


A woman with dark, curly hair is shown in a professional setting, looking intently at a laptop screen. She is wearing a dark blue button-down shirt under a light grey blazer. Her hands are positioned on the laptop keyboard. The background is softly blurred, showing what appears to be an office environment with a window and some greenery. The overall mood is focused and professional.

Rewiring the world of work

10 questions the pandemic asks of employees, managers and businesses



COVID-19 has changed the way we work – most likely forever.

Many of us have accustomed ourselves to remote working from home, but there are still many unanswered questions for individuals and organisations of all shapes and sizes.

In this eGuide, Richard Harris, Chief Legal Officer for the Robert Walters Group, addresses many questions the pandemic asks of employees, managers and businesses.



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Q How will employment law need to be modernised, to reflect the increase in remote working?


A Apart from in the areas of discrimination and equality, a lot of UK employment law hasn't changed for a considerable time.

The discussion about “worker status” – whether a person is an employee, worker or contractor – has been on the back burner since The Taylor Review and the Good Work Plan. Published in 2017, it was notable for addressing employment practices to keep up with the modernising workforce and the rights of workers. However, I wished it provided more clarity as to who is classified as an employee, worker, or contractor.

If there's a silver lining to COVID, it's that it's a catalyst for our government to address the employment and tax nettles we've needed to grasp for a long time.

The changes to IR35 came into effect in April. For a long time, HMRC has taken the view that the use of limited companies by some contractors has been a loophole to allow some to pay less tax. The truth is that compliance with IR35 rules has been less than perfect, and the changes were HMRC's attempt to make enforcement easier.





I share a view with many others that the new approach of pushing liability on to clients, agencies and MSPs is the wrong one. The changes will not address the real issue – what does it mean to be self-employed in 2020? The tests applied by HRMC dates back to a case in the 1960s about cement mixers and lorry drivers – not the most accurate real world application when we think about IT professionals and project managers.

So, on one side you've got the government clamping down on limited company contracts being used as a path to beneficial tax treatment. On the other side, you have employees potentially working from home where they're using their own equipment and possibly controlling their own time.

With more flexibility, we're now in this situation where limited company contractors look very similar to the future employee (or vice versa).

It's blurring the lines on top of an already imperfect test. As someone who's an employee myself, it's time for the government to grasp the outstanding issues and provide clarity – they should be looking at employment categories and allied taxation that are attuned to the new ways of working in a post-COVID world.



Q Do you think there will there be a change to the gig economy and how it works?

A With people working from home, potentially independently with their own equipment, gig workers will need to be measured differently with a greater focus on productivity.

In many ways, who isn't going to be a gig economy worker in the future?

This is a loaded question that needs to be answered and settled because there hasn't been much advance thought or planning to what being an employee means in a post-COVID world. It's becoming legal Darwinism to see what works and what doesn't. It's fascinating to see where we'll get to, but it's also going to be chaotic and not very well ordered.

Q Do you feel that some people, businesses and policymakers are simply waiting for the end of the pandemic before making long-overdue changes?

A Covid-19 is a massive disruptor and accelerant

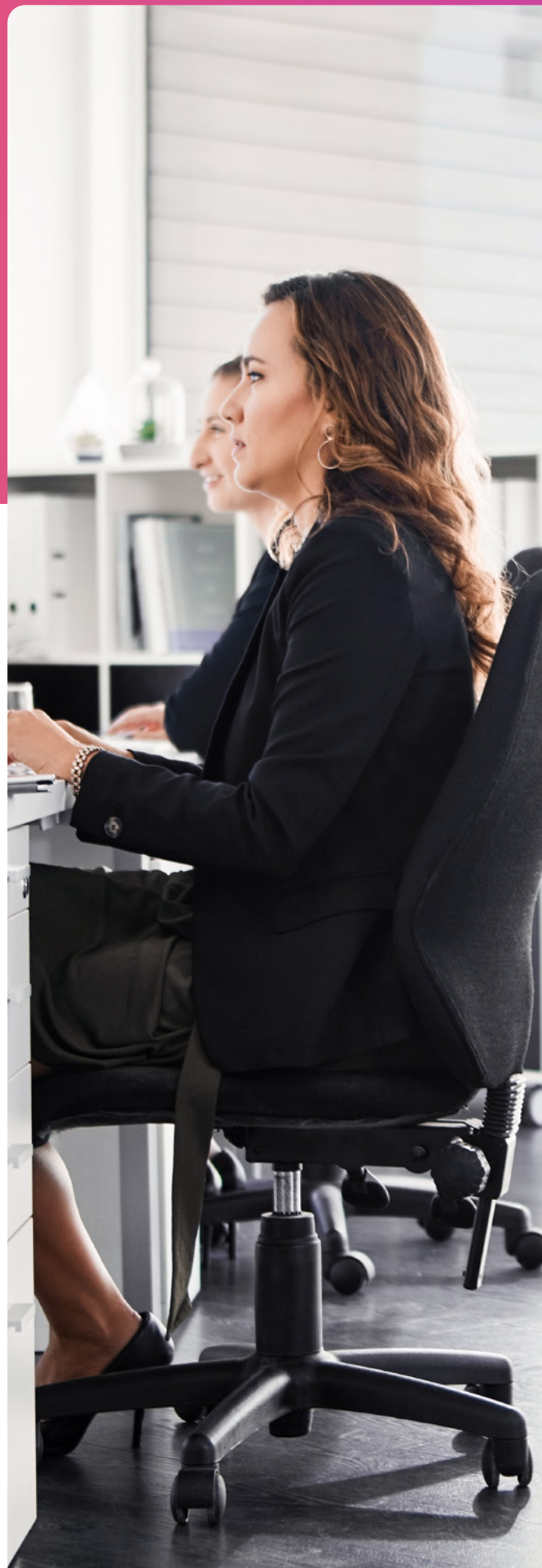
As we rebuild, it's incumbent on businesses and the government to redefine the world of work – they can no longer avoid it. The government should address where legislation hasn't kept up with the market.

