



Organising Freelancers: A Hard Case or a New Opportunity?

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Abstract. Freelance workers present a special challenge in terms of collective labour organisation. As an individualistic and highly dispersed workforce, they are both difficult to recruit and represent. This paper explores the operational and legal difficulties that freelancers pose for trade unions in terms of collective representation. It is argued that freelancers have a range of distinctive needs and interests, that are accessible to trade union intermediation and that unions must adapt their traditional strategies if these needs are to be met. We conclude with an outline of particular methods and structures used by freelance unions in the UK and Europe. The paper indicates some of the constraints and opportunities for trade unions in organising the self-employed.

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1. Introduction

Recent increases in the number of self-employed in the UK (Kitching, 2015) have prompted renewed debates as to the status of such workers² and whether their interests are being adequately represented. The diverse nature of this group means that interest representation has taken different forms. For example, liberal professionals are represented by their own professional associations; skilled craft-workers may be represented by trade and employer organisations, whereas workers in media and the performing arts have maintained a tradition of strong unionisation. A relatively new group of self-employed workers that has developed with the “knowledge” economy remains substantially unorganised and the issue of representation of such workers becomes more poignant as the decline in union membership in old traditional sectors has increased.

This paper, which is largely exploratory, attempts to examine the issue of representation of a distinctive category of the self-employed, the freelance

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 2. Business secretary Vince Cable launched an Employment Review to improve the clarity and status of British workers, October 6, 2014, Press Release, Department of Business Innovation and Skills.

worker, and determine how far their interests are capable of being represented by trade unions in the UK. It is recognised that this group is heterogeneous and that particular sectors may be more amenable to representation by trade unions. The paper is primarily based on a review of the literature on trade representation of non-standard workers. There is much research on the emergence of non-standard work in the modern economy but the issue of interest representation of such workers has received less attention in the UK.

The paper is structured in three sections: (1) the changing employment and industrial context (2) the organisation and service needs of freelancers (3) determinants of trade union organisation strategy towards the self-employed and freelancers.

2. The Employment and Industrial Context

A number of commentators have described the fragmentation of the labour market that has arisen with the breakdown of 'Fordist' systems of production and structural shifts in the economy from manufacturing to services resulting in more individualised employment relationships (Clarke, 1990; Boyer and Durand, 1997). The attendant increase in contracts for services where individuals provide work through multiple engagements is a characteristic of freelance work.³ Project work often involves short term transactional contracts as opposed to long term relational contracts.⁴

Organisational fragmentation as a result of vertical disintegration of the firm (Collins, 1990)⁵ has also been accompanied by the erosion of national collective bargaining structures. This is particularly the case in some areas where freelancers now predominate, such as journalism and television. The dismantling of collective bargaining that took place in the UK in the 1980s and 1990s under successive Conservative governments was targeted against particular forms of restrictive practices, for example, the pre-entry closed shop in the newspaper and television industries. The effect of the abolition of the closed shop in television on trade union bargaining power has been documented by Saundry (2001) who notes the abolition of multi-level bargaining in large corporations such as ITV and replacement by individual company agreements. A further effect noted by Heery (2009) is that trade unions have been unable to maintain standard employment relationships, resulting in a de-stabilisation of their traditional stance towards contingent labour.

3. The word *freelance* is defined in the Oxford English dictionary as 'self-employed and hired to work for different companies on particular assignments'.

4. See further, Burke, A. (2011), "The Entrepreneurship Enabling Role of Freelancers: Theory with Evidence from the Construction Industry" *International Review of Entrepreneurship* 9(3):1

5. Collins provides examples of managers of large firms arranging aspects of production through subcontracting, franchises, concessions and outsourcing.

Historical and structural factors influencing trade union organisation of contingent workers must be set alongside demand-side factors such as business need for flexibility and supply-side factors such as worker preference for short term or temporary contracts (Gallagher and Sverke, 2005). The perception of the contingent worker as an agent with distinct but legitimate interests that require representation rather than a victim of structural forces is reflected in recent literature on atypical workers (Heery, 2009; McCann, 2008). This theme will be examined in the next section of the paper, where the particular interests of freelancers will be examined.

