ELW Conference Saturday 11 November 2017

The dilemma for trade union rights in Britain: caught between the EU and Free Trade Agreements

by

John Hendy QC[1]

As everyone knows, the British people voted by a tiny majority to leave the EU. Those on the left and those on the right both had a view that we should leave the EU but for completely different reasons. Why the electorate voted in the way they did is a matter for discussion on another occasion. One reason was undoubtedly a rebellion against the status quo, a disaffection echoed in the last UK general election, which manifested in a different way in the June 2017 election in the massive vote for Jeremy Corbyn's Labour Party and in particular for the Labour Party Manifesto, '*For the many, not the few*'. The upsurge in support means that the Labour Party now has 500,000 members and is the biggest political party in Europe.

One of the stated reasons the right rejected the EU is because they asserted that Britain should regain its parliamentary sovereignty. But of course, that justification is in reality a complete distortion. The right has no interest in British parliamentary sovereignty, as can be seen by its current enthusiasm for bilateral free trade agreements to replace the EU. The Trade Bill, published last week makes this clear. We will return to FTAs shortly.

From the left's perspective, the argument that Brexit would enable national sovereignty to be regained was a claim with real force. Whilst totally supportive of internationalism as a principle and largely supportive of the concept of universal international minimum standards, the left has always objected to European laws which could inhibit the implementation of a socialist

[1] Barrister at Old Square Chambers, London and hon. Professor in the Faculty of Law at UCL.

agenda by a socialist government in the UK (a possibility which until recently has been entirely hypothetical). EU Directives obliging governments to privatise public services, as in the case of the railways,[2] are obviously offensive to a policy of enlarging public ownership.

When the EU came to full fruition in the 1980s, the people of Europe were promised 'a social dimension'. At the 1988 Trades Union Congress, Jacques Delors won the British trade union movement to the EU project by convincing them of the benefits of the social dimension which would extend collective bargaining and rights for workers and prevent 'social dumping' (i.e. taking competitive advantage by undercutting labour costs). The steps that were taken to that end in the early years are undeniable. The benefits of EU Directives on equality, equal pay, non-discrimination, health and safety at work, protection for agency workers and for those facing business transfers offered protection well beyond the scope of existing UK law. But for several years no significant further rights for workers have emanated from the EU. In the era of the social dimension, the term 'social dialogue' had real meaning, with directives being negotiated jointly the employers and trade unions at European level and directives (like the Working Time Directive) containing provision for substantive provisions to be agreed by the social partners at national level.

Since those days, however, the EU has undermined workers and trade union rights in two particular ways which are particularly worthy of exploration as we consider the future.

First, the EU has used its extensive toolbox of economic controls over national governments to encourage, as a matter of European policy, governments to limit trade unions' influence over the terms and conditions of workers. Ironically this policy has largely been driven by the UK![3] The operation of this

[2] The First, Second, Third and Fourth Railway Packages, each of which consists of several EU Directives to open railway operations to greater competition, amongst other things.
[3] M Martínez Lucio, A Koukiadaki and I Tavora, *The Legacy of Thatcherism in European Labour Relations: The Impact of the Policies of Neo-liberalism and Austerity on Collective Bargaining in a Fragmented Europe*, Institute of Employment Rights, Liverpool, 2017.

policy is not well known, though researchers are well aware of it.[4] Indeed, it is often thought that such economic tools are only applied to those nations of the EU that have been forced to go the European Central Bank (ECB) and the International Monetary Fund (IMF) for bail outs. That is not, however, the case. Such economic weapons are being used against all governments in the EU in line with EU policy.

Details of that policy can be found in a European Commission report called *Labour Market Developments in Europe* published as long ago as 2012, which set out the economic policy objectives of the EU. Developed in league with the other two members of the Troika – the ECB and the IMF, the policies particularly aimed at reducing the wage setting powers of trade unions. Four methods are particularly employed:

First, limiting the duration of the application of collective agreements from having indefinite duration to impose a limit on their lifespan, for example collective agreements are now limited to 1 year in Spain and only 3 months in Greece.

Second, increasing the scope for derogating from sector-wide agreements. In other words, where a national level collective agreement sets the minimum terms and conditions for a particular industry, employers are to be permitted, at establishment level, to undercut the national agreement and impose lesser terms and conditions.

