

SELF-EMPLOYMENT

The view from the EU and UK (And a few other countries!)

SOME HOT TOPICS!

■ FROM THE EU

- EU Parliament rejects new law on drivers' hours if not *all* covered (Not just employees and "false" self employed drivers-EC)
- BUT radical new law proposed for maternity rights for s/e women
- Agency Directive, 2008

■ FROM THE UK

- Draft Regs. on agency work-who is covered?
- Tax proposal for "false" s/e construction workers
- Tax proposals affecting contractor's expenses
- IR 35 *is* on the agenda for our looming General Election: two parties in favour of repeal

WHAT DOES THIS ADD UP TO?

- It demonstrates the issues, tensions and controversies of self-employment.....
 - From the EU; problems of defining employment status/disregarding the s/e in the Agency Directive, seeing most/all as “victims/vulnerable” But, there is some recognition of the changing needs of s/e
 - From the UK, continuing suspicions of tax avoidance. Growing judicial willingness to intervene in employment relations. The challenging of “sham”, “disguised” or “false” employment and the overruling of contract documents (So much for “freedom of contract”)
 - So; here are some of the controversies and conceptual problems

BUT INTEREST IS GROWING: WHY?

- Recognition that self-employed/freelancers/I.Profs etc play an important and growing role in economies
- Increasing numbers, including freelancers/contractors obtaining work through agencies that are on the political/legal agendas
- Surviving the recession better?
- The “orthodoxy”, now, of the need for flexibility, innovation and creativity (Formalised in the EU by the European Employment Strategy/Lisbon process 1997-)



Some statistics.....

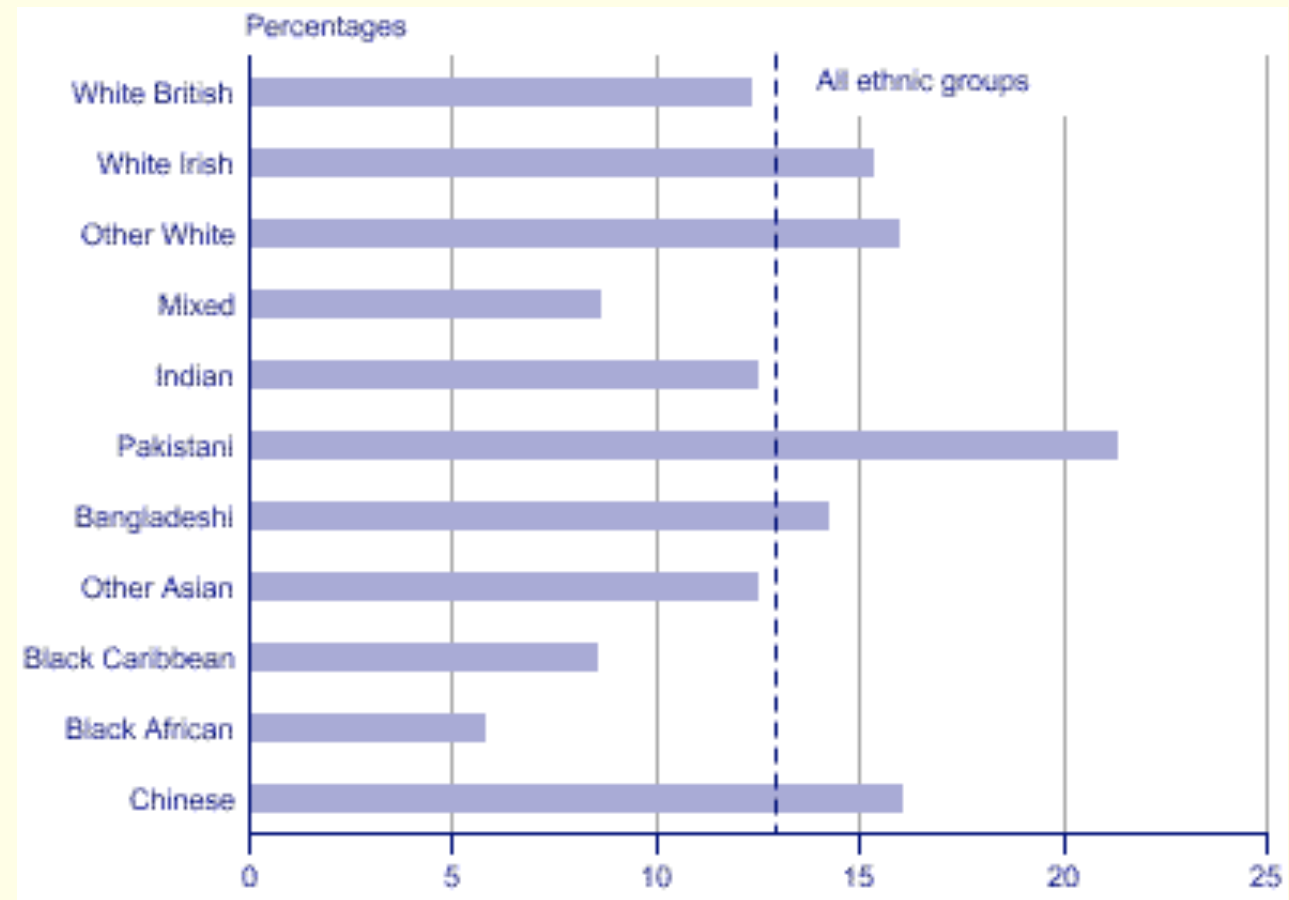
- BUT, so hard to get them.....
(ETUC; European Foundation; Eurostat; OECD etc make it difficult to find data)For example, ETUC's Benchmarking Working Europe 2008 totally ignores agency temps and the s/e
- Mostly, data taken from self-defining (reliable?)
- Mostly, data linked to “entrepreneurism”/micro businesses rather than professional jobs, and to areas such as agriculture, construction and leisure sectors (Eurostat)
- <-C/E---Atypicals---Casuals---IPros-micro.b—sme->

