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Article:
Cruz, K, Hardy, K and Sanders, T (2017) False Self-Employment, Autonomy, and Regulating for Decent Work: Improving Working Conditions in the UK Stripping Industry. British Journal of Industrial Relations, 55 (2). pp. 274-294. ISSN: 0007-1080

https://doi.org/10.1111/bjir.12201

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False Self-Employment, Autonomy, and Regulating for Decent Work: Improving Working Conditions in the UK Stripping Industry

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Abstract: A large scale study of working conditions in UK based strip dancing clubs reveals that dancers are against *de facto* self-employment as it is defined and practiced by management, but in favour of *de jure* self-employment that ensures sufficient levels of autonomy and control in the workplace. While dancers could potentially seek 'worker' or 'employee' status within the existing legal framework, their strong identification with the label 'self-employed' and their desire for autonomy will likely inhibit these labour rights claims. We propose an alternative avenue for improving dancers' working conditions, whereby self-employed dancers articulate their grievances as a demand for decent work, pursued through licensing agreements between clubs and local authorities and facilitated by collective organization.

Key words: lap dancing; stripping; sex work; false self-employment; self-employment; employment status; decent work; licensing; unions

Introduction

Erotic dancers in the United Kingdom are labelled as self-employed workers or independent contractors. The high degree to which dancers are disciplined and managed by clubs means, however, that they experience relatively low levels of autonomy, which appears uncharacteristic of self-employment. Legal scholars have advanced suggestions for remedying this 'false self-employment' in the stripping industry through reclassifying dancers as regular employees or workers of the clubs (Albin 2013; Cruz 2013). At the same time, the persistence of self-employment across the sex industry globally suggests that sex workers may want to remain 'unmanaged', which might be because workers themselves view sex work as a 'private matter' (Cruz 2013; O'Connell Davidson 2014).

In this article, we evaluate these challenges to, and possible solutions for, improving the working conditions of dancers in the England and Wales, drawing on a multi-method study of the UK stripping industry. In previous articles based on this broader study, we identified low levels of autonomy as a key challenge for improving working conditions, associated with the high degree to which dancers are disciplined and managed by clubs. While we argued that this appears uncharacteristic of self-employment, we found that dancers engaged in this form of work for the flexibility it offers (Sanders and Hardy 2014). In further work, we proposed that 'false self-employment' in the sex industry - specifically erotic dance and prostitution - might be addressed by advancing labour law claims relating to unfair dismissal and holiday pay (Cruz 2013).

We extend these analyses in this article by combining original analysis of the qualitative data from our sociological study, social and legal theory, case law and licensing regulation. We argue that dancers want to be self-employed for two interrelated reasons: despite their low levels of actual autonomy, dancers perceive 'self-employment' as the route to increased workplace autonomy in the workplace and strongly identify with the label of self-employment. Our novel empirical finding that dancers *want* to be self-employed disrupts straightforward arguments for the use of individual labour law claims and prompts discussion of alternative strategies for improving working conditions. We conclude that strategies grounded in claims relating to 'decent work' norms, which do not turn on dancers asserting a particular employment status, could usefully frame dancers' collective demands for licensing reform.

False self-employment and working conditions in the stripping industry

The degree of power and agency that individual women experience in their role as dancers has been a key concern within research on the stripping industry (c.f. Egan 2006; Frank 2002). While this has traditionally tended to focus on the micro power dynamics of the dancer-customer interactions (Barton 2006; Bradley 2007; Frank 1998; Grandy 2008; Rambo and Cross 1998), recent attention in the United Kingdom has turned to how the nature of the employment relationship determines dancers' experiences and working conditions. Sociological research has indicated that working conditions in strip clubs in the UK are poor (Hardy and Sanders 2014; Sanders and Hardy 2014),

while the question of how to improve dancers working conditions is at the forefront of debates between legal scholars (Albin 2013; Cruz 2013).

This article brings together these legal perspectives with original empirical data from the largest sociological study of the lap dancing industry to date. It also responds to calls for empirical research on the area of 'quasi' or 'false' self-employment (Burchell et al 1999). This '"grey area" between employment and self-employment' (Kautonen et al. 2010; 112) has been gathering pace as an employment issue in trade unions, in the courts and in academic literature. This has led to an explosion of terms attempting to characterize the employment relationship in which these workers find themselves, including 'involuntary self-employment' (Kautonen et al. 2010) or 'reluctant entrepreneurs' (Boyle 1994), amongst others (see Kautonen et al. 2010 for extensive summary of these varying terms).

Kautonen et al. (2010; 114) have suggested that, within these debates, 'the central empirical question' is 'whether the self-employed individual, at a given time, would be willing to give up self-employment if they could continue doing the same work' as an employee. We argue that the answer to this question - in the case of dancers - is negative: given the choice, dancers would continue as self-employed. However, they would like greater control and autonomy, which is characteristic of 'true' self-employment.

While formally labelled as self-employed workers, clubs often treat their dancers – through high levels of control and other markers of employee status, such as longstanding obligations between the parties, integration, and dependency – as employees, while giving them none of the protections that individuals with formal employee or worker status enjoy. At the same time, however, dancers view certain aspects of self-employment – namely autonomy and flexibility - as desirable and identify strongly with the label of self-employment. Our empirical research shows that while dancers reject self-employment as it is practiced by employers, they are attached to the idea of self-employment and want *spatio-temporal, corporeal/behavioural and financial* autonomy and control at work.

