FBL 22nd June 2021 - Working in the New Normal

KAREN: Welcome back to Student Hub Live, "Working in the New Normal." Well, now we're going to talk about working in the new normal with colleagues from business and law. I'm joined by Andy Galloway who's one of our tutors and a business consultant-- and much of his work has had to change in the last 15 months-- and Rebecca Kelly, who is a legal academic in the LU Law School. But before that, she worked in higher education as a lecturer and researcher specialising in human rights, and also working in health and social care policy management for central government and the NHS-- something we've been talking about in the chat today. So, welcome both.

My first question focuses, really, on the value of jobs. And I wondered what your thoughts were, Andy, if you may sort of begin, on how you think the pandemic has caused society to review the value that's been placed on some particular jobs. There's been quite a shift, in terms of our ways of thinking about what is key and what is important.

ANDY GALLOWAY: Thanks, Karen. Yes I think we've noticed there's been a bit of a change in society and how society views some jobs. Traditionally, we had public sector jobs-- jobs like the military, health, policing, fire service, ambulance service-- these were always considered to be key jobs, because these were essential services that we needed. In a previous life I was a police officer, so I'm acutely aware of what-- you know, that sort of key roles in society whenever you have to prioritise.

I think what the pandemic did was change the landscape a little bit. We've seen what always have been key roles suddenly being recognised as such. And I'm referring to things like retail supermarkets. We needed our supermarkets. We needed the people to man the checkouts. We needed the people to work behind the scenes and get the food onto the shelves. We needed the transport and logistics to get the food from the warehouses out to the supermarkets. I think we all remember March and April, 2020, whenever toilet roll became a commodity, and probably went up in value higher than gold did for a brief period. And it was the supermarket staff who managed to get it all back out onto the shelves.

We've seen education and the role of schools increase in society. You know, my daughter-in-law is a teacher, and spent much of last year teaching the children of key workers. Those key workers weren't necessarily doctors and nurses and police officers and civil servants. Quite often, those key workers-- the children where their parents worked in logistics in the supermarkets, and in many cases, in education, as well.

So I think what we did see was a real shift in the value of what actually is a key role. And we realised, yeah, you can have all these services, but you also need food. You also need services to be delivered. We needed to keep our roads open, to get our lorry network right across Britain to distribute the stuff out.
KAREN: So there was an increased appreciation of these roles that we hadn't valued, that all of a sudden became absolutely essential to keeping food on the table and people in toilet paper. But these very people were often in the most insecure and underpaid work environments. Rebecca, what are your thoughts on that, and how has that impacted?

REBECCA KELLY: Yeah, it's a really, really interesting area, so thanks for raising it. So as you say, I mean, certainly, I think, as a society, a positive that has come from the pandemic has been that we now recognise the importance of different roles, and as you say, have more empathy with how difficult it can actually be. But what is still challenging is that those roles that we've been talking about-- they often are, as you say, low-paid and insecure. So we can ask questions about what the law is currently doing to provide protections. But now is also possibly a good time to consider possible areas where the law, perhaps, needs to adapt and to change, as well.

So if we started off, perhaps, by looking at working conditions, for example-- the law in the UK is actually very progressive and good with employment rights. There are lots of protections that are actually available. So some of the things that people might be aware of-- things like a minimum wage-- I think it's around 9 pounds an hour at the moment. We also have things like maximum working hours. And these are really positive things. But when we're looking at the law, we do also have to ask just how effective the law always is, as well.

So if we stick with those examples, if we talk about the minimum wage, there are question marks over whether that actually represents a living wage-- which is a slightly different thing. There are also questions when it comes to things like maximum working hours. Even before the pandemic, how effectively were we actually monitoring and protecting people's working hours? And if we look post-pandemic with, for example, things like remote working being on the rise, it becomes even more challenging to track the actual hours that people are working. So, you know, the law constantly has to evolve.

The other thing that we mentioned was this idea of insecure workers, and that's actually something that has been all over the news recently. So I imagine a lot of you have heard about, for example, something called a "zero hours contract." Now, with zero hour contracts, there aren't actually any fixed hours for a given week. It's a lot of flexibility, and that can be something that's a real positive from a business point of view, where they have, for example, unpredictable work. Perhaps they're a new business. Perhaps they're a service industry, where demand fluctuates. That can be a really good thing from a business point of view. And actually, from a worker point of view, they can have real pluses, as well. So if, for example, you're a student, or you're a parent of a young child, or perhaps you've recently partially retired, having that access to flexible work can be a really positive thing.