This second technique is, of course, at the centre of the current attack by President Macron on the unions in France. France is a country with a very high collective bargaining coverage. Over 80% of workers are covered by collective bargaining even though trade union membership is extraordinarily low, the lowest in Europe, with less than 10% of workers being members of a trade union. If centralised collective bargaining is destroyed in France by Macron,

[4] See the description in KD Ewing and J Hendy, *Reconstruction after the crisis: a manifesto for collective bargaining*, IER< Liverpool2013, at 34-39 and the references therein.

the power of the unions will be destroyed. So, although we counted our blessings that Le Penn didn't get elected in France, the French working class is in for a most almighty struggle if they are to successfully resist the Macron reforms of labour law.

The third of the techniques is the restriction of the mechanisms by which collective agreements are extended to other employers not initially included in their scope. In most countries with industry-wide collective agreements there are mechanisms for bringing within the coverage of the agreement employers (and their workers) on the fringes who are not presently covered. Such a mechanism existed in Britain for decades in the twentieth century until the Tories abolished it. But those mechanisms for extension have now been cut back by the intervention of the EU Commission.

The fourth technique is by extending the right to participate in collective bargaining to non-union groupings. Ad-hoc groups of workers and formalised works councils which are not run, on the workers' side, by trade unions are of course much less likely to be free of employer domination and much more likely to be ineffective and under-resourced.

In consequence of these measures Isabelle Schömann (who was a researcher for the European Trade Union Institute) has written:

> …the reforms have resulted in a dramatic decline in collective bargaining coverage, a breakdown of collective bargaining, a strong downward pressure on wages leading to deflationary tendencies, downward wage competition and an overall reduction in the wage-setting power of trade unions.[5]

That is a truth that simply cannot be denied. And the EU, when it woke up to find that the British people had voted by a very small minority to leave the EU, can only thank itself for producing the conditions where workers throughout

[5] I Schömann, 'Reforms of collective labour law in time of crisis: towards a new landscape for industrial relations in the European Union?', in D Brodie, N Busby and R Zahn, *The Future Regulation of Work, New Concepts, New Paradigms*, Palgrave, London, 2016 at 152.

Europe have had their terms and conditions and their right to collective bargaining weakened in this way.

The effect that Isabelle describes is confirmed by other research: Emanuele Menegatti has pointed out that:

> '…in the wake of the financial and economic crisis, EU institutions have influenced national wage policies by pushing wages down. … The wage policy imposed by the EU is once again a diversion of EU action from its social rôle, thus increasing it distance from EU citizens. [6]

In Portugal, 172 sector level collective agreements in 2008 were reduced to 36 in 2012 and coverage fell from 2 million workers to 225,000 workers. In Romania, 98% of workers were covered by collective agreements in May 2011 and that was reduced to 36 % by the end of 2012.

Britain of course has had long experience of attacks on collective bargaining. When Mrs Thatcher came to power in 1979, collective bargaining coverage was at 82% of all British workers - 8 out of 10 workers had the benefit of a collective agreement. Today that stands at about 20% - 2-out of 10 workers - leaving 8 out of 10 workers at the mercy of market forces and the generosity of employers.[7]

The consequence of the decline in collective bargaining has been stark indeed in the UK (and in other countries, such as Greece, even worse). The most recent statistics show that employee share of GDP is now 49.3% compared to 65.1% in 1976.[8] For the last ten years, there has been no growth in UK real wages. Average real weekly earnings peaked in early 2008 before the crash. Since that

---

[6] See E Menegatti, 'Challenging the EU Downward Pressure on National Wage Policy', [2017] 33 Int J of Comp Labour Law and Ind Relations, 195-219 at 218. He adds (at 201) that 'Within the "ordinary" framework of economic governance, EU institutions have exercised systematic pressure on minimum wages and the public-sector wage bill.' He distinguishes ordinary measures from those applied to bail-out countries. He points out the bitter irony that the EU has no jurisdiction over matters of pay: Art 153 Treaty on the Functioning of the EU.

[7] See Martínez Lucio, Koukiadiki and Tavora (above) and KD Ewing, J Hendy and C Jones, *A Manifesto for Labour Law: towards a comprehensive revision of workers' rights*, IER, Liverpool, 2016.

[8] Office for National Statistics, *Quarterly national accounts: April to June 2017*, https://www.ons.gov.uk/economy/grossdomesticproductgdp/bulletins/quarterlynationalaccounts/aprtojun2017, accessed 10 November 2017.

time average real weekly earnings have declined - with a slight recovery in 2014-2016 caused by a drop in the rate of inflation rather than an increase in the value of wages. The decline thereafter continued and data for early 2017 shows a 7% drop in the real average weekly earnings compared to the 2008 peak. Unsurprisingly, inequality has increased with, for example, the average FTSE chief executive now earning 386 times more than a worker on the national living wage.[9] In the face of a declining share of the economy, many people have relied on debt. UK now stands at £1.554 trillion[10] and is expected to rise to £2.3 trillion by 2020,[11] and will probably provide the foundations for the next big financial crisis.