The central question that we address is how dancers' current working conditions can be improved. The answer to this question must consider both the possibility of legally challenging existing practices of quasi self-employment and alternative measures for improving working conditions through enhancing autonomy and control in the workplace. We find a contradiction between legal remedies for addressing false self-employment and the views and demands of dancers, which reveal an attachment to the label and reality of self-employment, for reasons of both identity and autonomy. As such, we propose regulating the working conditions in clubs through licensing agreements, which could be framed as a demand for decent work and supported by collective organisation.

Many scholars have noted the increase in numbers of unprotected workers (Albin 2010; Fredman & Fudge 2013; Freedland and Kountouris 2011). Dancers,

like construction workers, taxi drivers, and hairdressers, are on the margins of labour law. In response, legal scholars have attempted to stretch the category of employee status to cover these workers and have argued for new categories of employment (Albin 2013; Freedland and Kountouris 2011). On the other hand, sociological scholarship has responded by examining experiences of marginality and crafting a whole host of terms to try and capture it (see above). In bringing these two approaches into conversation, we combine empirical experience with categorical debates in legal theory. As a result, we find that dancers' exclusion from labour protections is not necessarily due to inadequacy of legal categories (employee or worker), but to dancers' own demands for genuine self-employment. Conversely, bringing to bear legal analysis (case law and theory) on empirical sociological data stresses the need for precision in using the term 'self-employment' in sociology, in order to identify strategies for improving conditions amongst the self-employed. Our interdisciplinary approach reveals that legal and policy based scholarship on alternatives to traditional employment protections must understand - and where necessary be tailored to - specific industries; and that sociological scholarship on false self-employment can benefit from understanding the concrete challenges that can be made to these conditions via the legal system.

First, we introduce the empirical study and methodology. Second, we set out the current context of 'false' self-employment as it exists in clubs, and dancers' desire for greater autonomy and control over their labour power in contrast to

current practices. Following this, we review recent case law and labour law scholarship concerning the practice of false self-employment in UK clubs, and discuss how reclassifying dancers as club employees or workers could respond to some of the troubling working conditions experienced by dancers. In the final fourth part, we suggest alternative regulatory and political measures as a way to improve dancers' working conditions, which would allow dancers to remain self-employed, while mitigating its risks.

Methods

This paper is a result of a large scale, multi method project into the apparent rise of the stripping industry in the UK and the experiences of those who work in it. The project was largely based across two cities, one in the North and one in the South, with access to 20 clubs and stripping pubs (and a small number of clubs in rural towns as a point of comparison). Observations and notes were taken on approximately 80 visits to venues. Two main data collection methods were used: an interviewer administered survey of 197 dancers (mainly current) and qualitative interviews with a range of workers, owners and regulators.

Researchers conducted the majority of the surveys. Three peer interviewers who were active dancers collected forty surveys and a further forty respondents completed an online version of the survey. The survey asked respondents questions about the last four clubs in which they had worked, enabling a comprehensive and detailed picture of how clubs operated and the different

standards across the country. In all, 45 towns and cities were recorded, with a further 16 worldwide destinations cited as places where dancers had worked. The questions in the survey focused on their individual motivations and journey into dancing; other forms of work; education; feelings about work; earnings; fines; fees; tax; unions; the advantages and disadvantages of the job; and work patterns. While there were no specific questions relating to employment status, dancers were asked to comment on what would improve their current conditions.

Additional interviews were conducted with dancers (n=35); people who worked in the industry (bar staff, security, 'house mums', managers) as well as owners (n=20); and 15 people involved in regulation with roles such as licensing and enforcement officers, health and safety inspectors and police. SPSS was used to analyse the survey responses, and patterns identified in the survey were cross analysed with the qualitative data. The mixed method approach enabled broader work patterns to be qualified and provided a large enough sample to suggest that this study is representative of the current state of the stripping industry in the UK.

'Self-employment' in UK Strip Clubs

UK strip pubs and clubs hire dancers on a self-employed basis (as 'independent contractors'), making them responsible for their own, tax, National Insurance (NI) and working insurance. As independent contractors they are required to pay

'house fees' to the club in order to secure a spot to sell their labour to customers through private dances and one-to-one time in the 'VIP area'. House fees ranged from £0-£200 though only 19% of dancers had ever paid over £80. On average, dancers paid £80 to the clubs in London and £20 in regional areas. Furthermore, commission on private dances and other services paid by dancers to the clubs ranged from 0-66%. The standard was 30% (usually £3 on a £10 dance or £6 on a £20 dance) and 18% of dancers had paid over 30% commission at some point in their dancing career. In addition, in some clubs dancers were forced or encouraged to 'tip out'. This usually included for the 'Housemum' (essentially the dancers' line manager) (up to £10), £1 for DJs and in some places for security staff as well. In addition to these costs, dancers in some clubs – often the more corporate chain based clubs – had to buy outfits from a club sanctioned source. Dancers were not reimbursed for these.

Dancers cited a number of negative features about their current conditions of self-employment. This included 1) high levels of control over their working conditions; 2) arbitrary fees and fines; 3) going home out of pocket or not being paid by clubs; and 4) termination of their agreements without notice. First, dancers' labour was strictly controlled through 'Codes of Conduct'. 'Codes of Conduct' (also known as 'house rules') acted as an agreement, or contract for service, between the club/licensor and the dancer, which permitted the dancer to work in the clubs under the specified rules. The terms appeared to be non-negotiable and are presented on a take it or leave it basis. During the signing of

the code of conduct, the women had to produce photographic identification stating her age (see Colosi 2010; 31) and papers documenting their right to work in the UK. The official nature of this event meant that some dancers assumed that the Code of Conduct was a contract of employment.