In terms of the law on zero hour contracts, you do also have lots of employment rights. So you do have, for example, the right to your wage. You also have the ability to take a paid holiday, and to have rest breaks. So there can be really, really good parts to that type of arrangement. However, they are really rising quite significantly, and quite quickly, these zero hour contracts. And research just prior to the first lockdown shows that there are around one million people on these contracts. So some interesting questions are being raised about whether or not people who are on those contracts as workers are actually there by choice.

So, I mean, it might be interesting to gather some views on people's feelings about these types of zero hour arrangements.

KAREN: Absolutely. So let us know in the chat how you feel about zero hours contracts. Patrick says the minimum wage has become a benchmark and a target to keep wages down, which is interesting. And Rebecca, I think you've raised this really interesting notion, here, about supply and demand, and for whose benefit some of this is working. You know, you've mentioned that both for businesses, it can be very useful, having this flexibility, and equally for employers, it can have this flexibility. But it's difficult, as you say, to identify where there's a correlation in terms of what driving factors are really leading some of this. You know, is it that this is really benefiting the businesses, or the individual people? So let us know your thoughts about this in the chat.

Rebecca, I wonder if you might want to respond to Patrick's point about a minimum wage?

REBECCA KELLY: It is actually a very, very interesting point. Because, yes-- because the minimum wage is obviously a good thing, we said. It does give that kind of benchmark for people, you know, the basic, basic level. But because people do often refer to it as being, well, that's the living wage, that's what the government recommends that we pay people, there can be an assumption that it is always enough, basically. And if we have everybody paid similar levels as a result of that, it can indeed potentially stagnate things slightly.

But there are initiatives out there. So one of the things that we will probably talk about a little bit, today, is where we're making choices, for example, as consumers about which businesses we decide to use services from or to purchase from. There are various benchmarks that they can sign up to with organisations that talk about the real living wage. So there are certain things that we can do to try and push things up. Because the law is there to set basic levels. It sets the basic threshold that we can't go below. But the hope is really that work is properly valued, and actually, perhaps, the pay is slightly higher than what the minimum wage requires as the absolute, basic level.

KAREN: So an interesting point from Patrick. And Mark raises another really interesting point, saying, unfortunately, can't live on zero contract hours, especially in terms of security. And this is a key thing, because there are several unions that are calling for a ban on some of these, because, they say, people can't save for the future, and also they can't sort of budget for fixed hours in the week. So I wonder what some thoughts are on that. I mean, is this something that should be banned, in both of your opinion?
REBECCA KELLY: Oh, this is an interesting one. Certainly, in terms of people being able to, for example, access mortgages, or certain levels of lease-held premises, as well, you have the landlords looking at guaranteed incomes. There are problems. So for me, I wouldn't want to necessarily go in one direction or the other. But I would like people in the audience to definitely be thinking about where they think the balance should be. Because there are obviously perks, in terms of economic efficiency, to having this flexibility. On the other hand, we could ban it completely, because of the situation it can put some workers in-- they perhaps haven't really chosen to be on these arrangements. But probably the compromise a society needs to make-- and that's what law is about-- will be somewhere in the middle. I'd like the

audience to start thinking for themselves, a little bit, which direction they might want the law to potentially shift in. Because it is looking like it could shift, at some point. There's a lot of pressure mounting around this area.

KAREN: Well, let's ask them. Emily, what do people at home think?

EMILY: So the chat are having this discussion. It's just the chat's blown up, so everybody's got-- understandably, everybody's got an opinion on this. And it's interesting. So we've got Tracy, up to Craig, and Tracy and Mesra have all sort of-- they've got an opinion. And the opinions are on both sides. So I think you hear a lot of news stories. And actually, my brother was on a zero hours contract, but it was one where he barely got any hours. So it's an extreme case where people aren't getting full-time hours. And people were talking about this on here.

