm had engaged a number of young people to do administrative work for them, and described them as “apprentices”, paying them the NMW apprenticeship rate of £2.68 per hour (significantly lower than normal NMW rates). Four of the individuals visited Citizens Advice Broxtowe as they were concerned that their treatment was unfair. They had been working at the business for several months, and had not received any written contract or apprenticeship agreement. There was also no formal training provided.

The individuals were nervous of formally reporting the situation due to concerns that they would simply lose the work; there were also potential complications for them if they either resigned or were dismissed, due to the possibility of being sanctioned for Jobseekers Allowance.

Illustrates the need for:

- Greater clarity regarding employment rights
- Stronger enforcement of worker rights
- More accessibility to enforce rights



5 Unclear agency arrangement

Our client identified a role with a company that she wanted to work for, and had found this through an agency. She obtained an offer of work which was to be done through the agency rather than directly for the company, but was not given any documentation by the agency or the business she worked for.

The agency then told her she would be working through an “umbrella company”. She was originally told a rate for the day which was then reduced, and she was told that the umbrella company would be charging administration fees. She had been given a form to sign by the agency, which included an option to sign a statement that “the Conduct of Employment Agencies and Employment Business Regulations 2003 shall not apply”, and had been “instructed” that she should agree to this option.

She did not understand the umbrella company arrangement. She was also confused about the statement she was being asked to sign. Her preference was to simply work for the company.

Illustrates the need for:

- Clearer information to be provided to agency workers

6 False self-employment

An individual agreed to work for a local business. Typical working hours were 9 or 10 per day, with no rest breaks. He was paid around £150-£160 per week (which worked out at around £3.50 per hour - considerably below NMW). Holidays and days off when work was unavailable were unpaid. Deductions were taken from pay for equipment that needed replacing, reducing pay even further. Equipment was all provided by the business, as was transport. The individual was told what to do, where to work, and was part of a team supervised by the business owner.

There was no written contract or anything in writing.

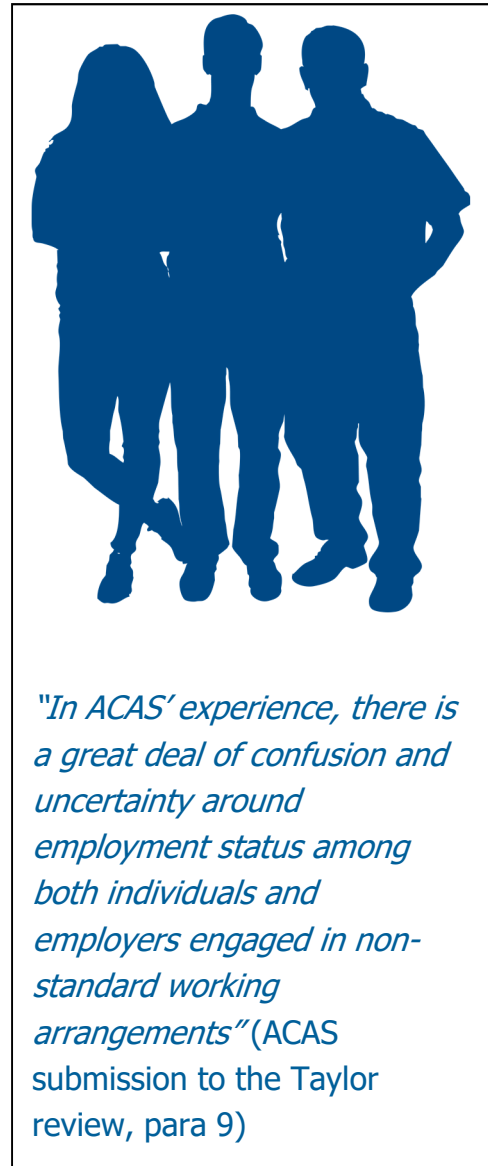
The individual was told he was self-employed. The circumstances indicated that he was more likely to be a “worker” which would mean that NMW and holiday pay was due. When he queried this with his boss, this was laughed off.