Analysis of four different Codes of Conduct, verified as typical by dancers, reveal 56 different rules to be complied with by dancers, indicating the high levels of control exercised by the clubs. The rules were largely negatively framed statements regarding the activities from which dancers should refrain, how they should not act and which behaviours were not acceptable in accordance with the expectations of management (and in line with licensing stipulations). These were variably applied between different venues and some dancers described the ways in which corporate clubs (often ones seen as more 'respectable') were frequently more stringent than smaller, more informally managed clubs. They included prohibitions on chewing gum, looking at their phones and in some clubs, dancers were given – and then forced to pay for - new underwear if they were wearing a non-matching set.

Second, infractions of the rules outlined in the Codes of Conduct resulted in 'fines'. Indeed, 61% of dancers in the survey had been fined at some point in their dancing career. The highest reported fine was £100 for a missed shift. The most common fines were for chewing gum, using a mobile phone on the floor

and arriving late to work. Alongside other dancers, Poppy (21, British Mixed Heritage) saw these fines as integral to the business model of the clubs:

> *Fines are a big thing ... The clubs have fines so that they can make as much money off the girls as possible, because they are there to run a business too.*

Many dancers were highly critical of the use of these fines, arguing that managers imposed them overenthusiastically and arbitrarily. Poppy stated that 'with some clubs you get really ridiculous fines and they will fine you for anything if they are in a bad mood' and Nina (26, White British) said that '[the club] just fines all the girls for no reason'. Colosi (2010; 32) notes how the house rules were difficult to access after the initial signing and a common complaint from dancers was that rules were often changed without advising dancers, meaning that they were often given fines for breaking rules of which they were not aware, and had not signed up to. Alternatively, the rules imposed were contradictory and dancers found it impossible to avoid fines. For example:

> *[Large chain club] used to fine you, [even] if you were off doing a dance with someone and you called to the stage, they would fine you. Even if you were [already with a customer] (Heidi, 26, White British).*

The fining system, if stated clearly in the Code of Conduct and signed by dancers, is legal. But we would argue that there is clearly a question of fairness and that often managers impose fines outside of the agreement.

Third, repeated non-compliance of the Codes of Conduct could be met with 'dismissal'. Serious breach of the rules lead to termination of the working relationship, particularly if it related to a false declaration of earnings (to the club); repeated or serious breach of license conditions; solicitation or prostitution; theft; or drug use. However, the formal self-employed status of the dancers meant managers viewed it as unnecessary to fairly dismiss dancers. Instead, they could simply not be allocated further shifts, even without repeated, or sometimes any, non-compliance of rules. Clubs and managers had almost complete power over the workforce who had no recourse to complain, no external official authority to whom to direct complaints, and whose only potential act of resistance was to leave. As Egan (2004) notes, these rules are designed to simultaneously produce both productivity and docility amongst dancers.

Fourth, a final critique that dancers voiced about the lack of control they felt was in relation to either going home out of pocket or not being paid. For the most part, dancers accepted that they took on a financial risk. However, the terms under which they had to work meant that managers held significant means of financial control over dancers. This placed

dancers in a weak bargaining position vis-à-vis the club and its management. As mentioned above, the club stipulated both the cost of the house fee and the amount of commission paid. In addition, although dancers were responsible for extracting payment from customers, they often did not directly access and control this in the form of cash. Instead, a system of chips, vouchers or other internal currency systems were often used:

> *At the end of the night we cash in the chips and then they give us our cash. Well, our cash minus their commission, minus the house fee, and … any fines. So because we don't handle any cash whatsoever … we can't say "oh, I'm not going to give you the fine", because they have all our money (Matilda, 24, White British).*

When this was the case, dancers could not challenge the commission or fines, as they were deducted before their earnings were handed to them. They could rarely utilise the threat of withdrawing their labour, as labour supply tended to be high. Some dancers reported managers deciding on an *ad hoc* basis as to how much the 'house' would take, often raising this (and hence, once again, contravening the contract) if a dancer had earned a significant amount of money:

> *The problem would be that if you had made £600, rather than taking his [commission] which was supposed to be a third [£200], he'd be like "ah, I'm going to take £250", because he could (Julia, 25, White British).*

Dancers therefore depended on the integrity of managers, leaving them with little power to contest the imposition of fines, to control their earnings or to ensure that they were paid the full amount owed. Indeed, clubs sometimes simply withheld money from dancers:

> *If a club owes you money, you've got no proof of what they owe you a lot of the time. Clubs like I'm working in now, they didn't have the right money the other day, as a lot of card transactions had gone through, but they gave me a formal receipt saying that things are owed to you. There's a signature and everything, but a lot of clubs they won't give you one, or if they do, it's on the back of a piece of a paper. So a lot of clubs, if they don't want to pay you, they just won't (Dalia, 20, White British).*

Multiple dancers reported clubs withholding earnings. This was particularly problematic if the customer paid via credit card or through the house voucher system. As Nina (26, White British) stated:

> *If a customer pays on card, you get vouchers… they can just withhold the money if they want to. They owe my friend £450. She won't get that. They just put it off, put it off, put it off, put it off. She's given up now.*

This was disempowering to the dancers, as it also removed their ability to resist through withdrawing their labour:

> *We can't walk out when we want to 'cos we won't get our money… we just have no – no power really which is really frustrating (Matilda, 24, White British).*

In summary, although some clubs were clear and stuck to Code of Conduct agreements, the ways in which rules were set and enforced ultimately transferred significant disciplinary power to managers over dancers. These stringent rules on dancers' behaviour, dress, comportment, financial arrangements and the nature of their encounter with their clients are symptomatic of a relationship of significant control and economic dependency, and, as such, resonate with employee rather than self-employed status.