Yeah. Mark was talking about the fact that-- yeah, it's fine if you've got a full-time wage and you're getting those hours. If you're only getting a few hours a week, you can't live on that. However, Craig talked about the fact that actually, if an organisation does it well, these zero hours contracts can be useful to both, as they provide flexibility for both the individual and the employer. I guess it's, from what Craig's saying, it's just a matter of making sure the discussion that's had between the two makes sure that that balance is reached, rather than it being one party dictating in a way that takes advantage of it.

But yeah, I think that's the thing-- it's again, like we were saying, it's a government kind of legislation, as well. How do we regulate these sort of things so that people can't take advantage? But yeah, people seem have a lot of concerns. But actually, it's that flexibility that they're still interested in. And as with COVID, you know, we're learning about some more flexible working. So yeah-- some really interesting points.

KAREN: Really interesting discussions, and really interesting sharing experiences of particular workplaces. We've asked whether you would opt for zero hours contracts, and 71% said no, they would not opt for that sort of contract.

Now, this is something, Andy, we were talking about a little bit earlier today, which is about the value on particular roles. And I think this is something that's quite interesting, here. So some roles have become more recognised as being valuable during the pandemic. I wonder if you could share your insights into which ones those are, and what the implications of that is.

ANDY GALLOWAY: Absolutely. I work a lot with engineering construction manufacturing companies, assessing their people management practises. Traditionally, we have always looked at the front-of-house and the key operations. So you see the operation staff. You see the manufacturing staff. Within construction, you see the guys on site. You will see the key roles-- you know, the architects, the quantity surveyors. These are very much the industry-led roles, and always have been given precedence by those organisations.

Last March everything changed, because all of a sudden, those architects, those quantity surveyors, those valuers-- they weren't working in their offices anymore. They had to work from home. And to do that, they had to get connected onto a network. And all of a sudden the IT department, who have always been those folks who live in a dusty office at the back of the building-- they suddenly took precedence. They had to get everybody in the organisation online and communicating, and communicating quickly. And their value increased.

And at the same time, the human resource managers-- those folks who, again, sit in a supporting role-- and in some organisations, are still considered to be a cost more than the value-- all of a sudden their value became very apparent, because they had to start looking at things like furlough. They had to get people onto work rosters. They had to get people back into work. Organisations were having to increase and decrease, and suddenly, the role of human resource management very much was valued-- to the extent that I've spoken to some human resource managers and HR directors who would say that they've now got a much, much bigger voice at the boardroom table.

But I want to highlight another, because these-- IT and HR-- they're fairly well-paid and professional roles. And just to go back to what we were talking about a few minutes ago-- again, some of the hidden workers within Organisations, who suddenly came to prominence, were the people who clean. The people who hoover. The people who empty the bins. And those roles kept on going on. But suddenly they had a much more important role to play-- and that was keeping surfaces wiped down, and making sure that the offices were safe to work in.

So last September, I went to a company. They are in the pharmaceutical supply chain. They had no option but to keep working right through the pandemic. And so whilst everybody went into lockdown, they had to keep going, for obvious reasons. And the managing director called in his cleaners-- which is their term-- his domestic staff. He called them in, and he said, OK, folks, we have to keep the place running. You're the experts, here. You tell me how we do it. How do we keep-- you know, what protocols do we now need to put in place? This is what I have in mind, but in terms of actually keeping things clean, and to enable you to do your job, and to keep the workers safe, what do we have to do?

And I spoke to the supervisor of that team, and she felt that her stock in the company had risen significantly, because she's seen that she really did become a key person within that organisation, and making sure that they could function. And there was that move from being that hidden role of the person who occasionally comes through with a vacuum cleaner, or comes through and empties the bins, they were the people who were saying, you know, this is what you can touch. This is what you can't touch. This is the door you come in, and the door you go out. And they were making sure they were wiping things down and putting the protocols in place to keep everybody safe.

KAREN: So certain roles have come to the forefront. But they haven't always been equal. I mean, inequality is something that I'd like to sort of turn to, now, because, Rebecca, I've heard reports that there has been a particular impact on black, Asian, and minority ethnic groups. Is that true? And what can you tell us about that?

