

Anything goes? Exploring the limits of employment law in UK hospitality and catering

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Abstract

Through a case study of the UK hospitality and catering sector, this article explores the limits of employment law as a means of protecting workers from ill or unfair treatment. Finding microbreaches of the law to be common practice in the sector—akin to industry norms or ‘custom and practice’—it considers the routinisation of these microbreaches as an instance of conflict between formal legal rules and social norms. The conflict is problematic because it means that workers are less likely to perceive breach of their legal rights as an injustice worthy of challenge. The industry norms observed have been formed under the influence of an asymmetrical distribution of information and power, including organisational control over the labour process. If employment law is to be made effective, a realignment of legal rules with social norms is needed and, at the same time, the correction of this asymmetry.

1 | INTRODUCTION

Given the prevalence of low-paid, precarious employment in hospitality and catering, the sector constitutes a privileged entry point from which to examine the effectiveness of employment law. In the United Kingdom, hospitality work has always been low paid, widely regarded as low skilled and low status, and lacking any tradition of unionisation and collective bargaining (Lucas, 2004; Wood, 1992). As such, it has long been considered a sector where employers enjoy

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a wide prerogative to determine terms and conditions unilaterally and where workers are more vulnerable and in need of the law's protection (Lucas, 1991a). From their creation in the 1940s until their abolition in 1993, the catering wages boards provided both a floor of rights and important tripartite mechanisms of regulation and law enforcement (Lucas, 1991b; Radiven & Lucas, 1997). From 1999, the National Minimum Wage Act (NMWA) was successful in lifting the wages of a substantial segment of the hospitality labour force a little higher; however, the statutory minimum was always set at too low a rate to have more than a marginal positive effect (Davies & Freedland, 2007). In 1998, the Working Time Regulations created potentially important new rights to breaks and paid holidays, but weak enforcement mechanisms, almost wholly reliant on the willingness and ability of individual workers to bring claims before employment tribunals, significantly compromised the effectiveness of the rules (Hurrell, 2005).

The failure of modern employment law to lift hospitality and catering workers out of conditions of low pay and precarity is fairly well documented (Pollert, 2007). Not only is the substance of the legal rules inadequate, rates of compliance are low (Metcalf, 2019). Major breaches of the law, involving forced labour and the systematic non-payment of wages, may not be widespread (French, 2018). As we will endeavour to demonstrate, however, minor breaches—microviolations or microbreaches—are so frequent as to have become standard practice in the sector, akin to industry norms. Without a strong trade union presence or functional equivalent along the lines of the old wages boards, moreover, these industry norms have come to reflect, largely, the preferences of employers.

What is the relevance to the effectiveness of employment law as a means of protecting workers from ill and unfair treatment of worker perceptions of the law and of fair and standard practices at work? Findings from a series of 25 in-depth, semistructured interviews conducted in 2019 with hospitality workers were consonant with the characterisation of microbreaches of employment law as standard practice in that sector, more or less acceptable from the workers' point of view. Further, these findings suggested that in the routinisation of microbreaches of the law, worker perceptions of those practices as standard, and even fair, or at least not terribly unfair, figure as both symptom and cause. If practices are common across different workplaces, workers may become inured to them and stop expecting anything better. If workers do not perceive breaches of their rights to be unjust, then the likelihood is further increased that breaches will go unchallenged and become standard practice.

Our research was conducted before the outbreak of Covid-19 and the devastation to the sector that has been caused by lockdown measures (Institute of Employment Rights, 2020). In the eventual aftermath of the pandemic, there may be opportunities for reform. With that hope in mind, we suggest in conclusion that if employment law is to become effective, a dual pronged approach is needed of both strengthening enforcement procedures and supporting the involvement of workers collectively in rule-making. Such a dual pronged approach could replace a vicious circle with a virtuous one, involving the realignment of social norms and formal legal norms through the empowerment of workers and the gradual improvement of terms and conditions.

2 | A TRANSIENT WORKFORCE

The UK hospitality and catering sector is estimated to employ more than 3 million people, constituting more than 9% of total employment (López-Andreu et al., 2019). In the last decade, it has expanded at a faster pace than the rest of the economy, and part-time work, especially under 0-h contracts, is substantially higher than the national average. Subcontracting and

outsourcing practices have increased in recent years exacerbating the precariousness of employment. Although microestablishments employing 0–9 workers comprise the majority of enterprises, the trend in the last decade has been the decrease of microestablishments and the increase of larger establishments of all other sizes (Green & Owen, 2019; López-Andreu et al., 2019). Taken as a whole, the sector is dominated by brands and franchises, so that many small, even microenterprises, enterprises are really part of big multinational chains with unified management structures from middle level and above.

The workforce in the sector is overwhelmingly young, including a substantial proportion of students (Warhurst & Nickson, 2007). A quarter of total employment in hospitality is composed of non-UK citizens, from both EU and non-EU countries, and this is much more enhanced in ‘back of house’ occupations. Hospitality jobs are typically low paid, at or just above the minimum wage and are considered low skilled. There are very few barriers to entry into the sector, likewise to exit, and many workers consider it an easy way to earn money while studying, or until they decide what else they want to do, or as a stop gap until they find other, better employment (Lloyd & Payne, 2018). While employed in the sector, it is customary for workers to change employers frequently. The high turnover constitutes a structural obstacle to building workplace-rooted collective identities and an established trade union group that can act at the company level and above.