In this section, then, we have demonstrated that high levels of control and discipline over dancers' labour circulated within the clubs, justified and structured by Codes of Conduct. Clubs often act in contravention of the agreement by changing the rate of commission and simply withholding earnings, which constitutes a breach of contract. These restrictions and the conditions - alongside factors such as high levels of integration, long standing obligations between the parties, and dependency often on a single club - make dancers' status as self-employed contractors questionable. Indeed, we would argue that dancers often labour in conditions of quasi or false self-employment. In the next section we outline the ways in which dancers rejected this *de facto* form of self-employment and argued for a form of *de jure* self-employment characterised by high levels of autonomy.

The Allure of Self-employment: Autonomy and Control

Despite the conditions described above, dancers nonetheless asserted (almost without exception) that they wanted to remain self-employed. Dancers sought to be treated in reality, and not just formally, as independent contractors. None of the thirty-five respondents stated that they would prefer to be employed and only a few thought that a contract of employment would be desirable in terms of improving their conditions. Specifically, they instead asserted a desire for increased autonomy in the workplace, which they believed was achievable only through self-employment. Self-employed status was a key attraction for many dancers because they believed that it would enable three different types of freedom and autonomy to be properly exercised – *spatio-temporal, corporeal/behavioural* and *financial* - and because of an intense identification with the label of self-employment. We describe these freedoms as mainly 'future oriented' because dancers do not enjoy them to a significant extent in the present.

Existing research on self-employment routinely emphasises 'autonomy' and 'independence' as key motives for engaging in self-employment (Cassar 2007; Dawson et al 2014; Feldman and Bolino 2000; Gatewood et al. 1995). While much of the literature does not distinguish between independent contractors and small business owners, autonomy and 'independence' or 'flexibility' are overriding themes. Yet it is often not clear exactly what is meant by these terms. Elsewhere, we have argued that dancers engaged in dancing for the flexibility it

offers, which offered them opportunities to 'strategically… create alternative futures of work, employment and education' (Hardy and Sanders 2014: 119). However, in this article we are concerned specifically with dancer's attraction to self-employed status and their desire for increased autonomy in the workplace itself.

Previous authors have pointed to the ways in which 'self-employment can offer flexibility to women in respect of temporal and spatial decisions regarding work' (Marlow 2006; 407; see also Annik and Dulk 2012). Similarly, dancers emphasized the importance of these freedoms. First, dancing was an attractive method of income generation because it enabled some level of *temporal* flexibility in terms of the days on which they worked. Usually, women were able to call the club at the beginning of the week and 'book in' their shifts. Indeed, 85 per cent (n = 151) of dancers surveyed stated that the ability to choose their hours was the main advantage of the job. Faith (34, White British) said 'I like the fact that you can decide next month I'm not gonna work and you don't have to fill in a time sheet'. Another dancer summarised the advantages: 'It's flexible, like you can work when you want, as often as you want or as little and it's quite social' (Anna, 27, White British). Heidi (26, White British) reiterated that the main advantages were: 'the freedom really, [to] pick and choose your own hours and days. You don't have to ask permission to go on holiday and stuff'.

Such temporal flexibility was important to dancers for lifestyle reasons we have outlined elsewhere and for enabling women to use dancing to work towards

future objectives (Hardy and Sanders 2014). Despite this, total spatio-temporal autonomy was often not the experience of many dancers. For example, many dancers reported not being allowed to leave (and therefore set their own hours) when business was slow and also being forced to work a shift on a Monday or Tuesday if they wanted to work the busier weekend shifts. Often, if dancers did exercise full temporal flexibility (ie refusing a Monday or leaving early) they could find themselves unilaterally dismissed. Similarly, although in theory dancers could work for different clubs on a nightly basis, dancers often found that club owners attempted to prevent them from doing so:

> *The whole club was very possessive… if you wanted to go and work for another club, you had to say that you were going on holiday, because you'd get sacked, because they saw the girls as their property (Dalia, 20, White British)*.

Dancers who worked in strip pubs (rather than clubs) in London's East End, however, were more likely to frequently work shifts at a number of different pubs. Many dancers desired this spatial mobility and felt that it was unfair for clubs to label them as independent contractors and simultaneously restrict where they worked.

Second – something that is not reported in the existing literature on self-employment - many dancers emphasised job autonomy in terms of corporeal and behavioural freedom as a key attraction of the work, and felt that genuine self-

employment would expand this. Citing Hackman and Oldham's (1976) classic work on autonomy, Annik and Dulk (2012; 385, our emphasis) have pointed out, 'traditionally, autonomy is defined as the freedom and discretion to decide when, where, and *how* a job should be carried out'. For example, Eerika (36, Finnish) emphasised the freedom to 'get pissed [and] take drugs' as an appeal of the clubs. Although she emphasized that she had not done this personally, it was the sense of freedom that it conferred that constituted the attraction. For others, control of their labour and image, in the style of the show or costume they wore was a fulfilling part of the job. Dancers reported a desire to have more control over their style and dress:

> *In some places, they have so many rules, you have to do your nails, your hair, your make up, you have to have a long dress. All these rules and they'll put pressure on you how you look (Ines, 35, Spanish).*