Those are the economic tools the EU used in relation to collective bargaining. There are also the activities of the Court of Justice of the European Union (CJEU) which has been just as energetic in undermining collective bargaining.

The most obvious examples are the famous cases of *Viking* and *Laval*.[12] Those cases established the precedence over the rights to strike and bargain collectively of the freedoms of business enshrined in the 'Four Pillars' of the EU Treaty: freedom of movement of capital, freedom of movement of labour, freedom for a business in one EU country to establish in another, and freedom for a business in one EU country to provide services in another. In *Viking* and *Laval*, dating back to 2007, the CJEU held that the third and fourth pillars,

---

[9] The Equality Trust, *Paytracker, Comparing Chief Executive Officer pay in the FTSE 100 with average pay and low pay in the UK*, March 2017, https://www.equalitytrust.org.uk/sites/default/files/Pay%20Tracker%20%28March%202017%29_1.pdf, accessed 10 November 2017.

[10] The Money Charity, *the Money Statistics, November 2017*, http://themoneycharity.org.uk/money-statistics/ accessed 10 November 2017.

[11] Prof Prem sika, 'Budget: the Chancellor's obsession with the deficit will drive our economy into the ground,' *Left Foot Forward*, 31 October 2107, https://leftfootforward.org/2017/10/budget-the-chancellors-obsession-with-the-deficit-will-drive-our-economy-into-the-ground/, accessed 10 November 2017.

[12] **International Transport Workers' Federation v Viking Line ABP (C-438/05)** European Court of Justice (Grand Chamber), 11 December 2007 EU:C:2007:772; [2007] E.C.R. I-10779; [2008] 1 C.M.L.R. 51; [2008] All E.R. (EC) 127; [2008] C.E.C. 332; [2008] I.C.R. 741; [2008] I.R.L.R. 143; **Laval un Partneri Ltd v Svenska Byggnadsarbetareforbundet (C-341/05)** European Court of Justice (Grand Chamber), 18 December 2007 EU:C:2007:809; [2007] E.C.R. I-11767; [2008] 2 C.M.L.R. 9; [2008] All E.R. (EC) 166; [2008] C.E.C. 438; [2008] I.R.L.R. 160.

freedom of establishment and the freedom to provide services, have superiority (subject to certain conditions) over the fundamental trade union rights to collectively bargain and to strike. Though the principles in those cases have not resulted in a wave of litigation, they remain as dangerous rocks lurking beneath the surface.[13] They are certainly not simply historical judgements of academic interest only.

Indeed, the *Viking* and *Laval* principles have taken on a new lease of life with the 17:10 judgment of the Norwegian Supreme Court in *Holship Norge AS v Norsk Transporterforbund* in December 2016.[14] The case has huge significance for the rights of workers and trade unions.

Norway is not part of the EU but is part of the European Free Trade Area (EFTA). As such, Norway is subject to the European Free Trade Area Court, a court which, in all but judicial robes, is equivalent to the CJEU, essentially applying the same jurisprudential doctrines.

Since at least medieval times, casualisation has been rampant in the dock industry – one of the most notoriously casualised industry of all industries. The famous image of dockworkers, standing 'on the stones' outside the dock gates in the hope of being chosen for a day's work or even half a day's work unloading and loading a ship, is an image fixed in the mind of working class consciousness throughout the world. That uncivilised aspect of what is now described as the gig-economy was one which was ended in many countries in the middle of the last century.[15] In Britain casual work in the docks was ended by the introduction of the National Dock Labour Scheme, brought in by a

[13] The employers relied on *Viking* and *Laval* in the recent industrial action case of *GTR v ASLEF* [2016] EWCA Civ 1309; [2017] I.R.L.R. 246, though the argument failed on the facts there.

[14] HR-2016-2554-P; case No 2014/2089.

[15] And equivalent legislation or at least major revisions of labour law is what is now necessary to regulated the middlemen like Uber and Deliveroo which have exploited modern technology to bring back casualisation in many industries.

Labour Government after the Second World War. The Scheme was abolished by the Tories despite the dock strike of 1989.