The sector also employs professionals, meaning those with formal training who rise to positions of responsibility and management. Until these professionals are promoted to salaried managerial positions, however, they tend not to be treated differently by the employers to other, non-formally trained workers. Moreover, these professionals also tend to change employers frequently, if not for better workplace climate and conditions, then for the accumulation of learning and experience. Unlike other industries where job titles and job posts correspond to assumed differentiated skill levels or where a variation of terms and conditions of employment is operative across different types of firms, locations and market niches, hospitality is a sector characterised by an essentially flat workforce structure. As a service sector organised around constant social interaction, its employment relations are structured in part by the nature of relations between co-workers and managers at any given workplace. This often leads to interpersonal dynamics having a disproportionate influence on how rights and obligations are allocated, experienced and enforced.

Collective bargaining is non-existent at sectoral level and negligible at company level. The unionisation rate is very low, estimated at between 3% and 4%. Right across the United Kingdom, trade unionism has been in retreat for four decades for a variety of structural, historical and political reasons. As a result, workers have become increasingly more dependent on the law for protection of their rights. Since the 1980s, employment relations have been shaped by the decline of industry and the rise of service sectors, the privatisation of public services, anti-trade union legislation and the near disappearance of sectoral-level multi-employer bargaining (Waddington, 2019). Certain features of the hospitality sector combine to offer a partial explanation of why union membership levels are especially low there, including the prevalence of young workers, seasonal fluctuations in demand, the transient nature of employment and the smallness of the vast majority of employers. That said, comparison with other countries, where union membership and collective bargaining coverage in hospitality are much higher, suggests that there is nothing inevitable about this (Ioannou, 2015; Papadopoulos & Lyddon, 2020).¹ While recruiting young, precariously employed workers is a difficult task, there is increasing willingness on the part of trade unions to devote resources to this, engaging in innovative organising efforts to address young workers’ interests (Simms et al., 2018).

The absence of active trade unions and collective agreements in hospitality renders law the main form of regulation of employment relations. Since the early part of the 20th century, radically different approaches have been taken to legal regulation ranging from sector-specific rules and enforcement procedures to universally applicable statutory minima. In the 1920s, it was attempted without success to create a trade board for the sector: a tripartite wage-setting body that would compensate for the absence of collective bargaining (Bayliss, 1962). With Ernest Bevin as Minister of Labour, and in recognition of the importance of catering to the war effort, the Catering Wages Act of 1943 eventually provided for the creation of a set of wages boards, each with responsibility for different parts of the sector. In the decades that followed, wages, breaks and holidays were regulated by the boards, with the regulations enforced by a variety of means including a dedicated labour inspectorate (Kahn-Freund, 1948). Importantly, minimum wage rates were exclusive of tips (Albin, 2011). Evidence suggests that the wages boards system was relatively successful in creating a floor of universally applicable rights (Bayliss, 1962, p. 119), though, in the postwar context of full employment, wages tended to be rather higher than the legal minima: 'the state of the labour market was a more potent force in determining pay levels' (Commission of Industrial Relations, 1971, p. 22). In the 1980s, the role of the boards was narrowed in line with the deregulatory agenda of the Conservatives under Margaret Thatcher (Wood, 1992, pp. 38–42), and in 1993, they were abolished outright. Wages and other terms and conditions were henceforth to be determined primarily by individual employers with no legal limitation of the rate of pay.

During the period in office of the Labour Party under Tony Blair, vulnerable workers were defined generally as those for whom, 'the risk of being denied employment rights is high and who [do] not have the capacity or means to protect themselves from that abuse' (Department of Trade and Industry [DTI], 2006, p. 25). On the basis of this definition, the Trades Union Congress (TUC) estimated that as many as one fifth of all UK workers were vulnerable (TUC, 2006). In terms of addressing that vulnerability, the most significant steps taken by the government involved the creation of new statutory employment rights granted across all sectors to all 'workers'—a category that included not only employees, in the strict legal sense of the term, but also casual workers and those on 0-h contracts: dependent contractors. In 1998, the NMWA created a new minimum of £3.60 per hour, to be adjusted upwards periodically by a tripartite 'Low Pay Commission'. So low was the rate of £3.60, however, that, even for those working full-time, it required to be supplemented by tax credits in order to amount to a living wage (Davies & Freedland, 2007). Initially, the legislation allowed for tips paid through the pay roll to count towards the minimum wage; since 2009, however, it has been stipulated in law that the national minimum must be paid exclusive of tips (Albin, 2011). In implementation of a directive of the European Union, the Working Time Regulations created rights to breaks—including a break of at least 20 min after 6 h of work and another of 11 h between periods of work—and to 4 weeks' paid holidays per year. With regard to the directive's upper limit of 48 working hours per week, the Regulations provided that individual workers could choose to 'opt-out'. In practice, opt-outs became standard terms of contracts for work, presented to job applicants on a take-it-or-leave-it basis (Barnard et al., 2003).