REBECCA KELLY: Yes. Yes, it is. So the research is pretty clear that there has been a disproportionate impact. So looking at it from a legal perspective, in terms of focusing on workers and the impact of the pandemic, there are questions that we can start asking, in terms of what our response might actually want to consider. So some of the questions that have been raised are around, for example, could some of this be because BAME workers have been selected more often for some of the riskier types of jobs within a role? That's something that we might want to look at.

Another thing that's actually been raised is whether or not there may be reasons for BAME workers feeling less able and comfortable to challenge health and safety issues that they may come across, or sort of see, or whether or not they're confident to whistle-blow, in the same way as other workers. And there's also just a big question-- what we're often coming up with, as employers, is blanket policies in terms of how we approach the risk that COVID potentially raises. And there are some question marks as to whether those types of blanket policies-- for example, over returning to work-- are appropriate, or could they actually have what we call "indirect discrimination effects" against BAME workers? So that's something that may be done innocently, but actually disproportionately affects a particular vulnerable group.

So there are quite a lot of interesting legal debates that are actually raised on this particular area.
KAREN: Now, our widget says, "select all the areas that apply," but unfortunately, you can only select one. So if you could let us know which the most important aspect is, in terms of-- we can only have five things here, but health, employment, earnings, and personal finances. So which do you think has had the highest impact on BAME workers, please, out of those options? So please do vote for that. My apologies for that wording, there, but sometimes the computer just says no, and this is one of them. So you can only choose the one that you think has had the most impact.

So sorry, Rebecca. You were talking about some of these sort of indirect areas of discrimination. That's not something I'd thought about before. Can you tell us about how some of those things may manifest?

REBECCA KELLY: Yeah. So, I mean, the classic example is-- because this is obviously an emerging area, in terms of the possible indirect discrimination for BAME workers-- but if we were to look at it in a well-established area, which would be indirect discrimination against women, for example, it might be having employment policies about having to start very early in the day, for example. And that could well impact on people who have childcare responsibilities, if they've not been able to, for example, drop children off at care facilities or at school, depending on what age range we're talking about. Now, it's not a policy that directly says, you know, women cannot work here, but it may have made it more difficult for them to do so.

So if we look at this in terms of the BAME situation, there are still question marks over whether there could be differences in terms of PPE design-- so the protective equipment, some of it designed around particular body shapes or characteristics that vary. Or perhaps certain health conditions, more prevalent, that make people more vulnerable to COVID. There are lots of really big debates about whether or not a pattern may emerge that we start to understand, as more time goes by, that could mean as a side effect

of having these blanket policies could actually be-- not deliberately, but indirectly-- causing an unfair outcome. You know, basically placing people from the BAME community at higher risk, potentially-- which, obviously, is not something that we should be doing.

One of the things that's actually potentially coming out from this, as well-- so obviously, our particular session is focused in on the workplace practises and the pandemic, but it probably is worth saying, this general idea that we can rely on the law to put everything right doesn't necessarily always work. So I think what's also becoming apparent is that some of this disproportionate impact is really the costs of, perhaps, a lack of equality that's built into society as a whole. So I think that's something else that I'd really want people listening, today, to get used to really thinking about-- that there is actually this notion that law can fix things, but it can only really do that if the values and the principles go to society as a whole, and we start to look at equality.

And it's probably worth saying, while people are completing our poll, that equality actually could be impacted in lots of different ways, that perhaps we haven't realised, because of the effects of the pandemic. So if you look, for example, at people who have perhaps been looking after young children, who haven't been at school, or if we look at people who've had to take Shield, for example, they may not actually have had the same opportunities at work that they would have had otherwise. So we may see that they're being held back from where they should be, in terms of an equal society.
Or if you look at very young people, you know, young people who haven't had access to the same education opportunities that they normally would have for a significant period of time, or have been trying to enter as a new worker into the job market, and the opportunities haven't quite been there. There are lots of different aspects of society where this inequality can sneak in, and it's never just limited to the workplace. So it'll be interesting to see what the results of the poll have picked up on, in terms of wider impacts.

KAREN: Well, let me tell you. 33% say that the highest-- oh, it's changing right now. Is that going up or down? 31% say health. The leading is 38%, with employment. Then earnings, at 25%. And then personal finances very low, in at 6%. So employment is the key thing that people see. And as you say, Rebecca, a lot of the sort of challenges about making sure that these concerns are able to be heard, and about engaging the voice of all people within some of those considerations. So it's very interesting.
What do you have to say, then, Rebecca, about that poll, with employment being the single highest factor?