BUT WHAT DO WE KNOW?

- Overall in the EU, 18% are recorded as s/e
- Two thirds are male, though an increasing number of women are entering s/e
- A growing number of older workers are becoming self-employed
- But Eurostat and European Occupational Health and Safety Organisation (OSHA) report long hours working (47 a week on average) and a high incidence of stress etc.

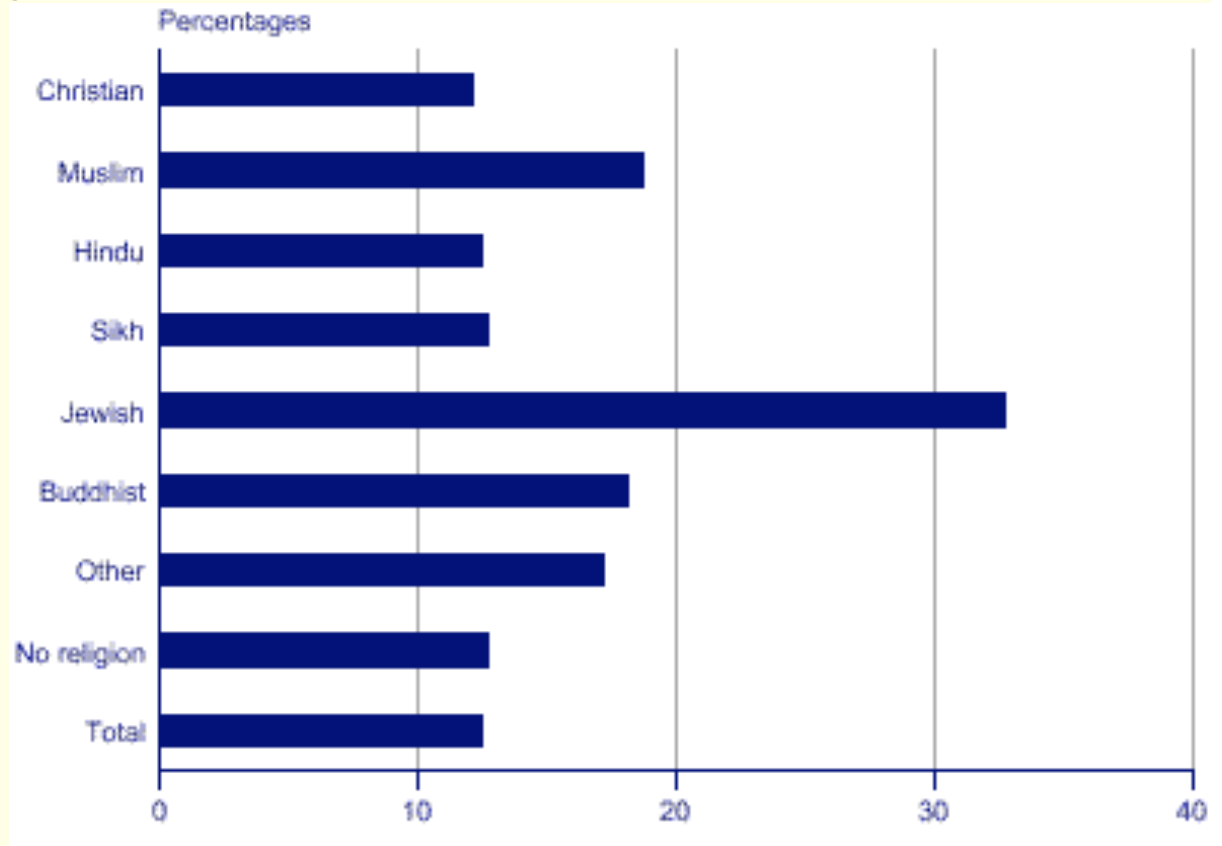
OTHER FEATURES

- Ethnicity plays a role



What about religion?

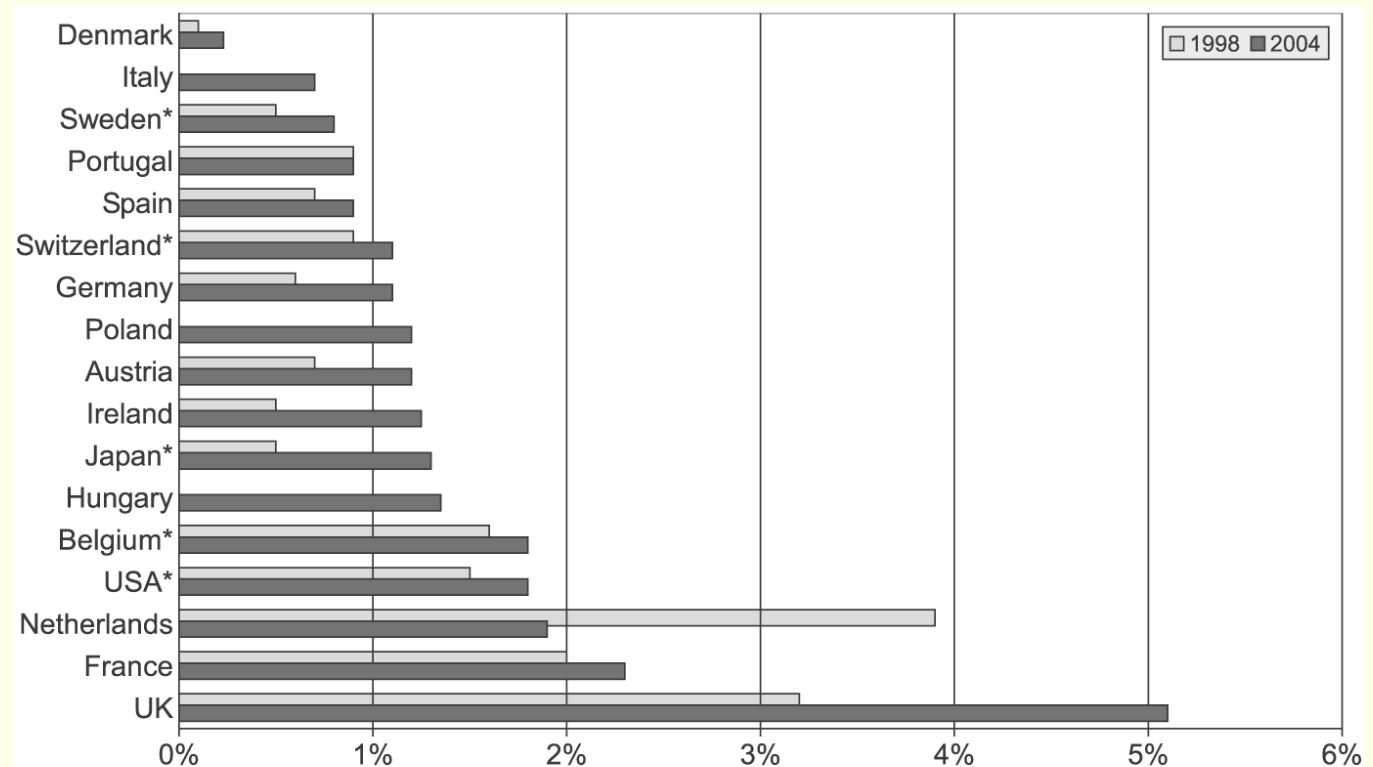
- Real differences in the likelihood of becoming self employed