In respect of the national minimum wage, the Inland Revenue was given an inspectorate role and associated powers to recover wage arrears on behalf of workers (Davies & Freedland, 2007). For most other employment rights, including rights to breaks and holiday pay, enforcement relied solely on the willingness of aggrieved individuals to bring claims before employment tribunals. At the same time as it created new employment rights, however, the Labour Government implemented a number of changes to the tribunal system designed

specifically to make it less accessible to workers, ostensibly so as to reduce the number of ‘vexatious’ claims as well as the overall cost to the taxpayer (Pollert, 2007). As a result, workers who did seek external help for workplace grievances were often left isolated and their cases were inadequately addressed (Pollert, 2010). Targeted action was taken to protect the absolutely most vulnerable in agriculture and associated sectors only, with the introduction of a ‘gangmaster’—or labour provider—licensing regime (Davies, 2014). When the regime proved relatively successful in protecting workers from exploitation and abuse, calls were made for its extension from agriculture to other low-paid sectors, including hospitality (TUC, 2013). To date, these have gone unheeded.

Since 2010, and notwithstanding several changes of the government, policy objectives in respect of vulnerable workers have essentially followed the course set under New Labour (Mustchin & Martinez Lucio, 2020). On paper, all workers in all sectors have a set of statutory rights including rights to a minimum wage, paid holidays and breaks; in practice, a significant proportion may find that their rights are routinely breached (Davies, 2019). State enforcement of employment law continues to target only the absolutely most vulnerable workers and egregious breaches of the law, now through a *Director of Labour Market Enforcement*, which has oversight of the Gangmasters and Labour Abuse Authority, the national minimum wage compliance team within HM Revenue and Customs (HMRC) and a third agency with responsibility for employment agencies (Davies, 2016). In principle, individual workers whose rights are breached may bring a claim before an employment tribunal; in practice, there are many reasons why they are unlikely to do so, including significant financial and emotional costs, real and imagined (Kirk, 2018). Between 2013 and 2017, the institution of fees for cases brought to tribunals created an additional hurdle for those contemplating this route (Kirk, 2018), until the fees regime was judged unlawful by the Supreme Court as a barrier to workers’ access to justice (Ford, 2018). In the 20 years since the NMWA came into force, meanwhile, the minimum wage, which continues to amount to little more than a subsistence wage, has become a ‘going rate’ or ‘ceiling’ for many workers, rather than a floor: the most that they can realistically expect to earn (Puttick, 2019). This is particularly the case in low-pay sectors including hospitality.

According to Green and Owen (2019), the most frequent breaches of workers’ rights in the restaurant and food and beverage sectors concern the underpayment of wages, long working hours, and insufficient holiday entitlement and rest breaks. Non-compliance with the law is usually a result, they argue, of one or more of three distinct conditions: (a) ignorance of the detail of the law on the part of workers and sometimes employers, (b) collusion between workers and employers and (c) conscious exploitation of workers by their employers. In respect of the hotel sector, similar observations are made by López-Andreu et al. (2019). Both studies recognise that as workers are left to enforce their rights individually rather than collectively, they often hesitate to start a formal complaints procedure, fearing negative repercussions or deeming it not worth the ‘hassle’. The casual nature of employment is a key factor shaping workers’ increasingly common decision to accept minor employment rights’ breaches as an element of the job. When the threshold of toleration is passed, exit is overwhelmingly preferred to the exercise of voice (Hirschman, 1970).

3 | SOCIAL NORMS AND LEGAL NORMS AT WORK

In exploring the limits of employment law as a means of protecting workers from ill or unfair treatment at the hands of employing organisations, a key question that falls to be addressed is

whether the applicable legal rules are routinely respected by employers—complied with, either intentionally or incidentally—or, alternatively, frequently, or even routinely, breached (Parker & Lehmann Nielsen, 2011). Non-compliance is not only difficult to address and remedy, it is also difficult to investigate. Complaints data can grossly under-represent the true level of breaches, and administrative data are fragmented and subject to biases, suggesting a need for specialised worker surveys complemented by in-depth interviews (Cockbain et al., 2019).

Compliance is rarely a clear-cut, one-off event but rather a process of negotiation over time, influenced by the relationship between the regulators and the regulated, the legal and the organisational environment, and determined by economic, political and social contexts (Edelman & Talesh, 2011; Hutter, 2011). One of the things that must be taken into consideration when addressing questions of compliance or non-compliance with *formal legal rules* is the possible existence of *informal social norms* and of beliefs shared by affected actors, and groups of actors, regarding what is expected, or fair or just in any particular situation (Dukes, 2019; Dukes & Streeck, 2020). Social norms stand in a complex relation with formal law. In some cases, legal rules may have their origins in social norms or practices, for example, where elements of ‘custom and practice’ are held by the courts to be legally binding or where the terms of collective agreements are accorded legal force by reason of a court ruling or statutory provision. Where legal rules and social norms are at odds with each other, on the other hand, so that the former are perceived by those affected to be unfair or unrealistic, breach of the law may go unchallenged in a manner that undermines, over time, its efficacy and legitimacy. It is also possible that the substance of applicable legal rules may shape workers’ perceptions of what is fair in a given situation. The ‘knowledgeability’ of social and economic action is invested, we might say, with legal notions and concepts, even if these are apprehended by the actors themselves in the guise of practices, routines or shared understandings that are only dimly reminiscent of the legal rule from which they originally stem (Knegt, 2018).

