

IMPROVING LABOUR PROTECTIONS FOR DANCERS IN NIGHT CLUBS IN ENGLAND & WALES

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Executive Summary:

Notwithstanding the calls for reform within the industry, dancers in England and Wales are still faced with precarious employment arrangements that fail to address the realities of the exploitative industry. Labour Law has failed to recognise dancers within the employment framework and provide the fundamental labour law protections required.

This policy brief will focus on the three following issues with the current labour law protections for dancers. Firstly the legal definition of worker and how dancers are excluded from receiving protections under the Employment Act 1996. Secondly, the unsafe working conditions within an unregulated industry. Thirdly, the inaccessibility to justice for dancers.

This policy brief calls for the UK Government to acknowledge the significance of the law to remedy the lack of protection that dancers face. The proposed recommendations of this policy brief seek to alleviate the legal precarity of dancers and ensure that they have access to fundamental labour law protections.



1. The Legal Definition of Worker

Dancers in nightclubs, find themselves in a precarious position, excluded from the definition of a 'worker' or 'employee' under section 230 of the Employment Rights Act 1996 due to the absence of formal employment contracts. This persists despite the presence of employment relationships between dancers and their managers akin to traditional employment. Instead, dancers are classified as self-employed, a classification, which denies them legal status and eliminates their entitlement to labour law protections and rights, including:

1. The national minimum wage under the National Minimum Wage Act 1998 which causes them to be vulnerable to exploitation and underpayment.
2. Holiday pay which causes loss of income, decreasing their standard of living.
3. The Working Time Regulations 1998 which causes overworking, that may even lead to an increased risk of physical and mental health issues.

As a result of this lack of statutory protection, dancers are more vulnerable to exploitation in their workplace and less likely to voice concerns about problems that arise in their working environments.

“Even where the work-wage relationship is established and there is substantial control, there may be other features of the relationship which will entitle a tribunal to conclude that there is no contract of employment in place even during an individual engagement.”

–Stringfellows restaurants LTD v Nadine Quashie [2012] EWCA Civ 1735

Reform:

- The definition of a worker under the Employment Rights Act 1996 should include dancers in nightclubs in its scope in order to **provide access to labour law protections and rights**. This should reference to the approach taken in the Uber BV v Aslam [2021] UKSC 5.
- **A more purposive approach** should be implemented in the dancer's industry. The employment relationship between the dancers and the nightclubs should also be given greater weight in identifying an individual as a worker.

2. Working Conditions

Venues where dancers perform often fail to implement adequate safety measures, characterised by poorly maintained facilities worsened by dubious business practices from management, stemming from precarious and exploitative work arrangements. The majority of these venues remain highly disordered, lacking in basic hygiene, and situated in isolated areas, further heightening risks.

This lack of compliance to health and safety regulations leads to an increasingly unregulated workplace environment for dancers, jeopardising their physical and psychological well-being and fosters a culture of exploitation and vulnerability. As a result, the prevalence of substance abuse within an unregulated and criminalised environment, becomes rife, along with abuse, harassment and victimisation of dancers.

The nature of the work lacks structure due to flexible working patterns that result in arduous and late working hours that fail to comply with recommended rest breaks. This poses a threat to their physical wellbeing due to fatigue and strain, contrary to the Working Time Regulations 1998.

Reform:

- **Creation of an independent enforcement body** to ensure stringent enforcement of health and safety regulations within the industry. Its duty is to facilitate monthly checks within operating venues where dancers work and impose sanctions and fines in cases of non-compliance.
- Promote a **zero tolerance policy** of sexual harassment, discrimination, abuse, exploitation and victimisation through a **mandatory educational programme** for all individuals working within the industry in accordance with the Equality Act 2010.
- Incorporation of a no overtime policy to ensure that dancers are not subject to extremely long working hours
- Introduction of **mandatory time off** for dancers, with the entitlement of three consecutive working days off within every 14 day period.

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Being told we were self-employed, we could be fired at any time for any reason, which makes it impossible to negotiate working condition. Just forgetting about it and leaving one club for another wouldn't improve the situation for myself or anyone else. I really felt that I had no other choice but to bring a claim.

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**-KR v Mick Costello and others
4111660/2021**

3. Access to Justice

Access to justice constitutes a significant impediment for dancers due to different systemic barriers, including financial constraints, denial of anonymity and a restrictive time limit for bringing legal claims:

1. Dancers usually **lack stable income** and sufficient financial resources rendering it difficult for them to meet the high costs associated with legal proceedings including filling claims, securing legal representation and obtaining necessary evidence like expert psychological assessments
2. Refusal to grant **anonymity** exposes individuals to the risk of social stigma, fear of public exposure and personal repercussions, further deterring them from pursuing legal action
3. Potential claims under the Equality Act 2010 pose an additional hurdle of a **three-month time limit**, leaving victims of sexual harassment with insufficient time to process their experiences

“social opprobrium is not regarded as sufficient to justify an anonymity order. It would appear to me that stigmatisation is a form of reputational damage and is not sufficient to outweigh the principle of open justice.”

-EAT in A v Burke and Hare

Reform:

- Introduce a **specialized institution** dedicated to supporting the cases of dancers to accommodate the challenges of the unique nature of their work, ensuring tailored support and equitable access to justice
- There should also be **legal measures granting anonymity** to dancers and protecting their privacy and safety
- The **period to bring a claim** should be extended to provide sufficient time for claimants to overcome psychological barriers and seek legal advice

Recommendations

1. Expand the legal definition of **worker** and **employee** under the Employment Rights Act 1996 to include dancers in nightclubs
2. Extension of protection of dancers through the Health and Safety at Work Act 1978 in order to receive protection from **health and safety** regulations.
3. Creation of an **independent enforcement body** to facilitate the working conditions.
4. Enforcement of a **zero-tolerance policy** through an educational programme to combat exploitation.
5. Establish an institution to facilitate individuals bringing a claim and overcoming financial constraints
6. Amend Rule 50 of the Employment Tribunal Rules of Procedure 2013 to automatically grant **anonymity** to claimants with sensitive occupations
7. Extend the **time limit** for bringing claims under the Equality Act 2010
8. Encourage dancers in nightclubs to join trade unions to leverage **collective bargaining power**, to be able to negotiate for improved working conditions, legal protections, and access to justice

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Legislation

Employment Rights Act 1996

Equality Act 2010

Health and Safety at Work Act 1974

The National Minimum Wage Act 1998

The Working Time Regulations 1998

Case Law

A v Burke and Hare EA-2020-SCO-000067-DT

KR v Mick Costello and others 4111660/2021

Stringfellow Restaurants Ltd v Quashie [2012] EWCA Civ 1735

Uber BV v Aslam [2021] UKSC 5