



June 20th 2019

Unite Opening Statement to Joint Committee on Employment Affairs and Social Protection on Bogus Self-Employment

It is by definition difficult to quantify the number of people who are falsely self-employed throughout the economy.

In the 4th quarter of 2018, 224,100 people were classified as self-employed with no employees.

While many would be genuinely self-employed, it is Unite's view that many are not. We believe, for example, that the high level of self-employment in construction actually reflects a high level of **bogus** self-employment. This is borne out by Unite's experience on the ground in the construction sector.

In November of last year, the Assistant Secretary of the Department of Employment Affairs and Social Protection told this Committee, when asked about the outcomes of employer reviews and inspections, that her Department does not keep an "absolute record" of bogus self-employment and has not kept such statistics.

Unite is a general workers' union representing members throughout the economy, including thousands of general operatives and craft grade members working in the construction sector where bogus self-employment is especially prevalent.

However, it should be noted that our officers, organisers and shop stewards also encounter bogus self-employment in areas as diverse as English Language Teaching and archaeology.

An archaeologist may, for example, be instructed to arrive at a site at a particular time; instructed what work must be carried out, and the manner in which it must be carried out; instructed when they may take a break; instructed when work can finish; and provided with tools by the employer.

She or he may be working for an employer-defined hourly rate of pay, with an employer-defined timescale for how long that work will take. To all intents and purposes they are employed, working under the control and direction of the employer, unable to dispose of their time and unable to take up other work.

However, unlike regular employees, they have no entitlement to sick pay, paid annual leave, parental or family leave. Since the employer does not pay social insurance contributions, let alone occupational pension contributions, the impact of bogus self-employment follows a worker into retirement.

Nor do bogus self-employed workers enjoy a range of statutory protections, including but not limited to minimum wage laws, protections against unfair dismissal, and working time laws.



This is the experience of thousands of workers in all sectors of the Irish economy today.

Bogus self-employment is part of the larger phenomenon of precariousness – a phenomenon which will inevitably increase with the growth of the so-called ‘gig’ economy, or platform economy.

Bogus self-employment is not only about employers or contractors seeking to avoid social insurance payments, although that is a contributing factor. It is also a tool used by employers to maximise flexibility in the utilisation of inputs, putting labour on a par with parts, tools, equipment and materials.

It also seeks to undermine solidarity – since the worker is no longer part of a workforce, but instead an atomised individual provider of labour – and is used as part of an aggressive union-avoidance policy.

Addressing this Committee in February, Professor Michael Doherty of Maynooth University pointed out that, in the case of non-employees, “independent undertakings are generally forbidden from coming to mutual arrangements over basic terms such as minimum payments, as they would likely contravene competition laws”, and he concluded that:

“It is very difficult for non-employees to engage in effective collective bargaining”.

This is bad for the economy as a whole, and for the construction sector in particular, since all the available evidence indicates strong links between collective bargaining rights and economic progress.

Construction

The highly fragmented nature of the Irish construction sector helps facilitate bogus self-employment. This gives rise to tiers of sub-contracting, or what one could refer to as a sub-contracting cascade with the worker at the bottom of the cascade, several removes away from the principle contractor. This inevitably gives rise to an erosion of terms and conditions of employment, and means that statutory obligations relating to taxation and social insurance - in particular - are not met.

The CSO Labour Force Survey shows that in the fourth quarter of 2018 the percentage of people classified as self-employed with no employees in construction was just over 22%. This compares to 7% in the rest of the market economy (the private sector). The number classified as self-employed without employees in construction registered a year-on-year increase of 600.

In 2018, there were 33,000 self-employed with no employees in the sector, an increase from 21,700 in 2012.

We may assume that the high level of self-employment in construction actually reflects a high level of **bogus** self-employment.



As a percentage of total sectoral employment, however, in 2018 the proportion of self-employed with no employees had fallen slightly since 2012. This only reflects an increase in overall employment in the sector.