The International Labour Organisation (ILO) introduced Convention 137 over forty years ago in 1973. Article 2 provided that:

> 1. It shall be national policy to encourage all concerned to provide permanent or regular employment for dockworkers in so far as practicable.
>
> 2. In any case, dockworkers shall be assured minimum periods of employment or a minimum income, in a manner and to an extent depending on the economic and social situation of the country and port concerned.

Article 3 added that:

> 1. Registers shall be established and maintained for all occupational categories of dockworkers, in a manner to be determined by national law or practice.
>
> 2. Registered dockworkers shall have priority of engagement for dock work.
>
> 3. Registered dockworkers shall be required to be available for work in a manner to be determined by national law or practice.

The Norwegian Government complied with the Convention and implemented a Norwegian national dock labour scheme. That protection was provided and regulated not by legislation but, as is usual in industrial relations matters in Norway, by a national collective agreement negotiated by LO (the Norwegian Confederation of Trade Unions) and the National Employers Organisation.

The Scheme provided that in every registered port, there was a Port Labour Office which had on its books all registered dockers. When a ship came into Port it sought the number of dockworkers it required from the Port Labour Office which in turn contacted dockers on the register. If those on the register were selected to work they would get enhanced payments and if they were not working on any day they would get a protected wage. That was the way the

scheme worked in Norway and in many similar schemes in other European countries.

The Holship Line – a Norwegian company, part-owned by a Danish company – sought to use its own labour to unload a ship docked in a Norwegian port. It used its Danish part-ownership to claim that the requirement to use registered dock labour was an infringement of its Freedom of Establishment rights. In order to protect the collective agreement, the dock workers union called for a boycott of Holship. In order to call a lawful boycott in Norway, a union has to apply to the labour court to show that the boycott is otherwise lawful. The Norwegian Labour Court determined that the boycott was lawful and that the dockers were entitled to protect their terms and conditions of employment under the nationally agreed dock labour scheme.

Holship challenged that decision in the EFTA Court and that court decided that the freedom of establishment of Holship appeared to have been infringed. The Court directed the Norwegian Labour Court to reconsider the matter. It went then to the Norwegian Supreme Court who on 17 December 2016 held by a majority of 10 judges to 7 that the scheme and the boycott to enforce it indeed restricted the freedom of establishment of Holship and was therefore unlawful. With the boycott declared unlawful, the union could not defend itself or protect the scheme and Holship could bring in its own labour to discharge and load the cargo.

This decision signals the total devastation of virtually every national dock labour scheme across Europe, and as such is rejected by LO, the European Transport Workers Federation (ETWF) and the International Transport Workers Federation (ITF). But the implications go further still. The ITF have a major rôle in the protection of the terms and conditions of seafarers. They do it through the collective strength of dock workers who refuse to load or untie ships unless the owners can demonstrate that the collective agreements for the

seafarers on board match minimum ITF rates.[16] That will surely now be regarded as unlawful in the case of European owned vessels docking in European ports other than those of their own registry.

So, this is an enormously significant case. I am privileged to have contributed to the drafting of an application against the decision in the Holship case to the European Court of Human Rights the result of which is unlikely for two years or so.[17]

It doesn't end there. The CJEU has ignored the right of collective bargaining under the Charter of Fundamental rights of the EU in favour of the right to set up a business in that Charter.[18] It has also held that where work is done in one EU State to exploit lower labour costs with the purpose of supplying the goods or services to another with higher labour standards, the latter cannot insist (because of the freedom to supply services) on its higher standards being met by the employer in the State where the work was done.[19] The CJEU has also outlawed collective bargaining for self-employed workers on grounds that it breaches EU competition law.[20] Given that self-employment is a growing

---

[16] Recently illustrated in *Svenska Transportarbetareförbundet and Seko v Sweden* Appn 29999/16, Decision, 1 December 2016, discussed in KD Eing and J Hendy, *The Strasbourg Court Treats Trade Unionists with Contempt: Svenska Transportarbetareförbundet and Seko v Sweden*, in [2017] ILJ 435-443. https://doi.org/10.1093/indlaw/dwx013

[17] But any optimism for a swift and successful result must be tempered – the *Svenska Transportarbetareförbundet and Seko v Sweden* was lost on an unspecified technicality and see KD Ewing and J Hendy, *Article 11(3) of the European Convention on Human Rights*, [2017] EHRLR 356-375 on the miserable outcome of recent UK trade union cases in the ECtHR.

[18] Case C-426/11, *Alemo-Herron v Parkwood Leisure Ltd* [2013] ICR 1116; [2013] IRLR 744.