REBECCA KELLY: They are all interlinked. So the reality is that the research has shown that there has been a disproportionate impact across all of those things. And actually, a lot of it links back to what we said about the type of employment, before, that a lot of workers have been involved in, perhaps, some of the higher risk roles, that perhaps were appreciating more now, but also, in some of those things they've been on those types of insecure work that we talked about. So it could be that they're on zero hour contracts, or it could be, actually, that they're classed as being "self-employed," so they're working in the gig economy for companies like Uber or Deliveroo. And when the work dries up, they don't have that kind of guaranteed income. That makes getting access to credit difficult, and it can also, as a result of that,

lead to financial inequality, as well. So it's impacted across everything. You know, this overview of how the law works in overall society is critical. It's never as simple as just looking at one particular issue. So that's really interesting.

KAREN: Yeah, absolutely. We're nearly out of time, and I wanted to talk about one other, really important point. Andy, I wonder if you could fill us in on some of this. So this is around the notion of flexible working-- something that we've been discussing throughout today, as well. But I wonder if there are any developments here, in that direction, of people being able to work flexibly?

ANDY GALLOWAY: Yeah. I wonder how many of our audience today are working from home, and working for Organisations that previously said, no, you can't do that. We have to see you. You have to sit in the office. We have to watch what you do, and monitor what you do, and manage your performance. And all of a sudden, working from home became what we now call "the new normal." I've been working from home for 11 years. I work for Open University, I work for myself. And so the room I'm sitting in is my office. I'm quite used to it. But I know, for many people, this has been a real struggle.

But digitalization is the way forward. Look at what we are doing, right now. We're doing what so many Organisations do during day and daylight-- they video conference each other. We are having a meeting in the same way that Organisations all over the world are now having meetings-- in a way that used to be face-to-face. That, in itself, has made a change. We are no longer jumping on a train, or jumping on-- in my case-- jumping on a plane, or driving somewhere. We are doing it from home. I was flying, about once or twice a month, up to the middle of March last year. In fact, I just got home from an Open University residential school just in front of the lockdown. I just got home in time. And I haven't been on a plane since. I have no bookings. I have no desire to get onto a plane.

The world has changed, and whatever the new normal is going to be, it's not going to be what it was. The flexible work environments also mean that working from home means we don't need large office spaces. And yet, we also do need large office spaces, because in an office, we can't cram in as many desks as we did previously. And so Organisations now have a bit of a complex thing to deal with-- do they get rid of office space, or do they actually look for more office space to enable people to work in larger offices and be socially distanced?

What do you do with employees who rely on public transport to get into work? I know a company in Belfast, an IT company, and their biggest conundrum is they don't have any parking space on their building, and they are a city centre building. And they feel they've got a duty of care to their employees to say, we don't want you getting onto a bus, or getting into a train, at the moment-- not until things are better. And so that flexible working element of working from home-- it's for them, now, essential. There's no silver bullet. There's no black-and-white answer. These are complex issues, and Organisations are now grappling with them. And of course, the complexity and uncertainty of COVID means we don't really know-- we still don't really know what this is going to look like, even in three months' time.

KAREN: So massive challenges, in terms of shifting our thinking about what space we need, what we need to do at work, but also how we get to work-- so issues around transportation. And, I guess, to some extent, the organisation's responsibility in terms of protecting employees beyond the workspace as they access it. Rebecca, I wonder if you can talk about some of the legal implications of these. Because we've seen COVID's boost to things like automation, digitalization, and also we've been talking about remote home working. But I imagine there are lots of issues that come around employment and also human rights.

REBECCA KELLY: Yeah, you're absolutely right. So, yes, remote working, in particular, has been raising quite a few novel issues. They've been around, but they're being highlighted at the moment. So there are the things that Andy's done a really good job of picking up on, around things like the working hours, again, how we actually control what people are doing, and also, the potential for there being a bit of a mix-up between people's social or family life versus their working life.