3. The Service and Organisational Needs of Freelancers

The individualisation of the employment relationship has certain consequences for collective organisation and representation. Some consonance must be found between individual and collective interests in order to initiate and maintain collective organisation. The relationship between individual and collective interests has become more complex and ambiguous in the case of highly skilled and more autonomous workers where interactions with clients and customers bring competitive pressure to bear on individual workers (Dolvik and Waddington, 2004). If freelance labour markets are driven by individual aspiration, collective institutions may be perceived to be irrelevant.

This latter point raises an important issue which needs addressing at this juncture. There are business and individual arguments which might militate against the unionisation of freelancers. The individual argument is simply stated: if freelancers identify as entrepreneurial agents rather than as simply workers, they may see the trade union *qua* collective as unnecessary to their needs. The business argument is based on flexibility i.e. the growth of freelancers and the benefits they bring to businesses is contingent on flexible hire practices; innovation and entrepreneurship combine with new technology and business techniques to promote a flexible competitive economy (Burke, 2012, Burke and Cowling, 2015). These are valid arguments. However, the stance taken in this paper is slightly different. The argument is rather that the self-employed of which free-lancers are an important group, whether they comprise of highly skilled or vulnerable workers,⁶ may still benefit from organisation by trade unions. The trade union may need to adapt its strategies and indeed may be replaced by (or interlinked with) other types of organisation, but it is suggested that the type of services that freelancers require may be appropriately provided by independent trade union organisation.⁷ The question of alternative forms of representation for the self-employed is an important one and worthy of further empirical analysis,

6. Vulnerable workers may benefit more than others, however, trade union functions are not limited to providing a voice for this category alone; the modern trade union is designed as a partner in business – see, for example, *Fairness at Work* (1998), para 4.3.

however, this topic is largely outside the scope of this initial paper, where the focus is narrowed to the range and viability of trade union forms of representation for freelancers.⁸

The history of trade unionism provides many examples of trade unions organising in areas of casual or insecure employment, for example, transport and construction as well as the film industry (Saundry and Antcliff, 2006; Turnbull et al, 1992). In this case, the question is how far trade unions may find and build a common identity from a heterogeneous interest base.

This paper argues that freelancers as a group have a range of distinct interests that can be served by both trade unions and other means of representation. Heery (2004) identifies three distinct types of labour market interest that are provided by freelance unions to their members. The security interests of freelancers as a mobile group are much wider than other workers, including matters ranging from pensions advice and provision of public liability insurance to access to mortgages. Secondly, human capital interests are very prominent for freelancers as they do not have access to the training and vocational education that standard workers have access to at enterprise level. Thirdly, labour market information on job vacancies and career opportunities can be provided by freelance unions. The service needs of freelancers impose extra costs on trade unions, as freelancers require ‘industrially relevant’ services and support in the external labour market requiring full time officers. However, by the same token, employers may be more willing to accept freelance unions as they ‘mitigate market failures’ by providing the labour market facilities that employers have shelved (Heery, 2004, 32).

The organisation needs of freelancers are also different from those of standard workers. As Heery (2009) notes, regarding the bargaining limitations of contingent workers:

‘The fact of their contingency may make forming bargaining relationships difficult and prevents contingent workers developing levels of membership and organisation that confer bargaining power.’

The problem of organisation of the freelance worker is deep-seated: at the heart of this lies the contractual position of this category of worker as self-employed independent contractors or semi-dependent workers. Unlike standard employees, the self-employed may have contractual relationships with multiple clients at any point in time, thus the number of clients and job commitments involve complex commercial arrangements (Leighton and Wynn, 2010; Gallagher and Sverke, 2005). The resulting dispersion of contracts over time and

7. Some trade unions in the UK particularly in the media sector, for example BECTU, the NUJ and Equity, have traditionally catered for the specific needs of freelancers (see final section of this paper).