[19] *Case C-549/13, Bundesdruckerei GmbH v Stadt Dortmund* EU@C@2014:

[20] *Pavlov and Others v Stichting Pensioenfonds Medische Specialisten* (Joined Cases C180–184/98) [2001] 4 C.M.L.R. 1, modified to exempt self-employed workers undertaking the same activity as employees of the same employer: *FNV Kunsten Informatie en Media v Staat der Nederlanden*, Case C-413/13. I have had the honour to prepare a case challenging this to the European Committee on Social Rights (which administers the European Social Charter of 1961 – the little sister to the European Convention on Human Rights) on behalf of the Irish Confederation of Trade Unions; a decision is awaited.

phenomenon as employers seek ways to evade their responsibilities to workers and to pay tax to States, this is a serious matter.[21]

The irony is that though the Troika and the European Courts pursue their policies against collective bargaining, the forward thinkers of capitalism have come round to the view that it is a necessary measure to stimulate demand: see the OECD *Economic Outlook, 2017*.

In the light of the foregoing it is not surprising that there is so much resentment – not just in this country but in Europe – about the neo-liberal policies of the institutions of the EU.

It might be supposed that the negative aspects of the EU would cease to have effect in the UK after Brexit. The reality is more nuanced. There is, of course, the threat that continuation of a conservative government will water down the valuable individual rights that UK workers have derived from EU law. Many employment lawyers and the TUC are very concerned about this. Furthermore, it is not be imagined that governments which adopted laws (including the Trade Union Act 2016) and policies which succeeded in cutting collective bargaining coverage in the UK from 82% in 1979 to 20% today will slow, cease or reverse their efforts whilst they remain in office. Likewise, though the UK will, after Brexit, be no longer bound by Directives requiring privatisation with their adverse effects on workers' rights and on collective rights any Conservative government will continue to pursue its relentless objective of privatisation and outsourcing. The same goes for deregulation policies now adopted by the EU but largely acquired from the UK.

But what of the alternative to the EU for the UK? The future is likely to be Free Trade Agreements. Why would the USA or other developed States opt for

[21] This same issue arose in 19th century Britain where it was called restraint of trade and was outlawed. The modern definition of a trade union, s.1 Trade Union and Labour (Consolidation) Act, 1992, reflects protection of legislation dating from 1871.

anything less? Even for States within the EU, there is no insulation from FTAs since the EU is busy secretly negotiating them in defiance of the wishes of the peoples of Europe (see the massive petition against TTIP).

Such FTAs by definition, surrender national sovereignty to the investor court settlement system (ISDS[22]). Under that system, foreign corporations are given the right to take legal action against governments to seek compensation for losses (including lost expectation of future profits) founded on claims, amongst other things, of lack of 'fair and equitable treatment' or 'appropriation' of assets. Claims under ISDS override both national and international law. So it is no defence for a government to resist a claim on the ground that the allegedly offending act was the fulfilment of an election manifesto promise, or that it was a requirement of an Act of Parliament, or that it was law decided by the Supreme Court or by the Court of Justice of the European Union or by the European court of Human Rights. So it was that Veolia could claim lost profit against Egypt under the France-Egypt bilateral FTA when its wage bill under a waste management contract rose because of a rise in the minimum wage.[23] So it was that Philip Morris tobacco could make a claim for lost profit against Australia by reason of federal legislation requiring plain packaging for cigarettes; the fact that Philip Morris's challenge to that legislation had been dismissed by the highest court in Australia, the High Court, was no bar to Philip Morris claiming under ISDS that the legislation (and the High Court decision) deprived it of future profits.[24] The fact that the first claim is still pending five years after it was lodged and the second failed on a procedural irregularity does not diminish the point that the fear of legal action in ISDS

[22] 'Investor State Dispute Settlement'.
[23] Veolia Propreté v. Arab Republic of Egypt (ICSID Case No. ARB/12/15); Claims arising out of disagreements over the performance of a 15 year contract entered into between Veolia's subsidiary, Onyx Alexandria, and the governorate of Alexandria to provide waste management services, including Egypt's alleged refusal to modify the contract in response to inflation and the enactment of new labour legislation.
[24] Philip Morris Asia Limited v. The Commonwealth of Australia (PCA Case No. 2012-12); Claims arising out of the enactment and enforcement by the Government of the Tobacco Plain Packaging Act 2011 and its alleged effect on investments in Australia owned or controlled by the claimant.

where the damages are measured often in billions of dollars[25] can paralyse governments from carrying out their democratic mandates.