Third, dancers wanted more financial autonomy in the workplace. As we have outlined, dancers acted as a source of income for the clubs through house fees, commission, fines and tips. Dancers indicated a desire for greater control over their earnings through receiving cash payments, which would allow for the contestation or refusal of fines. As such, dancers frequently emphasised that they wanted cash payments in order to ensure payment and have more power vis-à-vis the club. This would help them have more control over contexts in which, as one dancer put it: 'One night I only made £22 once I'd done a dance, paid my fee and got a taxi home' (Una, Dancer). Specifically, dancers frequently asserted

regulating the house fees as a key mechanism for improving wages. Ines (35, Spanish) wanted an arrangement across clubs in which,

> *clubs would have to adhere to… some kind of system whereby they pay tax for every single fee that they're charging.... If they had to pay tax on everything, they wouldn't bother.*

Multiple dancers mentioned regulations on the number of dancers working on any one shift as key to improving conditions. Matilda thought that 15-20 was the maximum, while Ines thought that it should be proportional to the capacity of the club: 'so [if] the club can fit 300 guys, so the maximum number of girls is 30. 10%'. Some felt that in addition to fees, commission should be tied to the amount of custom that the club brought in.

Dancers' desire for on-the-job autonomy in general contradicted their actual experiences of self-employment in the clubs. As a result, many dancers bitterly resented the strictures, rules and codes that defined which outfits they should wear, whether they could use their phones, speak to other members of staff or leave at will. Dancers felt that the rules established in the Codes of Conduct restricted freedoms that they desired as a key component of self-employment. The contradiction between women's status as independent contractors and these strictures were not lost on the dancers, as one survey respondent pointed out: 'management come and they say, "do this, do that", but we're self-employed, so they shouldn't be able to' (anonymous survey respondent). Overall, dancers

wanted increased job autonomy, which dancers believed is only commensurate with self-employment.

In addition to desiring autonomy, independence, and flexibility, it was also apparent that dancers strongly identified with the label, or identity, of self-employment. As Valdez (2011) has argued, for some more marginalised groups the autonomy achieved through self-employment can be a measure of success, rivalling that measured in purely economic terms. Similarly, self-employment is 'typically taken to be a strong indicator of entrepreneurial activity' (Dawson et al 2014; 805). It is routinely framed in a positive light by self-employed respondents (Dawson et al 2014) and more generally at a cultural and social level. Drawing on Foucault, McNay (2009) has outlined the ways in which contemporary social relations and individual subjectivity have been re-organised around the notion of enterprise. In such a context, the values of self-sustenance, autonomy and entrepreneurialism are viewed as the core valuable characteristics of the subject under contemporary capitalism. It is the entrepreneur who is the agentic subject *par excellence* in neo-liberal cultural and economic discourse (Chiapello and Boltanski 2005). As such, it is perhaps not surprising that many dancers are attached to self-employment as a means of asserting their agency and self-control. Dancers - and sex workers more broadly - are often discursively cast as 'objects' (cf Capes 2008; van Heeswijk 2014). This de-legitimating frame can be refuted through embodying and inhabiting the status of the entrepreneur. In asserting their status as a self-employed, dancers

can frame themselves as enterprising subjects and masters of their own destiny, in the face of stigmatizing discourses that cast them as powerless and victimized. In addition to stipulations of the occupational structure of the industry (ie that dancers currently have no choice initially but to be independent contractors), it is hard to disentangle dancers' positive attitudes towards self-employment from the cultural, social and political emphasis and value placed on entrepreneurship and individualism.

We now turn to recent UK case law in order to examine how existing practices of 'false' self-employment have been, and could be, challenged. We argue that dancers could be characterised, in the eyes of the law, if not in those of dancers themselves, as 'employees', or more likely, 'workers'. As such, claims for employee or worker status could, in theory, address some of the worrying practices of clubs outlined above.

Legal Responses to False-Self Employment

In 2012, Nadine Quashie, an ex-dancer from the famous London strip club 'Stringfellows' became the first dancer in the UK to challenge her dismissal (Stringfellows Restaurant Ltd v Quashie [2012] EWCA Civ 1735). Nadine's working conditions reflected many of those in our study: she could not substitute her labour; Stringfellows controlled the rota; and she was highly controlled in the workplace. Nadine had to work a prescribed number of shifts per week, and of these shifts certain days were specified; had to attend weekly meetings; was

discouraged from working elsewhere; was told how much she could charge; had to perform free dances for customers on stage every shift and was told how to perform; had to comply with a dress code; was not allowed to refuse customers; had to seek permission to leave 'early'; in addition to numerous other rules. Nadine was therefore subject to the three levels of financial extraction described above. She had to pay a house fee of £65 per night, a commission fee of between 20-25% on each dance, and any fines (£50-£100 for being late for a meeting, and £25 for missing a stage dance). In addition, she had to pay contribute £15 each shift to the wages for the 'house mother', the DJ, the hairdresser, and other facilities at the club.

Quashie claimed that, by terminating her agreement with the club, Stringfellows had unfairly dismissed her. The Employment Tribunal therefore had to decide whether Quashie was an *employee* on the nights she danced at the club, and whether she had continuous employment over a one year period (the necessary qualifying period for a claim at that time). The judiciary have devised a number of tests to determine whether a 'contract of employment' exists (s.230(1) Employment Rights Act 1996). The main tests are: personal provision of service in exchange for a wage; control over the worker (or a residual right of control); the much debated 'mutual obligations' requirement; the workers' level of integration; and whether the worker is economically dependant on her employer or accepted the economic risk (Burchell et al. 1999; Countouris 2014; Deakin and Morris 2012). However, as Lord Justice Elias pointed out in Stringfellow's appeal,

employment relationships are so diverse that 'whilst each of these tests may in any particular case cast some light on the problem of classification, none provides a ready universal answer' ([2012] EWCA Civ 1735, para 7).