In the earlier parts of the 20th century, when systems of collective bargaining were being constructed, policy arguments emphasised the relative effectiveness of collective bargaining as a means of rule creation and rule enforcement. In modern industrial society, so it was said, the legal system alone—the legislature and the courts—could not possibly keep pace with industrial change, including changes in institutional conditions and opportunities (Davies & Freedland, 1983, p. 58). It followed that formal legal rules should be primarily procedural in nature, opening the law up to the reality of industrial and working life by delegating substantive rule-making largely to properly constituted organisations of the ‘two sides of industry’: the buyers and sellers of labour. With changing circumstances shaping and reshaping the interests, claims and willingness of the parties to make concessions, collective bargaining could result in rules with a far greater potential than formal law to secure industrial peace—or, rather, an industrial truce until the next round of joint rule setting, in response to the most recent changes in industrial circumstances or political power relations.

Collective institutions and processes were also argued to be superior when it came to the enforcement of norms, whether collectively negotiated, legislatively enacted or judicially decreed (Davies & Freedland, 1983, p. 19). Where unions are represented at the workplace, they can act as ever-present inspectorates, shielding individual workers from any potentially hostile reaction on the part of the employer by speaking with one collective voice. In the case of infringement by the employer, the union can negotiate rectification and/or compensation. Where enforcement of a legal norm relies on individual litigation, the union can provide moral, financial and practical support to the worker, including legal advice. Because the union’s capacity to act in these respects relies largely on its ability to threaten or take industrial action—it

'social power'—a further argument arises here in support of collective norm *setting*: the enforcement of norms is facilitated if it can draw on a (collective) sense of grievance among workers in their respective occupational communities and if the norms in question are grounded in the workers' sense of justice.

With the disappearance of collective bargaining and collective means of enforcement from many parts of the economy—and in the case of hospitality, the abolition of the wages boards and associated inspectorate—formal rule-making has become a matter for parliament and the courts alone, far removed from the workplace and rather less open to the incorporation of social norms and shared interests. The centralisation of wage setting and the preference for universally applicable standards has resulted in the creation of legal rules that may not be very well tailored to the specifics of work organisation in particular sectors or employing organisations (Dukes & Streeck, 2020). Although social norms and shared interests remain important today for their potential impact on compliance with and the enforcement of formal law, it is equally important to recognise and take account of the changed context within which they have been shaped and solidified. Certain features of hospitality are of enduring significance and here we would emphasise in particular: fluctuating demand and the potential importance of tips to worker remuneration. We would also wish to emphasise the importance in this respect, however, of the sometimes rapidly changing power relations between workers and employers, as structured by prevailing labour market conditions, the absence of trade unions and wages boards, weak employment law protections and the reshaping of social welfare entitlements in line with active labour market policies.

4 | EMPIRICAL RESEARCH: METHODS AND SAMPLE

During 2019, 25 in-depth, semistructured interviews were conducted with young workers in Scotland and the north of England, including some trade union members and full-time union employees. All interviews were individual, audio recorded, and subsequently transcribed and subjected to content analysis. Interviews concerned three major themes indicated to interviewees in advance: (a) terms and conditions of employment in current and past jobs; (b) the experience and consequence of these terms and conditions of employment on their personal, economic and social lives; and (c) their views and ideas about worker rights and their enforcement. The precise framing of the questions, the topics and the emphasis given to each was adapted in line with the age, current role, employment trajectory and experience of each interviewee. The interviews typically began with a discussion of the current job and employment trajectory and, on the basis of that discussion, focused more specifically on interesting instances or examples and on industry practices, norms and views about how things could be improved. An emphasis was placed on the employment history of the interviewees, and they were prompted to draw on their whole working life trajectory in their responses. The worker narratives were used to identify both 'facts' and 'norms', meaning both specific events that took place during their employment and also the workers' opinions, beliefs and values, as they were prompted to reflect and comment on these. Content analysis for the purposes of this paper involved the singling out of all direct and indirect references to rules, rights and customs and the selection of the most indicative examples.

Most interviewees were based in Glasgow, but some came from or had also worked in other cities in Scotland and northern England. Two had worked in the hospitality sector in the United States and Australia and were able to make comparative observations. The sample

was balanced in terms of gender and age including workers in their early 20s, late 20s and early 30s. Around half of the interviewees had completed university education, whereas one fifth had specialised hospitality professional training. Interviewees came from a diverse set of occupations working front of house in cafes, restaurants, bars and nightclubs and in hotels and food delivery. Some were cooks and kitchen porters, a few had worked in additional sectors such as retail and care work, some were also students at the time of the interview, whereas three had or had previously had managerial positions in a restaurant, bar and kitchen, respectively. A balance was sought and achieved in terms of the type of employing organisation, with the sample including big national and multinational chains, small and medium independent businesses, family businesses and microbusinesses. Some of the workers had worked casually through agencies in catering, whereas one had moved after many years in the sector into self-employment.