For me, the gig economy is a fascinating area. Brands that self-identify as 'disruptors' are the very ones who are reliant on the gig economy, but there's considerable impact across the board.

The Uber, Deliveroo and Pimlico Plumbers cases have all been widely reported, and they all ask the same question, 'is this person an employee, a worker or self-employed?'

With Uber, some of their drivers claimed they were workers and therefore entitled to basic employment protections and benefits while Uber claimed they were

self-employed and not entitled to them. The case came down to the amount of day-to-day control by Uber drivers. Uber controls jobs through the app, claiming to merely be a platform. However, my understanding of how the app operates is that the practical ability to reject work on the app is limited. Uber sets the standards of behaviour for drivers and the standards for vehicles. There is a lot of control from Uber's side and their business is based on maintaining a fair degree of trust and control.



The case went to the Supreme Court and sided with the drivers. Uber got it wrong and likely has to adjust its entire business model in the UK. The fact that it went to the Supreme Court after many years of litigation demonstrates the problem of the government and organisations not addressing and mapping out employment status across the board.

The challenge now is that a huge number of white-collar individuals are working from home – looking less like traditional employees and more self-employed. As such, the outcome of gig work cases could extend further into the mainstream of employment as the boundaries dissolve.

Maybe there should be other categories in addition to 'gig workers' because our world of work is more complicated now. We need different treatments for different people – and that's what the government needs to do instead delivering judgements on an ad hoc basis.

An interesting and recent postscript to the Uber saga is that Uber has now recognised the GMB Union and available to drivers will be a collective bargaining agreement. I think that gig economy is fertile recruitment ground for unions who have lost out on memberships following the decline for manufacturing industries in the UK. I think the moral of this, and it extends to the service sector, is play to fast and loose with employment rights and conditions, employers can encourage a unionised workforce.





Q Will workers' rights and responsibilities need to be (re) assessed now that everyone is working from home?

A One of the most pressing issues is what I call the "Great Return". As an employer, you may want to get everyone back to the office and back to the familiar: face-to-face interactions, water cooler conversations, collaboration of great ideas, etc. But not every employee will be pleased to return to this rhythm. Some will have found the flexibility of working from home is something they don't want to give up – so how does an employer justify saying no?

We'll want to watch carefully when a company has been saying to the markets, and telling their employees, that they've continued to advance their business thanks to their adoption and agility of technology. However, when the CEO of that organisation changes tack and wants their employees back in the office – legally – it may not be that straightforward within existing laws.

Similarly, what if the employer decides to forgo the office and the employee wants to return? This will be dependent on the employment contract where it states, 'your usual place of work'. How will organisations ensure their employees follow regulations like the Working Time Directive? Are organisations and their employees remotely working complying with Health & Safety obligations? Does an employees' home function as a workspace with duties of care for employers?



Mental health has also been a real concern for many in lockdown. Organisations need to be putting measures in place to help employees' struggling with their mental health – especially since many of us have moved to a remote working setup. Beyond the legal implications, it's also just the right thing to do.

A former colleague wrote a great article in which he said it's not about people wanting to be at home, it's about people wanting better when they're in the office. What I'd say to employers is: make the office environment better. If employees are going to commute two hours a day – costing them travel costs, childcare costs and more – then make it worthwhile for them to be at the office. Make it so that their job is enjoyable, productive and successful. Wherever you want your business to go, you're going have to take your workforce with you.

An observation which I have noted is its hard to get to the heart of what employees really want – I think there is a reluctance to come out and say that they prefer working from home, when they believe management respects those "at their desks".

Q How can organisations assess and manage their employees' productivity and performance with everyone working from home?

A Assuming many employees will be working with more flexibility, the binary measurements of productivity will need to be adapted to fit different set-ups.

Productivity can be evident in certain cases, like making a sale or answering a number of calls per hour.