The Employment Tribunal (ET) viewed Nadine as an independent entrepreneur and economic risk taker. Interpreting the facts, the tribunal decided that Stringfellows did not pay Nadine. Rather, payment came from the customer and the club merely provided a space for her to earn an income, in return for a fee. As such, Nadine accepted the economic risk. Second, the tribunal found that there was insufficient mutuality of obligation between the parties to find a contract of employment. In other words, the tribunal interpreted the facts such that there was no commitment, during any period when she was not at work, that Nadine was obliged to accept future work, nor was Stringfellows obliged to offer it.

Nadine appealed and the Employment Appeal Tribunal (EAT) reversed the decision, finding that the ET had taken a conventional and narrow approach to the question of pay and concluded that the 'fact that her pay came indirectly through vouchers from the customers is not material' (Stringfellows Restaurant Ltd v Quashie, para 54). The EAT took an interesting approach to mutual obligations, insisting that the 'reality' of the relationship be considered and referring to the fact that Nadine had to attend meetings each Thursday, or risk a fine, found evidence of mutual obligations between the parties consistent with a contract of employment. The ET's description of the high levels of control and

discipline that Nadine was subject to was highlighted, as was the fact that she was unable to substitute her labour.

Stringfellows then appealed to the Court of Appeal, where the original Employment Tribunal's judgement was endorsed. In sum, the court concluded that it would 'be an unusual case where a contract of service is found to exist when the worker takes the economic risk and is paid exclusively by third parties' (Ibid, para 51). The court therefore found that while there were obligations between the parties when Nadine was on the rota, and notwithstanding the high levels of control exercised over her when at work, she was not obliged to accept work if offered and Stringfellows made no promise of future work.

Legal scholars have argued that the Employment Appeal Tribunal approach – which found that Nadine was an employee - was preferable. As Albin has argued, while Nadine 'accepted' the economic risk by being paid in 'heavenly vouchers' by customers, she was in fact economically dependent upon the club. This is because Nadine could not manage that risk by dancing elsewhere and earning additional income and the club set the price of her labour (thus she could not charge more on slow nights in order to manage her risk) (2013; 187-188). With regard to pay, Albin has persuasively argued that Nadine was obliged to work and the club obliged to pay her according to her performance. It can therefore be argued that Stringfellows did pay Nadine, if we understand her wage as a salary based solely on commission (2013; 188-190). Cruz (2013) has similarly pointed

to Quashie's personal obligation to work certain days and attend weekly meetings, as well as being highly controlled and integrated into the club. The facts of the case can therefore be interpreted, much like the Employment Appeal Tribunal, to find levels of control and mutual obligations that are consistent with a contract of employment. Nadine's individual case does not preclude other attempts to argue that a dancer is an employee. It is possible that a tribunal would find a dancer to be employed, which would depend on the facts of the case, the legal argument presented and the application of the somewhat broad and indeterminate legal tests. A dancer would then be protected against arbitrary termination of her contract with the club by unfair dismissal laws.

Employee status aside, for the purposes of labour law protections it is very possible that many dancers could be considered to be 'workers', which is an employment category that sits in between 'employee' and 'self-employed' statuses. This status extends basic labour protections to all self-employed individuals who are required to personally perform services for another party who cannot be described as a client/customer of any business undertaking of the worker (s.230(3)(b) of the ERA 1996). Like employee status, there is no single, universal test for 'worker'. Essentially, however, worker status covers independent contractors who do not market their services to a number of clients or customers, but rather sell their services exclusively as part of another person's business undertaking and are integral to that business (Clyde & Co LLP v Bates van Winkelhof [2014] UKSC 32). If we accept that the club paid Nadine,

she clearly fulfils these criteria: she had to perform the work personally and she was in an exclusive relationship with the club and was as an integral part of Stringfellow's business. As the Supreme Court recently ruled, evidence of subordination (whether in the form of control or economic dependence) is not essential for a finding of 'worker' status. As Lady Hale put it, a worker might have 'a high degree of autonomy as to how the work is performed and more than one string to one's bow, and still be so closely integrated into the other party's operation as to fall within the definition' (Clyde & Co LLP v Bates van Winkelhof [2014] UKSC 32 para 39). Hence a dancer who is integrated into a club and has some measure of substantive autonomy in the workplace will still be protected as a 'worker'.

How, then, might 'worker' status respond to dancers concerns about working conditions? In addition to arbitrary dismissal, dancers in our study complained about the level of economic exploitation and arbitrary deductions (fines) and/or non-payment of wages. As a 'worker' there are a number of avenues for redress. First, as a 'worker' a dancer could make a claim for the minimum wage (National Minimum Wage Act 1998), which would ensure that, over a 8 hour shift, she would be paid £42, £54 or £58 (£5.30 for workers aged 18-20, £6.70 per hour for workers over 21, and from April 2016 workers who are over 25 are entitled to the national living wage, set at £7.20). The process of calculating whether a dancer receives or falls below minimum wage follows two steps. First, determining what the relevant pay is for each pay reference period (because

dancers are paid at the end of each shift this would be 1 day). Relevant pay includes performance related pay, minus deductions made by the 'employer' for his own benefit or sums paid to third parties by the worker for items and expenses connected with the job. Deductions would likely include uniform costs, payment to the 'house mum', or other services provided by the club for which the dancer is responsible, such as a hairdresser and security, and the house fee. Second, this total is divided by the total hours worked (for example, 8 hours) during the pay reference period to arrive at the workers' hourly rate of pay. If this is below £5.30 or £6.70 the dancer is not paid the minimum wage and can claim the underpayment for each day. For example, a 21 year old dancer whose relevant pay per shift is £30 will be paid £3.75 per hour, allowing her to claim £24 from the club (to total £54) in order for the club to be in compliance with minimum wage laws. This claim would effectively offset some of the effects of the economic exploitation that dancers are subject to each shift, through the extraction of house fees, commission, and fines. Successful minimum wage claims may also start to discourage clubs from rota-ing high numbers of dancers per shift. Since large numbers of dancers rota-ed on any one night could lower the relevant pay of each individual dancer, clubs would have to increase their expenditure on wages to comply with minimum wage legislation. In addition, it is also possible that a dancer could, as a 'worker', claim holiday pay, as well as protection against discrimination (Cruz 2013; 475-477).