So on the news today, there's been quite a lot of comments and coverage around whether anything needs to be done about that. Should we have set hours where people can and can't send emails to each other, to try and protect people against this? All sorts of different things are being potentially looked at. But the other thing that's actually coming up-- it's a really interesting question-- is what can employers do, in terms of actually tracking what employees are doing, when they are doing that remote working? So there are lots of questions about monitoring, and digital management. You know, some types of news refers to it as "surveillance," and legality around that.

KAREN: We asked people at home whether they think that their employer can monitor them. 80% said yes, they think that their employer can monitor them. But some of the issues coming up-- Curran says there's no commute, but often, no set coffee or lunch break. I know I'm really struggling. I'm having to schedule lunch breaks, otherwise, I don't get time away. So we're having to think about how we work. Chris raises an interesting point about a culture of "presenteeism" that COVID-19 may help eradicate-- just being there. And Tracy says she's more productive working from home, because the environment's set up to meet her personal needs. And Sarah feels that there's a lack of trust-- I assume in terms of from an organisation. Or this need, I guess, to account for what we're sometimes doing in the day. What do you make of those issues, Rebecca?

REBECCA KELLY: They are very interesting. So yes, actually, what you were saying is correct. So the interesting point that people have picked up is that you still have the same rights, in terms of breaks, lunch breaks, maximum hours. All of those considerations still apply when you're working from home. But you're absolutely correct, as well, to pick up that it could be quite difficult for employers to actually spot whether you're actually overworking or not. So when we talk about monitoring, it can be quite tempting to look at it as being a purely negative thing, like, "my employer's watching what I'm doing!" But equally, if they don't have some way of tracking what you're doing, they may not meet their legal duty to make sure you're not overworking, matching the health and safety requirements, as well. So there is quite a lot of debate about just how far employers can and should go, when it comes to watching people.

Now, there are different things that employers are trying. So some of them are literally looking at how long you're at a computer. So they're checking your keystrokes. Others are trying to look less, maybe, at that, and more at how many tasks you're actually completing-- so they're trying to set some kind of a realistic target, in terms of tasks that are actually being delivered. But all of that is much, much more difficult, because they can't physically see you coming into an office at a particular time and leaving an office at a particular time. And actually, trying to get that balance right-- it's new, and it's novel, and it's going to take quite a lot of getting used to. Like Andy's saying, I mean, the entire way that we structure our work environment is potentially changing, and we're not sure whether it's going to go completely back to how it was once this pandemic is over. Because quite a lot of people find that home working-- and flexible working-- is something they'd actually like to keep up. So it's challenging. It's a very challenging area.
KAREN: We're out of time, but there's just one question I'd like to ask, Rebecca, which is around the notion of what people can do. Now that we're sort of considering whether or not we can open the office, we're thinking about whether or not we want to go back into the office. So my question, then, very briefly, is if people want to keep working at home, can they insist on it? Where do they start, from a legal perspective?

REBECCA KELLY: They have a right to ask. So they can't necessarily insist on it, but they have a right to ask for what's called "flexible working." So that could be working from home, or it could be consolidating your work hours into less days, or it could be having flexible start and finish times, for example. So you can ask, and your employer can't unreasonably refuse-- but there are a very large number of reasonable reasons that they can provide for requiring people to go in.

What looks to be happening-- again, it's being covered on the news quite extensively-- is that employers are potentially going to look towards maybe a balance. So some working from home, for example, versus some in-office working. But actually, depending on the size of the business, in particular, and the nature of the work, there will be quite a lot of variety in terms of what employers decide to do going forward. But it's another area that we could be looking at legal reform for, because it is something that both labour and the conservatives are picking up on as being something to consider, going forward.

KAREN: And another thing that I love about law is it's always so dynamic and interesting, and always changing, which is what makes it so exciting. Andy and Rebecca, thank you so much. This has been such an interesting conversation.

ANDY GALLOWAY: Thank you.

KAREN: I wish we could stay and have it for longer, but we can't, unfortunately. We're going to have a quick video break. I'm going to grab a cuppa and a biscuit. Do the same at home. We are going to look at a video about balancing work, life, and study-- something we've been talking about today. Plus, I'll show you inside the Jennie Lee building. Then we'll be back for a really interesting discussion again. But this time, we're going to be talking about introducing COVID vaccine passports. So do stay tuned for that. It's going to be a really, really good discussion. See you in just a moment.