

Between David and Goliath: Why Labour should improve dispute resolution for SMEs



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The Labour Party is driven by principles that it holds dear of fairness, social justice and fair dealings at work. These are rightly held as a guiding light through which we develop our ideas.

Yet there are sections of the working world where our principles are yet to reach and where we could have a deep impact, showing how under a Labour government we are all better off. There is still a residual anger over issues that were not addressed during Covid, such as the exclusions, the lack of advice and the non-action over rent debt. Excluded people were variously told that they were a fraud risk or they were too difficult to understand and reach.

Dispute resolution is akin to an SME as employment rights are to an employee. Without support people fail to have their rights upheld. Obtaining legal advice is costly and prohibitive. This route is the last resort for small businesses preferring to try and fix problems for themselves, meaning that disputes may not be resolved and SMEs lose out. The majority of disputes centre around late payments, but this is not the only issue.

It was not Covid that finished off my business, but an inability to negotiate a fair agreement. At the end of our tenancy we were offered a deal that kept the fixed rent at the same level but increased what we would have to pay for tied products. The list of tied products was also increased to include soft drinks, a change that is contrary to the findings of the last CMA review into the industry. This is a trend that we are seeing in the pub trade and other practices including the use of hostile Section 25 notices to force tenants to leave premises that they have spent years building into a vibrant trade.

Providing a fair approach for SMEs to thrive is important not just for those running them, but for employees too. In 2022 SMEs (businesses employing 0 to 249 people) accounted for over 16 million people, 60.7% of private sector employment¹. Stable trading conditions and less time and money being spent on chasing disputes has obvious benefits for not just the owners of a business, but those employed by them.

Designing a dispute system is a pressing need, and in its design must level the playing field between the two parties, and it must see courts as the last resort. Preventative measures, alternate dispute

¹ Gov.uk Business population estimates for the UK and regions 2022: statistical release (HTML) Published 6 October 2022

resolution, mediation, and other methods can be utilised. These methods can also be used to collect data on issues that people are facing so quick action can be taken if unfair systemic practices come to light.

At the moment there are a hotchpotch of bodies and arbitration procedures available that give a confused picture of who someone running a small business can go to for help and advice¹. There are also instances where the process is lengthy and therefore the cost of disruption on the business is too costly. Small suppliers are also wary of souring relations with their clients when there is no guarantee of success.

During lockdowns I was involved in research into over the Pubs Code², which uses a system of arbitration to assist tenants of the large pub owning businesses, known as pubcos. This is a set of legislation passed in 2016 and designed to protect the rights of pub tenants. Tenants are often subjected to a tied arrangement where they have to buy products from their landlord at an increased cost. This is mostly beer but sometimes now wines, soft drinks and spirits, despite a ruling of the last CMA review that this should not be allowed.

This anti-competitive practice is supposedly moderated through the code by offering a way for a tenant to break the tie and pay a market rent only. There are two guiding principles behind the Pubs Code Adjudicator: 1) Ensure fair and lawful dealings and 2) no tenant should be worse off under a tie. This second principle should be easy to check as the raised prices paid for beer should be offset by commensurate benefits, such as advice from a development manager. Yet these commensurate benefits are never costed by the pubco and those tenants who have tried, including myself, to access a market rent only deal have found the process prohibitively lengthy, not responsive or difficult to access.

The Pubs Code is widely recognised as a failure and was the subject of a BEIS committee hearing in 2022, evidence was heard of frustrations from tenants who could not access the process and an adjudicator who admitted to not meeting with tenant representatives. There is an inherent imbalance of power and resources between a large corporation and individuals trying to run their own business. In order to ensure that the rights of people working in their own business a strong collective advocacy needs to be established that does not see these problems through the lens of disputes, but as the denial of rights.

The power imbalance between SMEs and larger businesses that they deal with will only be overcome if SMEs have a need for services that can offer information and advice, but also assistance when problems occur. This has to be done through a simple comprehensive system that can track issues and react to them. Creating a new Business Ombudsman that integrates many of the existing procedures, allows for action over late payments and helps to avoid the need for court processes would be beneficial in giving business owners confidence to do what they set up business for. These improvements would then have ramifications for employment, our high streets and the everyday economy.

Labour is in a crucial period of policy development and needs to show that it has a program for government that is different and addresses the problems that they see in their lives. It must show that its principles of security, prosperity and respect are applicable to all. In the world of work we are too often drawn into a dichotomy of workers and business. Many business owners work longer hours

1 Hodges C (2019) *Delivering Dispute Resolution: A Holistic Review of Models in England and Wales*. Oxford: Hart.

2 Meers, J., & Hind, L. (2022). The “Code Adjudicator” model: The Pubs Code, statutory arbitration and the tied lease. *Legal Studies*, 42(2), 296-314. <https://doi.org/10.1017/1st.2021.47>

than employees and do so without social protections and the benefits of holiday pay, sick pay, pension contributions and other economic benefits of being an employed worker. Shocks like Brexit, energy prices and covid have shown to business owners that they are not always in control of the prosperity of their businesses and external factors can take it all away through no fault of their own. There is still a lot of anger over exclusions during covid. Narratives of social justice and fixing the country together could be compelling, but only if they are inclusive.