Second, in relation to arbitrary deductions in the shape of fines and fees, a dancer who is classified as a 'worker' is able to recover deductions from wages that are not authorised by statute or a provision in the contract between the parties or agreed to, in writing, by the worker before the deduction is made (Employment Rights Act 1996 s.13). The law defines 'wages' broadly (Employment Rights Act 1996, s.27), a 'deduction' from which would encompass partial through to complete withholding of, and arbitrary deductions in the form of fines/fees from, a dancer's performance related pay.

There are, then, a number of possible legal avenues for redress against dismissal, high levels of economic exploitation, and the imposition of arbitrary deductions. However, while it is possible that dancers could gain protection as employees or workers, there is a conflict between legal protections against, and sociological perceptions of, false self-employment. In other words, contra to the fact that the law could extend protection to these workers it is unlikely that dancers want to, or will try to, access the law.

False Self-Employment: Legal Protections versus Social Perceptions

Dancers are unlikely to advance the above claims due to their attachment to the label self-employment and their desire for future oriented autonomy. There is, then, a conflict between legal protections that could address false self-employment and social perceptions of false self-employment. The law could

bring some, if not many, existing dancers under the auspices of labour law, which would ameliorate, or off set, some of the troubling working conditions in clubs. Such an extension of rights would not permit the club to alter the content of current dancers' contracts with the club. From a legal perspective, then, the only change that would be permitted is relabeling the status of the parties. In practice, however, upon a finding of employee status a club might alter working conditions in written contracts for future employees, bestowing them even greater powers of control over dancers. Considering the high rates of turnover in clubs, clubs could quickly replace most existing contracts with new, more stringent ones.

However, dancers in the study generally demanded genuine self-employment rather than the extension of labour rights. As outlined above, dancers strongly identify with the label of self-employment, in part due to the freedoms they believe it offers and also in terms of asserting their agency in a maligned and marginalised industry. Sex workers more broadly do not 'appear to see employee status as desirable' and want 'the right not to be told how to do their work, whom to do for and under what conditions; sex workers want to remain 'unmanaged'' (Cruz 2013; 478). Indeed, O'Connell Davidson (2014) argues that sex workers are asking for bodily autonomy and not that they be fully proletarianised and controlled, which dancers believe would result from altering their employment status.

Ultimately, then, dancers' perceptions signal a lack of identification with employee or worker status, which is obviously essential for the initiation of a legal claim, whether in the workplace, or once a dancer has left the workplace. Such lack of identification could also be important to the actual, substantive legal claim. What the contract says, or what the parties believe their relationship to be, are not conclusive evidence of the nature of the relationship. Yet how the parties have chosen to label their relationship might be an important factor if the legal tests for 'employee' or 'worker' are inconclusive (Young & Woods Ltd v West [1980] IRLR 201). In short, if a dancer does not identify with 'employee' or 'worker' status it might not only prevent her approaching an Employment Tribunal; it might also hurt her chances of success once there. Finally, there are many further social and legal barriers to accessing the legal system. These include migration status, stigma, and prohibitive legal costs (Cruz 2013; 480), due to drastic increase of legal fees as part of the then coalition government's deregulation of labour law and the functions of Employment Tribunals (Dickens 2014). In addition to these factors, claims in the workplace are very often inhibited by fear of reprisal at work, and claims from dancers who have already left the workplace are likely to be inhibited by the transitory nature of the workforce.

What, then, that can be done, legally and/or politically, to improve dancer's working conditions? In the next and final part we discuss three interrelated strategies, which offer possibilities for improving the conditions of work in strip

clubs in the UK, while respecting dancers' desire for greater autonomy and their attachment to self-employment.

Decent Work: Improving Working Conditions through Licensing and Collective Organisation

In this section, we assert that beyond employment tribunal claims, a possible strategy for improving working conditions is for dancers to articulate their grievances as a demand for decent work, which could be achieved through licensing reforms and facilitated by collective organization.

In response to the deregulation of national labour markets and an attendant increase in the number of unprotected workers, scholars and activists have begun to look towards international law and organisations for standards, norms, and ways of ensuring decent working conditions at the national scale (Bellace 2011; Fudge 2012; Vosko 2002). The International Labour Organization's (ILO) 'Decent Work Agenda', first launched in 1999, has been a key focus for such scholars. This agenda is, at its core, about ensuring decent working conditions through re-regulation and the extension of labour and social rights to informal, marginalized and self-employed workers (Fudge 2012; Sanches 2011; Vosko 2002). The definition of 'decent work' remains highly contested (Sehnbruch et al 2015), but it is clear that a central pillar is rights at work, which includes a minimum wage, paid annual leave, and unionisation (Burchell et al 2014).

Viewed as a malleable concept, recognisable demand and modest agenda, it can potentially offer dancers a common, worker based language to articulate demands for improved working conditions, and does not rely on asserting a particular employment status.