Multiple methods of recruitment to the interviews were utilised including suggestions via social contacts and trade unionists, snowballing, advertisements in printed posters and social media posts in several relevant pages and groups. The overwhelming majority of interviewees were non-unionised, reflecting the prevailing trend in the sector. The interviews with trade unionists included both permanent experienced organisers and newly recruited young temporary staff, and in all cases, not only their trade union roles but also their own employment trajectory in the hospitality sector was discussed. In recognition of participants' low pay, some were offered token compensation for their time.² As a small, qualitative sample from a small geographical area, this is not in any way representative of the whole sector. It is, however, indicative of broader trends as is evidenced by the fact that its main findings correspond closely with the findings of research commissioned by the Director of Labour Market Enforcement to inform the Annual Strategy 2019/2020 (Green & Owen, 2019; López-Andreu et al., 2019; Wishart et al., 2019).

5 | FINDINGS AND DISCUSSION

5.1 | Non-compliance as standard practice

There's not really a good kind of structure to how to, you know, even learn about what you're entitled to. You know, there's not a lot of people don't actually look for the information that is available. I think, just in general, it's a pretty shoddy industry in terms of the law and what applies to the employees that work within that industry, like things like zero-hour contracts. (Bar Worker 1)

In the cases we examined, core rights such as the right to a minimum wage were formally respected, work was declared for tax purposes and working hours tended to be largely the result of agreement. When the employment relation was examined in the round, however, areas of 'greyneyness' and uncertainty became apparent in respect of the workers' legal rights. Although the situation varied from worker to worker and from one establishment to another, almost all the interviewees were able to narrate at least some instances whereby they themselves or their friends and colleagues experienced rights' breaches. These included under-recording of worked hours, indefinite postponement of payment of wages, loss of some holiday pay and insufficient rest breaks. Some respondents also mentioned favouritism in the rota, confiscating tips to compensate the employer for damage to property, verbal bullying by managers and forced resignations by way of the gradual decrease of working hours.

Although most of the respondents experienced in their various hospitality jobs several inspections by the authorities, concerning music, alcohol, food hygiene and the condition of premises, none had ever witnessed an inspection related directly to employment matters. 'There are licences and people to check on every single aspect of hospitality, but nobody checks on the employment status or the employment rights or the employment conditions' (Nightclub Worker 1). It was clear to the workers that in the absence of an interventionist state and given the marginality of trade unions in the sector, protection of their interests and employment rights would be down to them alone. 'In all of my jobs at some point I have been underpaid and because I've always had the log to go back and be like no I worked this exact time and so I've got my own records' (Nightclub Worker 2).

Many respondents were broadly aware of their basic rights but less so of the specifics of the law and the avenues available to them to seek redress. The bigger issue was not insufficient knowledge of the law, however, but the limited belief in its enforceability and the practical utilisation of the law in the everyday work context. The right, for example, not to opt out of the Working Time Directive's 48 h/week maximum is very significantly undermined by the possibility of an individual opt-out. 'So, you waive the right to not work a close and an open so it might be the case that you know you finish at three o'clock the next day and you're back in at nine ... it's quite difficult to say no to that again because whenever you're going through your contract you're sitting in front of your manager and there's a lot of pressure on you to just sign it' (Bar Worker 2). An analogous pressure can be applied in cases when the customers are fewer than anticipated and workers who arrive for their allocated shift are told to go back home without pay. Although there may be a contractual right to refuse this ad hoc change to hours, in reality, the pressure to waive that right and 'voluntarily' accept the change can be too great to resist, especially for newly recruited and younger workers.

Most respondents described experiences where workers raised issues with their managers, some of which were resolved internally. Where there was no resolution of the matter internally, workers were hesitant to take it further, involving external agencies such as the Citizen Advice Bureaux and the Employment Tribunals. Phrases such as 'having the guts' and 'going up against this big company' kept popping up when prompted to explain their reluctance to seek external help for rights' enforcement. The commonly held belief was that these are for bigger things, not for petty, everyday stuff. In any case, outcomes would be uncertain. 'It's not worth going through all that hassle to maybe just maybe be told you know there was some sort of loophole that the employer's used to avoid this' (kitchen worker). The modest nature of available remedies was also dissuasive: the fact that after a great deal of time, effort and possibly money had been expended to substantiate one's case about breach of the law, only a small sum of compensation would be payable by the employer.

Compliance with, or breach of, employment law proceeds within a context that is shaped, above all, by a structural power imbalance between employers and individualised workers. In the prevailing conditions of high turnover within the sector, and the diffusion of part-time work and especially 0-h contracts, the law concerning redundancies and dismissals is insufficient to provide the majority of workers with even basic protection. Some respondents narrated examples of workers who fell out of a manager's favour, and their working hours were gradually reduced until they resigned. 'If they have a zero hours contract then they will just get zero hours, you know' (ex-hospitality worker). This possibility looms large in the background and can operate as a disciplinary mechanism dissuading workers from demanding that their rights be respected. 'So, you can have ten workers to cover one job technically so you can have ten

workers basically hanging at the end of their phone waiting for a shift rather than having one worker and if that one worker then challenges you or doesn't make it in then but if you've got ten there you've always got someone on call, on tap basically to fill a space' (trade union organiser). An older, more experienced restaurant worker admitted that this could happen but also called attention to the possibility that the threat might be exaggerated; it could be a case of 'younger workers projecting their fears' rather than a standard managerial practice in the sector.