The 2016 TASC report on *Bogus Self-Employment in the Irish Construction Industry* suggests that it may be appropriate to assume that 25% of all self-employed without employees in the construction industry are bogus self-employed. It is Unite's view, based on our experience, that this could be a conservative estimate.

English Language Teaching

Unite is currently aware of language schools in Dublin coercing workers into bogus self-employment contracts.

We are also aware that two of these schools are fully accredited and are on the Interim List of Education Providers.

Unite believes that, if not addressed, bogus self-employment will continue to spread more widely through the ELT sector and will be normalised. We have come to this view based on the fact that, like construction, the English Language Teaching sector is characterised by its transient nature.

Bogus self-employment is just one aspect of precarious employment in the sector – a sector which the Government plans to grow to a value of €2.1 billion by next year.

If teachers are to share in the benefits of that growth, precarious working practices in the sector must be addressed.

Cost to the state

I spoke earlier about the impact of bogus self-employment on the individual worker – an impact that follows them throughout their working life and beyond, into retirement.

There is also a significant cost to the Exchequer – which means a cost to all of us.

By definition, it is as difficult to put definite figures on this cost as it is to definitely quantify the numbers who are falsely self-employed.

The loss to the Social Insurance Fund due to non-payment of Employer's PRSI is likely to run into the hundreds of millions of Euros across all sectors. This point was detailed and developed in a recent presentation made to this Committee by the Irish Congress of Trade Unions, when they referenced the joint report published by the Department of Employment Affairs and Social Protection and the Department of Finance, *The Use of Intermediary-type Structured and Self-Employed Arrangements: Implications for Social Insurance and Tax Revenues*.

There is also a loss of spending power in the economy due to loss of benefits arising from self-employment. While this will be marginally mitigated by the new regulations governing access by the self-employed to Jobseekers' Benefit, due to come into force in November, we believe the overall gain to workers will be negligible.



Remedies

There is no single measure which will remedy either the wider issues regarding precariousness or the specific issue of bogus self-employment in construction and other sectors. Unite argues that consideration should be given to a package of measures:

- First and foremost, the burden of proof needs to be switched so that an employer can show that a worker is **not** in an employment relationship. In respect of the construction sector, all contracts for labour should automatically be assumed to be a contract for employment under Schedule E, and the principal contractor should be responsible for the payment of social insurance and compliance with all relevant terms and conditions attached to Schedule E employment. The first contractor must be made the agent of responsibility. This would create a clear line of accountability in terms of social protection, health and safety and taxation.
- At the same time, the Government must establish a uniform framework that defines the distinction between employment and self-employment. Currently, there are different distinctions made by different agencies on the same case. For instance, Revenue may determine someone as self-employed for tax purposes, while the Department of Social Protection can determine that that same person is employed for purposes of social protection. It is Unite's view that legislation is required to remove this ambiguity and ensure clarity.
- Unite also argues that the State should use its considerable purchasing power as the source of public procurement contracts to dis-incentivise bogus self-employment and other types of precarious working. We need to strengthen the policing and contractual provisions of public procurement contracts to prevent abuses. There must be provision for the contracting department or public agency to levy penalties on any contractor or company found to be engaged in bogus self-employment, with bond or retention monies from projects exposed to such penalties and the contractor in question to be barred from bidding for future public procurement contracts.
- In the case of any company operating subject to a license, permit or similar approval, such approval must be contingent on not engaging in bogus self-employment or other precarious work practices. This would mean that, in the case of English Language schools, schools found to engage in such practices would be removed from the Interim List of Education Providers (ILEP).

In conclusion, Unite argues that the above proposals constitute a win-win-win for workers, for the Exchequer and for compliant employers who may currently be at a competitive disadvantage vis-a-vis those who would use bogus self-employment and super-exploitation to give them a competitive edge in the market.

ENDS