No-one can doubt that FTAs thus present a complete surrender of sovereignty to multinational corporations.[26] But the EU is not an alternative to FTAs. The EU has already committed to important FTAs such as the Comprehensive Economic Trade Agreement (with Canada) and FTAs with Vietnam, South Korea and many others. The fact that the Transatlantic Trade and Investment Partnership (TTIP) and the Japan EU Free Trade Agreement (JEFTA) foundered has not deterred the EU in seeking such agreements - which of course bind the UK whilst (and for many years after) it is a member of the EU.

As dangerously, the entering of bilateral Free Trade Agreements will necessarily include ISDS arrangements and there is a real fear that under the mantle of compensating for failure to provide 'fair and equitable treatment' ISDS arbitrators will erect *Viking*, *Laval* and *Holship* principles to protect multinationals from one State party to a FTA from industrial action designed to protect derived from collective agreements in the other State party. Why would they not? It is true that the FTAs usually contain a 'Trade and Environment Chapter' which includes a declaration of adherence (by the State signatories – not by the corporations who will rely on the FTAs) to ILO fundamental principles but such declarations are not enforceable in the ISDS provisions (or anywhere else) and some countries (including the USA have not even ratified the fundamental ILO Conventions). In short, the labour provisions are worthless. It is not just the *Viking*, *Laval* and *Holship* principles

[25] See the UNCTD *Investment dispute Settlement Navigator* at: http://investmentpolicyhub.unctad.org/ISDS?utm_source=World+Investment+Network+%28WIN%29&utm_campaign=6e06693be1-EMAIL_CAMPAIGN_2017_05_18&utm_medium=email&utm_term=0_646aa30cd0-6e06693be1-70046405 (accessed 19 September 2017). ISDS tribunals cases settled by agreement have resulted in the following awards to be paid by governments to multinational corporations: 31 awards of between $100-499.9 millions; 9 awards of between $500- 999.9 millions and 9 awards exceeding $1billion.

[26] Of course, FTAs have many more defects, not least 'regulatory co-operation' which is a euphemism for deregulation and placing regulation in the hands of the corporations which are to be regulated.

which might be resurrected under ISDS as necessary to 'fair and eequitable treatment', so might all the other anti-collective bargaining principles in the CJEU cases referred to above. And it is surely possible that the recreation of sectoral collective agreements binding on all employers in an industry might be considered by ISDS arbitrators as not 'fair and equitable treatment.'

None of that would matter if a new government could avoid FTAs but in the absence of the EU, FTAs may be a necessary evil and, presumably ISDS will be part of the price for securing them. In any event, FTAs already binding on the UK have a life of many years after signature. CETA, though only entered into provisionally may be one such.

These will be the problems for the next government under Jeremy Corbyn, problems which are not easily solved whether the UK stays or goes.

However, to assist the incoming government in other associated ways the Institute of Employment Rights published its *Manifesto for Labour Law*[27] in 2016 to offer a way forward in relation to labour law under a Labour government. It is a very significant document, not least because the Labour Party's 2017 election Manifesto, *For the Many, Not the Few* picked up the principal proposals in the IER document.

Time does not permit elaboration here but three points stand out.

The first is the proposal for a Ministry of Labour. We might criticise some of the decisions and actions of other European Ministries of Labour but in the UK does not even have a Ministry. Consequently, there is no voice representing the worker at the Cabinet table. There is no overall labour inspectorate to enforce the rights of workers and trade unions. There is no administration to carry out any labour planning.

[27] Reference above.

Secondly, and key to the structure of labour law is the proposal to reintroduce Sectoral Collective Bargaining, i.e. bargaining covering an entire industryto produce a Sectoral Agreement covering all workers and employers in the Sector, whether the worker is a member of the union or the employer a member of the Employers Association. The Agreement would set minimum terms and conditions across the entire industry and many other things as well.

Thirdly, there are a raft of proposals to deal with the problems of casualisation, precarious employment, Zero Hours Contracts, the gig economy etc, and to provide universal rights for all workers from day one of their engagement.

It is interesting is that the IER *Manifesto* was written at a time when other labour lawyers and trade unions were undertaking a similar exercise elsewhere in Europe: in Italy the *Carta dei Diritti Universali del Lavoro* and in France the *Propositioin de Code de Travail* both published in 2017.

The time has come. Change is in the air. It is up to us on the Left to gather our collective thoughts to develop and demand a cohesive programme of labour law in the UK.

11 November 2017