8. One example of a professional association which represents the interests of the independent self-employed is IPSE, the Association of Independent Professionals and the Self-Employed (formerly the PCG or Professional Contractors Group).

space inevitably leads to a fragmentation of bargaining. Furthermore, the legal status of the freelance worker is complex. If the freelancer is defined as an independent contractor, the worker, in operational and legal terms may be termed an 'employer organisation' unless they are defined as the employee of their own organisation (Gallagher and Sverke, 2005). On the other hand, the semi-dependent freelance who only works for one employer, might achieve employee or 'worker' status. Trade unions are defined as organisations 'which consist wholly or mainly of workers'.⁹ The self-employed may not come within this definition, thus causing legal problems in terms of defining and constituting appropriate bargaining units for purposes of trade union recognition. Issues of contract and status thus combine with ambiguities of occupational identity and operational diversity to result in basic organisational dilemmas for both the self-employed worker and the trade union.

Despite and perhaps because of these inherent problems, freelancers' needs for organisation have been increasingly recognised. One of the issues for trade unions is whether to prioritise 'servicing' or 'organisational' functions in developing strategies to accommodate the distinctive interests of such workers. The literature reflects an old debate within the trade union movement as to how to maximise recruitment in an era of declining membership (Vandaele and Leschke, 2010; Dolvik and Waddington, 2004). Contingent workers place an extra burden on the servicing function of trade unions and union organising costs are higher, thus entailing a different calculus of resources.

The final section of the paper examines the changing strategies of trade unions in response to these dilemmas.

4. Trade Union Organisational Strategy Towards the Self-Employed

If trade union strategy is to adapt to the changing contours of a flexible labour market, how might this be accomplished? Trade union decline appears to have followed the 'post Fordist' fragmentation of collective bargaining that accompanied the collapse of nationally standardised industrial relations (Hyman, 2007). Gaps in union density between temporary and permanent workers indicate that a diversified strategy towards contingent workers should be adopted.¹⁰ The issue is not just one of changes in industrial structure; it is also related to attitude and expectation. As Hyman (2007) has observed,

'to the extent that disparate personal life-worlds shape employees' expectations and aspirations from work, the possibility that a standardised common rule can satisfy is diminished'.

9. Trade Union and Labour Relations (Consolidation) Act 1992, s. 1.

10. Vandaele and Leschke (2010) indicate that union density for temporary workers was 17% compared with 28% for permanent workers in the UK in 2008 (comparable figures for the Netherlands were 9% and 23%):

A crucial issue for trade unions is the problem of defining a more inclusive constituency for self-employed members and then structuring their representation facilities so as to extract resources from the new membership. This so-called 'logic of membership' is crucial to survival of the collective body (Pernicka, 2005). The fear of losing its membership base has precipitated a reversal in trade union strategy over recent decades towards contingent workers. Earlier exclusion strategies, based on fear of undermining standard workers have been replaced by both *inclusion* strategies, based on equal membership and '*engagement*', which recognises their different interests (Heery, 2010). The challenge for trade unions now is to find methods of interest aggregation to forge a common identity and then to forge efficient structures of collective representation (Pernicka, 2005).

In practical terms, trade union organisational strategy needs to address twin issues of recruitment and organisational structure. Freelancers are more difficult to recruit as their contracts are often short-term and spread across multiple clients. They are more difficult to reach and organise as they are not based in one firm alone. In addition, it is more difficult to identify an employer relationship in client firms where they are hired through separate companies or agencies. The nature of project work also involves spells of unemployment. Traditional union recruitment methods which have operated at enterprise level clearly need to be adapted to the dispersed working arrangements of many freelancers.

There are differing views as to what are the most appropriate structures of interest representation for the self-employed. Union structure can achieve integration in different ways. Industrial unionism provides vertical integration of individuals in the same workplace or industry, regardless of occupation. Craft unionism provides horizontal extension by enlarging similar occupational groups (Abrahamsson, 1993; Pernicka, 2005). One question that arises is whether self-employed members should be absorbed into existing structures of representation alongside other members or whether unions should set up separate structures to deal with their specific needs.