Rather than being pursued in the courts, such a demand could instead be enforced via localised council licensing arrangements. Section 27 of the Policing and Crime Act (2010) created a specific class of sex establishment, 'sexual entertainment venues' (SEVs), which placed erotic dance venues within a schedule that permits local authorities to regulate sex shops and cinemas. Local authorities are able to grant licenses for up to a year, and, before expiry, the license holder must apply for renewal. In accordance with these powers local authorities are able to establish conditions, terms, and restrictions to which establishments have to comply and subject to which licenses will be granted or renewed.

These powers, however, have proved to be something of an 'empty shell' for improving dancers' labour conditions (Sanders and Hardy 2014; Colosi 2013) and have instead been used to curb numbers of clubs in particular areas. Despite this, some examples of good practice have been revealed, in which councils have indeed used their powers to establish basic labour standards for dancers (Sanders and Campbell 2013).

Thirteen councils have specified that dancers must sign a code of conduct and four councils have stipulated that permission from the council is required for code of conduct alterations and have reserved the right to request changes. Bristol Council has specified that express terms outlining the parties' rights and obligations should be contained in any contractual agreement. These terms must specify that no deductions should be made unless permitted by the contract, which specifies the amount of payment. Given dancers concerns, a combination of these approaches, wherein express terms are required relating to payment and deductions *and* the council retains oversight of contractual changes, is of obvious significance for dancers. Failure to comply with the licensing requirements could lead to a council not renewing a licence. Although outside the parameters of this article, a club could, of course, legally review stipulations contained within a licensing agreement.

Building on the approaches of these licensing authorities, which have restricted the ability of clubs to unilaterally impose alterations to the contract by stipulating consultation with the council, we believe that there is further scope for licences to ensure decent working conditions. Councils should stipulate that contracts between clubs and dancers specify the process leading to termination of the agreement; that the rate of payment for each hour comply with the National Minimum Wage Act 1998; that deductions should not be permitted unless expressly stated in the contract *and* following consultation with dancers;

that clubs limit the number of dancers per shift; and that clubs clearly specify the level and extent of house fees, commission, and fines.

To ensure that the council creates stipulations that ensure decent working conditions, it is vital that dancers collectively articulate their grievances. The efficacy of this approach thus turns on dancers' actions. Unfortunately, this strategy was not widely mentioned in interviews by dancers as a means for improving working conditions (see also Sanders and Hardy 2014). There have been few organising successes beyond short-lived successful unionisation campaigns in two clubs in the UK in London and Bristol. Faith (34, White British), however, argued that this union recognition was more part of a public relations campaign for the clubs themselves than a substantive recognition or engagement with dancers in the union. As dancers or performers, many do not identify with the label 'sex worker' and therefore have been averse to organising through the International Union of Sex Workers (IUSW), although a small number joined Equity, the acting and performers union. Further barriers to organising include dancers' temporary engagement in the industry, the need for secrecy and discretion, and potential management resistance in a context in which there is an oversupply of labour (see also Chun 1999). An exception to this is the growing East London Strippers Collective (ELSC), which has begun to organise amongst the traditional strip clubs of East London. This is encouraging, not least because reform of working conditions through licensing would be sped up if dancers

themselves collectively communicated their demands to their local council and licensing authority.

Conclusions

Dancers in the stripping industry labour in conditions of false self-employment, facing high levels of control and discipline, while enjoying none of the usual benefits of employment. Yet it is clear that dancers want to remain self-employed. A key advantage of working in the industry was, for most dancers, the potential for a combination of varying types of (spatio-temporal, corporeal/behavioural and financial) autonomy. As such, dancers articulated a desire to be 'truly' self-employed in order to enjoy these freedoms. Despite the emphasis placed on employee status as a panacea for the exploitation faced by dancers by legal scholars (Albin 2013), it is therefore unlikely that legal claims will be pursued.

We have argued that there is capacity within the local licensing regime of Sexual Entertainment Venues (SEVs) to involve stipulations relating to the license of the club, which would ensure decent working conditions for dancers and do not rely on the assertion of a particular employment status. This could include, for example, regulations on the number of rota-ed dancers and limitations on fines or enforcing more accountability around fining systems. Indeed, it is these very demands - made by dancers themselves, and evident in this research and in

newly organising groups - that should form the basis of changes for improving working conditions in the strip industry.

Our interdisciplinary approach, combining sociological data with theory and analysis from both law and sociology, has enabled us to reach novel conclusions that will be of interest to both disciplines. Labour law scholarship has focused on critiquing the narrow reach of existing employment categories and is preoccupied with crafting alternatives. This article has added an empirical dimension to labour law scholarship by arguing that exclusion from legal protections might not be reducible to the inadequacy of existing legal categories. In the case of dancers, and perhaps other workers, exclusion from labour protections must be understood in the context of demands for genuine self-employment, while bearing in mind that it is hard to disentangle dancers' positive attitudes towards self-employment from the neoliberal valorization of self-sustenance, autonomy and entrepreneurialism. Nonetheless, we would argue that labour law scholarship and policy would benefit from focusing on alternatives to traditional employment protections in order to have a broad protectionist impact. While sociology can bring both empirical data and theory to understanding the experiences and social contexts of quasi-employment, legal theory is in return able to offer concrete and immediate possibilities for challenging unfair or exploitative working conditions within the current systems from which they emerge. Further, legal understandings could potentially play an important role in raising dancers' consciousness in order to comprehend the full

array of employment statuses that may be open to them as a means of improving their conditions, alongside strategies such as pressurising local authorities and collective organisation.

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