HM Revenue & Customs have an 'Employment Status Indicator' tool which is available to help decide whether someone is employed or self-employed for tax purposes. Completing this tool based on the individual's circumstances, the conclusion was that he was an employee.

A case is now being pursued through the Employment Tribunal to establish whether arrears of pay are due. Fortunately, due to the recent change in respect of Tribunal fees, the individual should not have to pay to pursue his case. Previously the cost (including taking it to Tribunal) would have been £390.

Illustrates the need for:

- An easier accessible way to establish employment status
- Stronger enforcement of worker rights



"In ACAS' experience, there is a great deal of confusion and uncertainty around employment status among both individuals and employers engaged in non-standard working arrangements" (ACAS submission to the Taylor review, para 9)

7 Employee underpaid NMW

An individual asked for advice in connection with benefit entitlement, in connection with having recently lost his job, and in the course of discussions it became apparent that his pay had been significantly under NMW.

He had worked for several restaurants as a chef, under terms which provided for an annual salary, paid in equal monthly instalments. His contract made no reference to the actual hours he should work, and there was no overtime paid or additional allowances. His actual working hours were very long – typically around 90 hours per week.

He should have received the full rate of NMW, currently £7.50 per hour, but based on his actual working hours he was being paid approximately £4.80 per hour.

The client has worked in the restaurant trade for several years, and believes the practice of long hours and underpaid NMW is rife. He is reluctant to take any action personally, due to fears that he would struggle to get a job in future as he would be seen as a “troublemaker”.

Illustrates the need for:

- Stronger enforcement of worker rights
- More accessibility to enforce rights



Appendix 1

The case studies above are taken from clients who have visited Citizens Advice Broxtowe seeking advice.

In order to get a wider picture of potential work issues, we also conducted a survey which included clients and non-clients, in the period April to July 2017. We spoke to 64 people who were in work, of whom 3 were agency workers and a further 9 were self-employed, with the remainder being in employment.

Of those in employment, 8 reported that they had received no written contract, and 3 reported being paid at a level which was below NMW. One individual reported having been refused holiday pay despite being otherwise treated as an employee.

Definitions/Abbreviations

ACAS – Advisory, Conciliation and Arbitration Service

HMRC – HM Revenue & Customs, who are responsible for enforcing compliance with payment of NMW

NIC – National Insurance Contributions

NMW – National Minimum Wage – current rates are £7.50/hour for age 25 and over, with lower rates for younger workers and apprentices

PAYE – Pay As You Earn – the income tax deduction mechanism employers should operate when paying employees

Citizens Advice Broxtowe

1. For further information regarding this report, please contact Sally Bestwick, Chief Executive Citizens Advice Broxtowe on 01773 719450 or at sally.bestwick@broxtowe.cab.org.uk
2. The Citizens Advice service comprises a network of local Citizens Advice, all of which are independent charities, the Citizens Advice consumer service and national charity Citizens Advice. Together we help people resolve their money, legal and other problems by providing information and advice and by influencing policymakers. For more see the [Citizens Advice website](#).
3. The advice provided by the Citizens Advice service is free, independent, confidential and impartial, and available to everyone regardless of race, gender, disability, sexual orientation, religion, age or nationality.
4. For more information regarding Citizens Advice Broxtowe, please visit www.citizensadvicebroxtowe.org.uk/. To get advice by phone call 0300 4568369.
5. Citizens Advice Broxtowe advised 6755 clients with 13,000 problems in 2016/17.
6. Citizens Advice Broxtowe is supported by over 50 trained volunteers, giving 17,700 hours per year.
7. Last year Citizens Advice nationally helped 200,000 people with 340,000 issues relating to issues they were having at work. Citizens Advice Broxtowe dealt with over 700 issues relating to work.

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We help people overcome their problems and campaign on big issues when their voices need to be heard.

We value diversity, champion equality, and challenge discrimination and harassment.

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