What types of representation do freelancers want? In terms of identity and aspiration, dependent self-employed workers may self-define as 'entrepreneurs' or alternatively, as economically dependent employees. While the former group may resist any collective identity or allegiance, the latter may orient more towards traditional union representation (Pernicka, 2006). Alternative methods of representation involving network arrangements, internet platforms and the like may be favoured by the more individualistically-oriented worker (Saundry and Antcliff, 2006). Such arrangements may also be more efficient and flexible than traditional union modes.

If union orientation is favoured, freelancers, as independent contractors, may seek collective models which are different from typical industrial models and be more effectively represented by craft-based models of representation (Gallagher and Sverke, 2005). Some commentators have suggested that a return to earlier forms of unionism might be more appropriate in view of trends in modern labour

markets to return to pre-industrial contractual conditions (Capelli, 1999; Heery, 2009).

One proposed method of addressing these issues is to extend trade union representation beyond the enterprise. Heery (2004) has identified a number of different practices as regards union behaviour in relation to freelancers which differ from the norm for conventional workers. His analysis suggests there is a distinctive form of 'freelance unionism' in the UK, distinguished by an emphasis on organising and representing workers in the external labour market. The particular characteristics of this form of unionism are as follows: recruitment is located at the point of entry into the occupation or job search; union participation is centred on geographical and occupational branches rather than firm level; representation is performed by external paid officers; the union service function is more accentuated; collective bargaining tends to be multi-employer bargaining and targeted at occupational labour markets. Heery suggests that the methods adopted by freelance unions such as BECTU and APTG, could be extended to other occupational groups with substantial numbers of freelancers, particularly those in IT, personal and business services and perhaps more widely in the knowledge economy (Heery, 2004, 32).

How have trade unions responded to the challenges posed by this changed organisational climate? It is beyond the scope of this paper to address this empirical question in detail but in conclusion, some broad trends across jurisdictions may be adumbrated.

The main issue is whether self-employed union members should be treated the same way as employees, treated differently within existing union structures or whether autonomous unions of self-employed workers should be created.

Workers in the arts and film industries are often organised in craft unions, reflecting a strong tradition of unionisation. In the UK, BECTU, for example, represents a community of workers across the media and entertainment industries and represents both employees and freelance workers.¹¹ The union's freelance branches are organised on both a craft basis, for example, camera, sound, hair and make-up etc. or geographical basis such as Southwest Freelance or Scottish Freelance. BECTU has multi-employer agreements for freelancers, for example, the *PACT*¹²/*BECTU Freelance Production Agreements* which regulate relations between producers and individuals engaged in the UK film-making industry.¹³ These agreements set basic rates of pay, overtime rates, and holiday entitlements and determine the types of contractual engagement as well as providing for a range of security benefits such as sick pay and public liability insurance. The agreements establish standard rates across the industry and both non-union

11. BECTU, the Broadcasting Entertainment Cinematograph and Theatre Union currently has 24,000 members.

12. the Producers' Alliance for Cinema and Television.

13. BECTU is currently negotiating a 2014 agreement with PACT, which improves on the minimum rates of the 2003 agreement, including travel time and night-working. There is also a time scale for the payment of fees.

members and non-PACT members may make use of the arrangements if they wish. Non-PACT members might negotiate their own deals if they can find crew to accept such deals but most films are registered with PACT even if the production company is not a PACT member, putting the individual production under the PACT fold. These freelance agreements therefore help to establish minimum conditions in the industry and union rate cards are generally followed, though Heery (2004, 29) does report some resistance to union pressure by some of the independent television companies with usage of sub-contractors. Like other unions catering to a large constituency of freelancers, BECTU offers a range of labour market services such as *Crewbus*, its Freelance Directory, A Freelancers' Fair, health and safety craft cards for freelancers operating in temporary locations, a tax guide for freelancers and employees and public liability insurance.