5.2 | A culture of toleration of breach of the law

There is laws of you have to have, I don't know, ten hours in-between a shift or something like that but it doesn't work like that because [laughs] I've just found it's been, it's short staffed. In the places that I've worked it's been having not enough staff to do that. (Hotel worker)

We did not encounter major human rights breaches in our fieldwork, such as forced labour or the systematic non-payment of wages, nor, however, did we specifically search for them. Focusing our investigation on the relationship of precariousness with statutory employment rights in the lived experiences of young hospitality workers, our key finding was rather a multiplicity of microbreaches of various rights. Concerning the right to breaks, for example, although some interviewees did get their breaks or had in the past worked in places where breaks were offered, most reported that their ability to take a rest break during a long shift depended straightforwardly on how busy the establishment was. Some reported that they were offered breaks at the beginning or the end of their shifts when customers were fewer, and not when they needed it, that is, in the middle of the shift. One reported that although breaks were offered, there was only a tiny room with one chair where one felt 'miserable', and most preferred to take their breaks in a corridor, where they remained visible to the manager and liable to be directed at any point to 'go do something'. Another interviewee mentioned that in the kitchens, breaks are unknown unless you're a smoker, in which case the chef lets you away for 5-min cigarette breaks in quieter moments. Where an employment practice comes to be established as a norm, then deviation from the norm can also carry social sanctions. 'It's almost always seen if there's somebody in a bar that says, oh I've been working for six hours I need a break, that person is automatically like eyed out as like a troublemaker, do you know what I mean? It's like, that guy's like, oh keep an eye on him you know, like it's like everyone else just does it but this guy wants his human rights, you know, and it's like' (Bar Worker 3).

In the context of individualised employment relations, these microbreaches tend to be too unimportant, of themselves, for the worker to consider that it is worth the trouble to contest them. For an employer employing numerous workers, however, the cumulative effect of these could be economically quite significant. Non-payment of small amounts of wages, such as an unpaid hour per week, a couple of days' less holiday pay in a year and a few unpaid trial shifts, can add up. If committed systematically over a long period of time, in a time frame much longer than the one individualised workers operate within, they can impact quite significantly on costs and profitability, helping to alleviate the overwhelming competitive pressures characteristic of the sector (Green & Owen, 2019; López-Andreu et al., 2019). Some of these 'microthefts' may be accidental, a result of bad organisation and occasional rather than systematic. In such cases, they are more likely to be rectified if contested. In other cases, microbreaches may go unnoticed

and perhaps intentionally so. Where managers initially commit to rectifying the breaches, they may subsequently 'forget' to do so. 'There has been some places that I've been in that they've not gave me my holiday pay and I've just thought to myself this is a losing battle just accept the fact that you're not going to get your holiday pay just go to another job and hope that it's better' (kitchen worker).

The transient composition of the workforce in hospitality both facilitates the microbreach of employment rights and provides, more importantly, the mechanism through which they gradually come to be taken for granted. Employers do not make efforts to retain their staff on a long-term basis, with the exception, perhaps of key personnel such as managers and chefs who tend to be salaried. Given the ease with which a hospitality job can be secured, meanwhile, hourly paid workers are frequently unwilling to 'put up a fight' in their workplace, preferring instead to leave and find employment elsewhere. Over time, a mutual understanding arises that the employment relation is anyway unlikely to last long. 'It's all they've always worked in a kind of weird sort of kind of almost liquid like basis where they can come, they can leave quite easily but they can get sacked quite easily' (restaurant worker). Temporariness becomes a prevailing sense in hospitality, a lived reality that at the same time informs understanding and consciousness. A social process is at work whereby a material reality shapes subjective experience, which in turn impacts again on material reality. In a context of individualised employment relations, exit becomes a more rational choice for the individual worker than remaining in the current job and attempting to effect positive change.

The multitude of individual acts that feed into and sustain a vicious circle of transience is a social process, mediated by social dynamics and determined by actual and perceived managerial pressure, as well as peer pressure. This social process lies at the border between fact and norm, connecting the two, translating and transforming the one into the other in both directions. Our fieldwork suggests that employment law does not play a central role in this process. On the one hand, it seems unable to command comprehensive compliance, and on the other, it is unable even to shape in an organic way the consciousness of hospitality workers and their subjective orientations. Breaking this vicious circle, and utilising employment law as an instrument with which to strengthen worker rights and their enforcement in hospitality, would require parallel action both from above and from below. Close monitoring and improvement of the regulatory context through setting up sectoral-level structures would need to be accompanied and complemented by processes encouraging and facilitating the collectivisation of the experience in hospitality work. Trade unionism and collective bargaining remain indispensable, yet in order to take root in the sector, they need to take into account the transience of hospitality employment, both attune and respond to its routines and customs in order to become relevant and effective in shaping the field.

