

Reducing the risk of sham contracts of employment

The risks of enforcing sham contracts of employment have been reduced through a new approach to the law, influenced by research by Alan Bogg, Professor of Labour Law at the University of Oxford and Anne Davies, Professor of Law and Public Policy at the University of Oxford.



The traditional approach to contracts of employment was to focus on the written contract of employment. Since employers normally draft contracts, this meant that the employer's presentation of the relationship between employer and employee was treated as the agreement between the two parties. This created a risk that some employers might draft 'sham' contracts which gave a false impression that individuals were self-employed rather than employees. Such individuals could not claim statutory employment rights such as the right not to be unfairly dismissed. Professor Davies and Professor Bogg's research into this area identified the risks of abuse relating to this approach.

This research has been used in judicial decisions relating to sham contracts of employment. A particularly noteworthy case is that of *Autoclenz v Belcher* (2011) in the Supreme Court. In this case the work of Professor Bogg and Professor Davies was the only academic work cited in Lord Clarke JSC's decision. The claimants worked as car valeters for the Autoclenz company which stated that they were independent contractors. They paid their own tax and national insurance. They signed a contract with a 'right to refuse work' clause, and a substitution clause which stated they could engage others to work on their behalf.

Lord Clarke JSC's decision was in agreement with the valeters that these clauses did not reflect the true agreement between the two parties. As a result of this ruling, courts and tribunals must look beyond the written contract when it is alleged that this doesn't reflect the true nature of the individual's employment arrangement.