The BECTU freelance model is also followed in other EU countries such as some Nordic countries. In Denmark, for example, trade unions for freelancers in the art and culture sectors negotiate collective agreements with employer associations or single employers, typically on minimum and standard fees as well as on standard contracts, for example, the Danish Artists Union and the Danish Actors Association. These trade unions organise both employees and freelancers and sign collective agreements with employers' associations (Pedersini and Coletto, 2010).

The experience of the German union, Verdi, is a prime example of some of the difficulties of the assimilation approach to the self-employed. Verdi, the Unified Service Sector Union,¹⁴ was formed in 2001 as the result of the merger of five unions in the private service and public sector and has extended membership to all dependent self-employed workers. Only one of the original five unions, the Media Union, had previously included self-employed members. Verdi is very service-oriented in its approach to the self-employed with a focus on legal services and representation, training and education and insurance products. German unions have had some success on the political front, for example, the former Media Union successfully lobbied for new regulations in favour of the dependent self-employed¹⁵ (Pernicka, 2005). One of the problems of Verdi as an inclusive union is that of conflicting constituencies of full-time employees, works councillors and rank and file.¹⁶

A different type of autonomous trade union structure is exemplified by the Spanish unions. In the 1980s, the UGT¹⁷ established a union specifically to represent self-employed workers, the Union of Professionals and Self-Employed Workers, UPTA. UPTA and the relevant employer associations negotiated a Self-Employed Workers Statute in 2007 which includes possibilities of concluding

14. Verdi organises 2,800,000 members and has around 30,000 self-employed members.

15. Establishing a new category of *arbeit-nehrmerahnlicher Selbstandiger* (self-employed worker similar to an employee).

16. Self-employed members are not represented in work councils.

17. Union General de Trabajadores.

‘agreements of professional interest’ (Pedersini and Coletto, 2010). The encouragement of collective bargaining for semi-dependent workers is a great innovation. Italy has also witnessed the creation of organisational bodies specifically to represent semi-dependent workers (*quasi subordinate* workers). These new unions are NIDIL-CGIL, ALAI-CISL and CPO-UIL (Bibby, 2005)

5. Conclusion

This paper has attempted to reflect upon some of the inherent difficulties of organising self-employed workers and chosen freelancers as a category which exemplifies both constraints and opportunities for trade unions wishing to pursue alternative strategies and reverse declining membership in more traditional areas of representation. The evidence indicates that despite the greater cost of recruiting and organising a more mobile and individualistic workforce, there are gains to be made both in terms of providing services to a potentially vulnerable group of workers and in building new constituencies for a modern workforce. Genuine dependent self-employed workers may be a heterogeneous group and in some cases, resistant to traditional models of union representation, but this challenge to trade union thinking is good for both trade unions and for the new types of worker that freelancers typify.¹⁸ Union effectiveness requires ‘the capacity to interpret, decipher, sustain and redefine the demands of the represented, so as to evoke the broadest possible consensus and approval’ (Regalia, 1988). The example of unions such as BECTU, in catering to the distinctive needs of freelancers and adapting their structures, services and organisational capacity to this important category of workers indicates that the project is both worthwhile and beneficial, if not without major obstacles, not the least of which is a certain amount of employer resistance.

18. Such workers have been termed an ideal type of future worker, the ‘entmployee’ (*Arbeitskraftunternehmer*) (Pontgratz H. and Voss, G. (2003)).