6 | CONCLUSION

Twentieth-century ideas regarding the desirability of opening up formal law to social norms, and to the particular conceptions of justice that may be shared across groups, sectors or occupations, are of enduring force. The closer formal legal rules are aligned with commonly held ideas of what is fair and what is expected behaviour in any given context, the more likely it becomes that those legal rules will be complied with by employers and enforced by workers. Focusing on hospitality and catering in the United Kingdom, this article illustrated the distance between workers' formal legal rights and prevailing conditions of employment as these have evolved over time. It

demonstrated the limits of employment law in a context in which microbreaches of the law have become standard practice, fostering a culture of toleration of breach of the law and relativising its normative force. Although hospitality and catering were never unionised in the United Kingdom, the wages boards ensured union involvement in the setting and enforcement of minimum standards. Since their abolition, employment in the sector has slowly deteriorated.

Within systems of employment law, universally applicable legal minima may be highly desirable as elements of a floor of rights (Wedderburn, 1986): basic protections enjoyed by all workers regardless of the type of contract they have and the sector within which they work. Of themselves, however, universally applicable rules may be inadequate, lacking a good fit, across the board, with the particularities and characteristics of specific sectors and workplaces, and, as such, less likely to be complied with and enforced. Over time, they may exert a downwards pressure on the setting of wages and other terms and conditions, coming to function as a ceiling rather than a floor. For these reasons, it may be argued that universal statutory minima should be supplemented by sector-specific machinery for rule-making and enforcement, capable of tailoring rules to the realities of work organisation, industry and labour force characteristics and prevailing labour market conditions (Ewing et al., 2016).

It is also important to emphasise, however, that recognition of the complex interaction of formal legal rules with social practices, social norms and shared beliefs does not imply that the former should simply be aligned to the latter. Existing practices in hospitality are problematic, constructed within a context of gross structural inequalities between individualised workers and employing organisations and largely reflective, therefore, of the preferences of the latter. A dual pronged approach of both strengthening enforcement procedures and facilitating the involvement of workers collectively in rule-making has the potential to replace a vicious circle with a virtuous one, involving the gradual improvement of terms and conditions and the empowerment of workers.

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CONFLICT OF INTERESTS

There is no conflict of interest.

DATA AVAILABILITY STATEMENT

The data that support the findings of this study are available on request from the corresponding author. The data (interview transcripts or parts) are not publicly available due to privacy or ethical restrictions.

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ENDNOTES

- ¹ Sectoral collective bargaining exists in hospitality in several European countries. In addition to Scandinavian countries where trade union density and collective bargaining coverage are generally high, most workers in big hotels in Southern Europe are covered by sectoral collective agreements.
- ² After initial attempts to recruit participants produced modest results, it was decided that a £20 gift voucher would be offered to each participant before the interview commenced to assist the recruitment process. Ethics approval for this was secured, and costs were covered by the project's research budget.

REFERENCES

- Albin, E. (2011). A worker–employer–customer triangle: The case of tips. *Industrial Law Journal*, 40(2), 181–206.
- Barnard, C., Deakin, S., & Hobbs, R. (2003). Opting out of the 48-hour week: Employer necessity or individual choice? *Industrial Law Journal*, 32(4), 223–252.
- Bayliss, F. J. (1962). *British wages councils*. Oxford: Blackwell.
- Cockbain, E., Scott, S., Krisztián, P., & Bradford, B. (2019). *How can the scale and nature of labour market non-compliance in the UK best be assessed? Final report of a scoping study for the Director of Labour Market Enforcement*. London: HMSO.
- Commission of Industrial Relations. (1971). *Report no. 23. The hotel and catering industry part 1. Hotels and restaurants*. London: Her Majesty's Stationery Office.
- Davies, A. C. L. (2014). Migrant workers in agriculture. In C. Costello & M. Freedland (Eds.), *Migrants at work: Immigration and vulnerability in labour law*. Oxford: Oxford University Press.
- Davies, A. C. L. (2016). The Immigration Act 2016. *Industrial Law Journal*, 45(3), 431–442.
- Davies, J. (2019). From severe to routine labour exploitation: The case of migrant workers in the UK food industry. *Criminology & Criminal Justice*, 19(3), 294–310.
- Davies, P., & Freedland, M. (Eds.) (1983). *Kahn-Freund's labour and the law*. London: Stevens and Sons.
- Davies, P., & Freedland, M. (2007). *Towards a flexible labour market*. Oxford: Oxford University Press.
- Department of Trade and Industry. (2006). *Success at work: Protecting vulnerable workers, supporting good employers. A policy statement for this parliament*. London: HMSO.
- Dukes, R. (2019). Economic sociology of labour law. *Journal of Law and Society*, 46(3), 396–422.
- Dukes, R., & Streeck, W. (2020). Labour constitutions and occupational communities: Social norms and legal norms at work. *Journal of Law and Society*, 47(4), 612–638.
- Edelman, L. B., & Talesh, S. A. (2011). To comply or not to comply—That isn't the question: How organizations construct the meaning of compliance. In C. Parker & V. Lehmann Nielsen (Eds.), *Explaining compliance: Business responses to regulation*. Cheltenham: Edward Elgar.
- Ewing, K. D., Hendy, J., & Jones, C. (Eds.) (2016). *Manifesto for labour law*. Liverpool: Institute of Employment Rights.
- Ford, M. (2018). Employment tribunal fees and the rule of law: *R (Unison) v Lord Chancellor* in the Supreme Court. *Industrial Law Journal*, 47(1), 1–45.
- French, S. (2018). Between globalisation and Brexit: Migration, pay and the road to modern slavery in the UK hospitality industry. *Research in Hospitality Management*, 8(1), 23–31.
- Green, A., & Owen, D. (2019). *How has the UK restaurant sector been affected by the fissuring of the worker-employer relationship in the last 10years?* London: HMSO.
- Hirschman, A. (1970). *Exit, voice and loyalty*. Cambridge: Harvard University Press.
- Hurrell, S. (2005). Dilute to taste? The impact of the working time regulations in the hospitality industry. *Employee Relations*, 27(5), 532–546.
- Hutter, B. M. (2011). Negotiating social, economic and political environments: Compliance with regulation within and beyond the state. In C. Parker & V. Lehmann Nielsen (Eds.), *Explaining compliance: Business responses to regulation*. Cheltenham: Edward Elgar.
- Institute of Employment Rights. (2020). <https://www.ier.org.uk/news/unions-rail-against-disaster-of-hospitality-scheme/>
- Ioannou, G. (2015). Labor force fragmentation in contemporary Cyprus. *WorkingUSA: The Journal of Labor and Society*, 18(4), 595–612.