SO; What of agency working?

- Tremendous differences even within the EU

etc



Note: Data are from 1999 and 2004 for Sweden, Switzerland, Japan, Belgium & USA

Source: Berkhout *et al.* (2007)

So; how can we sum this up?

- Many key statistic bases ignore the self employed or merge them into entrepreneurs
- A very wide range of factors appear to condition the incidence of self-employment including race, religion, location, but probably also, fiscal regimes
- National cultures and attitudes to self-employment remain critical
- The self employed sector remains very diverse in terms of role, income, well-being etc.
- These factors inevitably impact on not only the viability of self-employment but well being

IMAGES OF SELF-EMPLOYMENT

- Courtesy of Google!
- Asking it about “IT contractors”; self-employed persons and “freelancers”
- Some very strange responses.....



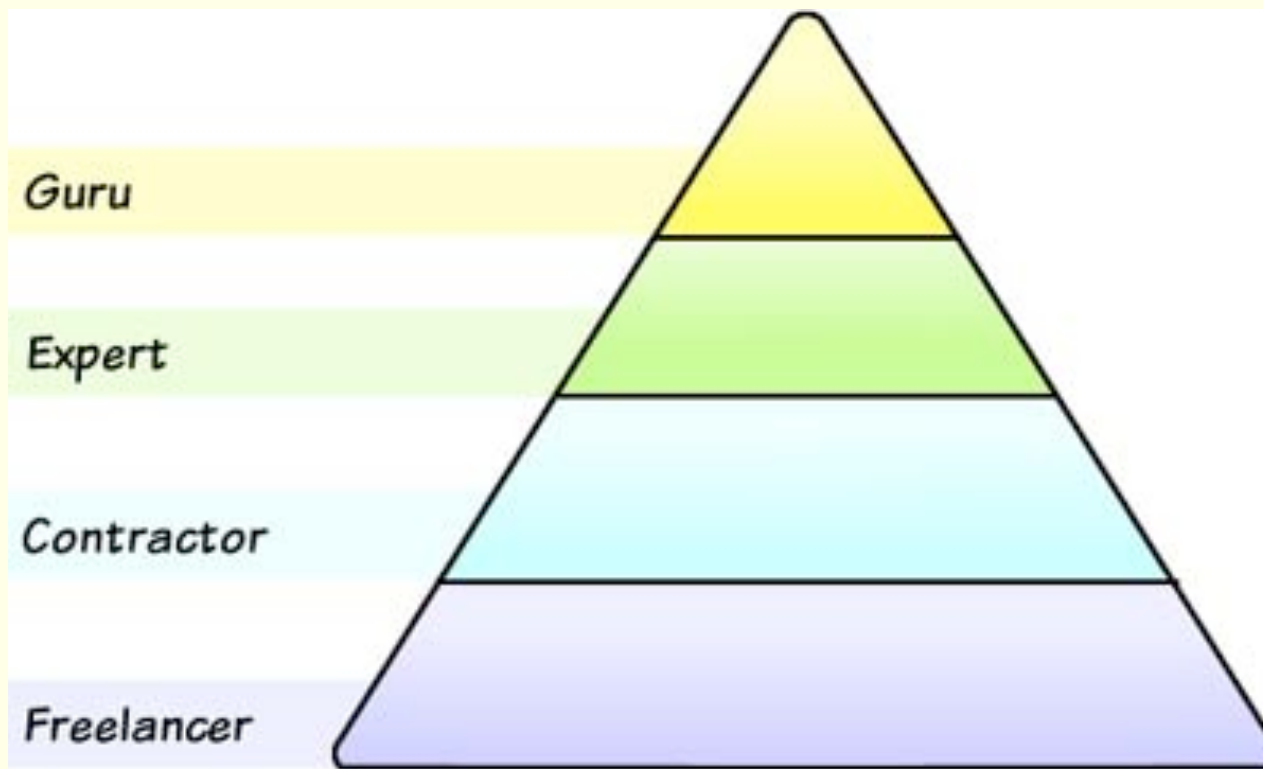












Guru

Expert

Contractor

Freelancer

Self-Employment Hierarchy



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*"This is Jesus - he says he's
God's interim manager."*







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BUT WHAT DOES RESEARCH TELL US?

- Although there is now an increased volume of work on agency working, there is still *relatively little on the various forms of self-employment*
- EU research, especially from the European Foundation (Storrie 2002; Arrowsmith 2006 etc) tells us about the working conditions etc of temps in the EU and regulation
- In the UK, the Business, Innovation and Skills Department has recently also produced a synthesis of recent agency work research
- The experience of temps (including IT contractors, engineers etc) and the clients who use them is also covered by studies (Guest and Clinton; Stanworth) This broadly confirms the findings from research from USA, NZ etc.

BUT WHAT ABOUT THE INDIVIDUALS?

- We have already noted the ground-breaking work of Dr McKeown and colleagues regarding the experiences, aspirations etc of contractors in Australia