References:

- Abrahamsson, B. (1993), "Union Structural Change", *Economic and Industrial Democracy* 14(4): 399-421.
- Bibby, A. (2005), "Opening the doors wide to the self-employed: How trade unions are recruiting and organising self-employed workers as members", Uni Global Union.
- Boyer, R. and Durand, J.P. (1997), *After Fordism*, Palgrave Macmillan Limited.
- Burke, A.E. (2011), "The Entrepreneurship Enabling Role of Freelancers: Theory with Evidence from the Construction Industry" *International Review of Entrepreneurship* 9(3): 131-158.
- Burke, A.E. (2012), "The Role of Freelancers in the 21st Century British Economy, PCG Report, London: PCG.
- Burke, A.E. and Cowling, M. (2015), "The Use and Value of Freelancers: The Perspective of Managers in Large Firms and SMEs", *International Review of Entrepreneurship* 13(1).
- Capelli, P. (1999), *The New Deal at Work*. Boston, MA: Harvard Business School Press.
- Clarke, S. (1990), "The Crisis of Fordism or the Crisis of Social Democracy?", *Telos*, 83:71-98.
- Collins, H. (1990), "Independent Contractors and the Challenge of Vertical Disintegration to Employment Protection Laws" *Oxford Journal of Legal Studies* 10(3): 353-380.
- Dolvik, J. and Waddington J. (2004), "Organising Marketised Services: Are Trade Unions up to the Job?" *Economic and Industrial Democracy*, 25(9):9
- Fairness at Work* White Paper (1998), Cm. 3968, Department of Trade and Industry.
- Gallagher, D. and Sverke, M. (2005), Contingent Employment Contracts: Are Existing Theories Still Relevant? *Economic and Industrial Democracy* 26, 181
- Glucksman, M. (2000), *Cottons and Casuals*, Durham: Sociology Press.
- Heery, E., Conley, H., Delbridge, R. and Stewart, P. (2004), "Beyond the Enterprise: trade union representation of freelancers in the UK" *Human Resources Management Journal* 14(2): 20-35.
- Heery, E. (2009), "Trade unions and contingent labour: scale and method" *Cambridge Journal of Regions Economy and Society* 2, 429-442.
- Hyman, R. (2007), "How can trade unions act strategically?" *Transfer* 13(2):193-210.
- Kitching, J. (2015), "Tracking UK Freelance Workforce Trends", 1992-2014", *International Review of Entrepreneurship* 13(1).
- Leighton, P. and Wynn, M. (2011), "Classifying Employment Relationships: More Sliding Doors or a Better Regulatory Framework?" *Industrial Law Journal* 40(1): 5-44.
- McCann, D. (2008), *Regulating Flexible Work*, Oxford: Oxford University Press.
- Pedersini R. and Coletto, D. (2010), "Self-employed workers: industrial relations and working conditions", *European Foundation for the Improvement of Living and Working Conditions*, Dublin.
- Pemicka, S. (2005), "The Evolution of Union Politics for Atypical Employees: A Comparison between German and Austrian Trade Unions in the Private Service Sector" *Economic and Industrial Democracy* 26(2): 205-228.
- Pemicka, S. (2006), "Organising the Self-Employed: Theoretical Considerations and Empirical Findings" *European Journal of Industrial Relations* 12(2): 125-142.
- Pontgratz H. and Voss, G. (2003), "Berufliche Sicherheit und Spass an Herausforderung – Erwerbsorientierungen in Gruppen – und Prjektarbeit" *WSI-Mitteilungen* 56(4):228-34.
- Regalia, I. (1988), "Democracy and Unions: Towards a Critical Appraisal" *Economic and Industrial Democracy* 9(3):345-371.
- Saundry, R. (2001), "Employee Relations in British television- regulation, fragmentation and flexibility" *Industrial Relations Journal* 32(1): 22-36.
- Saundry, R. and Antcliff, V. (2006), " 'It's more than who you know' - networks and trade unions in the audio visual industries" *Human Resources Management Journal*, 16(4): 376-392.
- Turnbull, P., Woolfson, C. and Kelly, J. (1992), *Dock Strike: Conflict and Restructuring in Britain's Ports*, Aldershot Avebury.
- Vandaele, K. and Leschke, J. (2010), "Following the 'organising model' of British unions? Organising non-standard workers in Germany and the Netherlands" *European Trade Union Institute*, Working Paper, Brussels.