- Kahn-Freund, O. (1948). Minimum wage legislation in Great Britain. *University of Pennsylvania Law Review*, 97(6), 778–810.
- Kirk, E. (2018). The ‘problem’ with the Employment Tribunal System: Reform, rhetoric and realities for the clients of Citizens’ Advice Bureaux. *Work, Employment and Society*, 32(6), 975–991.
- Knegt, R. (2018). Labour constitutions and market logics: A socio-historical approach. *Social & Legal Studies*, 27(4), 512–528.
- Lloyd, C., & Payne, J. (2018). Hard times in latte land? Analysing pay and working time in the café industry in France, Norway and the UK. *Economic and Industrial Democracy*, online first. <https://doi.org/10.1177/0143831X18809887>
- López-Andreu, M., Papadopoulos, O., & Jamalian Hamedan, M. (2019). *How has the UK hotel sector been affected by the fissuring of the worker–employer relationship in the last 10years?* London: HMSO.
- Lucas, R. (1991a). Remuneration practice in a wages council sector: Some empirical observations in hotels. *Industrial Relations Journal*, 22(4), 273–285.
- Lucas, R. (1991b). Promoting collective bargaining: Wages councils and the hotel industry. *Employee Relations*, 13(5), 3–11.
- Lucas, R. (2004). *Employment relations in the hospitality and tourism industries*. London: Routledge.
- Metcalf, D. (2019). *United Kingdom labour market enforcement strategy 2019/20, Director of Labour Market Enforcement, report to parliament*. London: HMSO.
- Mustchin, S., & Martinez Lucio, M. (2020). The evolving nature of labour inspection, enforcement of employment rights and the regulatory reach of the state in Britain. *Journal of Industrial Relations*, 62(5), 735–757.
- Papadopoulos, O., & Lyddon, D. (2020). Deregulation and institutional conversion in the Greek hotel industry: An employment relations model in transition. *Industrial Relations Journal*, 51, 92–109.
- Parker, C., & Lehmann Nielsen, V. (Eds.) (2011). *Explaining compliance: Business responses to regulation*. Cheltenham: Edward Elgar.
- Pollert, A. (2007). Britain and individual employment rights: ‘Paper tigers, fierce in appearance but missing in tooth and claw’. *Economic and Industrial Democracy*, 28(1), 110–139.
- Pollert, A. (2010). The lived experience of isolation for vulnerable workers facing workplace grievances in 21st-century Britain. *Economic and Industrial Democracy*, 31(1), 62–92.
- Puttick, K. (2019). From mini to maxi jobs? Low pay, ‘progression’, and the duty to work (harder). *Industrial Law Journal*, 48(2), 143–179.
- Radiven, N., & Lucas, R. (1997). Minimum wages and pay policy in the British hospitality industry: Past impact and future implications. *Progress in Tourism and Hospitality Research*, 3(2), 149–163.
- Simms, M., Eversberg, D., Dupuy, C., & Hipp, L. (2018). Organizing young workers under precarious conditions: What hinders or facilitates union success. *Work and Occupations*, 45(4), 420–450.
- Trades Union Congress. (2006). *The hidden one-in-five: Winning a fair deal for Britain’s vulnerable workers*. London: TUC.
- Trades Union Congress. (2013). New Gangmasters Licensing Authority inspection rules will see more rogue agencies, says TUC Press release, 24 July 2013.
- Waddington, J. (2019). United Kingdom: A long-term assault on collective bargaining. In T. Muller, K. Vandaele, & J. Waddington (Eds.), *Collective bargaining in Europe: Towards an endgame* (Vol. 3). Brussels: ETUI.
- Warhurst, C., & Nickson, D. (2007). Employee experience of aesthetic labour in retail and hospitality. *Work, Employment and Society*, 21(1), 103–120.
- Wedderburn, K. W. (1986). *The worker and the law*. Harmondsworth: Pelican.
- Wishart, R., Hunt, W., Rahim, N., Elias, P. B., & Grollman, C. (2019). *Labour market enforcement evaluation. Scoping study*. London: HMSO.
- Wood, R. (1992). *Working in hotels and catering*. London: Routledge.

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