- There is little from the EU
- From the UK we have the very significant research supported by the UK Professional Contractors Group (PCG) This was a study of 1765 members of PCG (It is thought “contractors” number around 1.4 million out of around 4 million self-employed in the UK)

WHAT DOES THE PCG RESEARCH TELL US? (1)

- Contractors tend to be aged 35+;91% male
- 83% have a degree, Masters or Doctorate
- They tend to be based in the South of England in the UK
- 32% describe their current role as a “consultant”;45% a “contractor” or “independent consultant; 12% “independent contractor”;5% “freelancer” and 4% “interim manager”. 61% work in IT or finance

WHAT DOES THE PCG RESEARCH TELL US? (2)

- 95% operate through limited companies; incomes are far higher than the national average
- Most contracts last up to a year; 6% lasted more than 3 years
- Many reported a more difficult economic climate: at the time of the survey (May 2009); 25% were out of contract but generally respondents are more optimistic than most in the UK economy.
- Most saw increased competition and client declining needs

WHAT DOES THE PCG RESEARCH TELL US (3)

- There are extremely strong and negative attitudes as regards tax and towards the tax authorities
- These attitudes strongly inform political choices and support for particular political parties: the abolition of IR 35 is seen as central

WHAT DOES THE PCG RESEARCH TELL US? (4)

- Despite the difficult economic climate, (25% out of contract), very few (18%) would accept a permanent job if offered one
- Very few (12%) have ever claimed Job Seekers Allowance (Unemployment benefit) in their career; 3% were currently claiming it
- This seems to suggest;
 - **a very strong commitment to the distinctive self-employed way of working**



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MOVING TO LEGAL AND POLICY ISSUES

- What are the **legal issues**?