However, we lose the bigger picture if we fail to account the productivity that doesn't fit traditional aspects, such as creativity or leadership in action.

We need to find methodologies to support the identification of these attributes, which is even harder when everything is done remotely.

We also have to be careful not

to discriminate between onsite and offsite workers. While not explicitly protected by law, I can see grievances arising linked to other types of discrimination. For example, end of year appraisal grades that are skewed towards office workers when the higher proportion of the home workforce is female.





Q What about reward and redundancy?

A It will become increasingly tricky to performance manage an employee out of the business with settlements will become more commonplace.

If a company is in the regrettable position of making redundancies, does being a homemaker compared to an office worker factor as justification for selection?

Is it legitimate to group homeworkers separately from office workers? How does the concept of 'establishment' in redundancy get followed? My advice is to be very clear around job descriptions and organisational units.

Q Will the changes we're seeing to the world of work disadvantage workers in any way

A Employees might need more enticing back to the office, but let's not lose sight that those with higher seniority – and income – will likely be living and working more comfortably at home. It's a different prospect to a graduate working out of a single-bedroom apartment; I believe those who suffer disproportionately are entry-level and junior employees.

If businesses decide the best business case is to go remote, then employees may miss out on mentorship without having senior peers around them.

Moreover, working collectively as a team and having social interactions is essential. Technology can help bridge the absence, but it can't replace face-to-face interactions.





Q And what about the costs and potential downsides to working from home?

A While my company may no longer have to rent an office, I'll have to turn a portion of my living space into my office – paying extra for additional items (screen, keyboard, ink, etc.) Do I remain GDPR compliant if I don't have a shredder or secure filing cabinet? Does my laptop that I use personally and for work become a taxable expense? Additionally, the boundaries of my hours' blur so that they suit the company and sometimes they suit me.

Before GDPR, the ICO could fine you £60,000 for leaving your work laptop on a train. What if I have friends over that work in the same industry and they see something confidential? Do I have an obligation to keep my house tidy?

These are conversations that companies would have had for years to plan for or address via a remote working policy. Because of the pandemic, they just had to go ahead and do it.


Q What if I have an 'accident in the workplace' while I'm working from home?

A No one knows what to do in this instance yet. Repetitive strain injury from working at a desk could be a workplace injury. But what if you trip and fall on the way into your house or slip in the bathroom trying to answer the phone?

In terms of data security and breaches – what if my child comes along and plays on my computer and deletes files or accidentally takes confidential documents in their backpack?

These are questions raised before the pandemic, but with so many workers now at home, the potential has now increased a hundred-fold.





Q Do you think the infrastructure – both legal and physical – that we've got in our workplaces now will become obsolete?

A The pandemic has revealed what has and hasn't worked well for a long time – finally forcing organisations to overhaul its operations.

There needs to be a continued rewiring of the workplace. It's like moving into a house and uncovering 1960s wiring that your modern day appliances – like your server and landline – are running on. It works, but we know it's not sustainable, so the urgency to rewire your home/organisation is immediate and necessary.

Across the market, we need to address more than just employment rights. We should be thinking about what it means to be a member of the working population.

The law should be updated to better reflect the realities of a homeworker. Suppose there is an accident in the home, it's still the companies' responsibility to do health and safety checks and monitor the mental health of its employees.

Also, many employees will appear to be much closer to contractors. Organisations will likely need to reevaluate the IR35 guidance as the permutations and considerations are multifarious.

In summary, with the end of the pandemic now in sight, it's a fascinating time to rethink how much has changed, how much continues to change, and how that'll affect the way employers and employees navigate the future of work.

After qualifying as a Solicitor in 2000, Richard Harris spent the early part of his career as a technology lawyer at leading London law firm, Bird & Bird. He subsequently worked for communications company Tiscali and online gaming giant, PartyGaming.

In 2011, Richard joined the Robert Walters Group as General Counsel, with responsibility for legal services across the Group, overseeing teams in London, Paris, Singapore, Hong Kong, Tokyo and Sydney. He also served as Chief of Staff for Resource Solutions and worked on the delivery of HR, IT and Finance to Resource Solutions from the Group. Richard was appointed Chief Legal Officer to the Group in 2016.

Richard is on the Representative Committee of APSCO, and has considerable experience in complex international outsourcing transactions, employment and commercial law. When not thinking about employment law or playing teaching assistant his two young children, Richard is a clean cook, loves making art, getting out on the bike and learning the ukulele.



About Resource Solutions

Established in 1997, Resource Solutions is a provider of Recruitment Process Outsourcing (RPO) and Managed Service Provider (MSP) solutions. As part of the Robert Walters Group – a world-leading specialist professional recruitment consultancy, our business has considerable resources at its disposal. With a global footprint across 31 countries, we're able to work in close partnership with organisations and manage everything from global accounts with demanding resourcing strategies to single sites with lower recruitment volumes. We currently source and recruit for clients in over 60 countries, manage a recruitment budget of over £2 billion and hire tens of thousands of employees each year.

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