- major ones of **definition** and the urgent need to define self -employment in its own right and not as a *default* category when not held to be an employee and applying a comparator model
- identifying what, if any, **protective rights** and support self employed people need or want, especially in terms of **training and development**

LEGAL ISSUES (1)

- There appear to be universal problems. In the UK the self-employed only have “life” in tax law, and some as “workers” in employment law with some basic rights, plus under contract law, so have to protect themselves
- In the EU, individual s/e largely ignored, with the emphasis on “entrepreneurship” “enterprise” and “job creation”(EES, 2009-12;Green Paper 2004 etc). Basic view is that many s/e are “victims”/”vulnerable” and need to be squeezed into the employee framework

LEGAL ISSUES (2)

- The main focus of law has been in differentiating the self-employed from the employee. Tests are similar across the developed world and stress the control of the employer/subordination of the employee, though in some systems emphasis is placed on **risk and opportunity** characterising the self-employed (But what of those bankers bonuses?)
- As mentioned, there has been a growing desperation in the **UK** to overcome “**false**”, “**sham**” “**dependent**” “**not genuine**” etc employment relationships and explore the “employment realities”. This is based on the perceived vulnerability of many less skilled, often migrant ,workers and the need to provide some rights and some security, possibly following the EU “flexicurity” model. But.....

WHAT DRIVES THE LEGAL AGENDA?

- For many law-makers and adjudicators there is a continuing reluctance to accept some forms of flexible working, including self-employment as legitimate (At best, atypical: at worst quasi -criminal!)
- Concerns that some work patterns are destabilising, undermining, fragmenting and bad for industrial relations
- Social justice ideas that see the need for employee-like rights to protect vulnerable people
- BUT tension with the priority for some of preserving choice and freedom of contract. *Who should decide?*

FISCAL MATTERS

- As contractors are broadly self-reliant and all costs/insurances/training etc has to come out of earned income, **tax emerges from research as the core issue**-arguably it is too dominant and distracts from other strategic and management issues
- In the UK, tax concerns have led to a huge **proliferation of business models** for the supply of services-umbrellas, limited companies, personal service companies, supplies through agencies and vendors. **SO;**

FISCAL MATTERS

- SO? This needs sorting out and an end to the “cat and mouse” practices and the wastes of time, energy and money
- For the first time it may be an important issue in the UK up-coming election
- These debates should not, though, distract from the need to identify;
 - the accepted characteristics of self-employment
 - a agreement of what self-employed person’s needs and responsibilities are (Maternity rights for self-employed women?)

SELF-EMPLOYMENT AND POLICY DEVELOPMENT

- Within the EU, although there have long been coherent and sustained campaigns to support, say socially excluded workers, older and disabled workers, within the employment agenda the professional self-employed are invisible
- Within the EU's Enterprise and competition agendas, policies for the professional self-employed and their contribution are not developed. (It may be that the emphasis on job creation limits their perceived role)
- None of the political groupings, Or the Consultative bodies, such as the ESC or CoR have explicit programmes for the self-employed. WHY?

WHAT IS TO BE DONE?

- Recognise the growing number of especially young and skilled people who are today **rejecting standard employment** in large organisations
- Recognise the **personal qualities and energy** that leads many into self-employment. Present it as a legitimate and NOT a default career path in school education and for women as much as men
- **Define** in an unambiguous way, what self-employment really is and what self-employed people do (Those involved in it have clear ideas)
- Explain the **value of such workers** for the economy and themselves
- Underpin all of this with **robust research data** that brings this invaluable group of workers to politics

A possible manifesto?

- Take self-employment out of the shadows (Australia is well ahead of the UK and EU on this) and recognise its integrity and distinctiveness
- Demonstrate, in a variety of ways, what value self-employed people bring, so law makers, politicians etc take notice or more notice
- Develop a coherent and comprehensive framework covering not just fiscal/pension/insurance issues but support structures, education, careers advice etc