



# University of Oslo

University of Oslo Faculty of Law Legal Studies

Research Paper Series

No. 2017-05

Yue S. Ang

**Partners in Social Entrepreneurship: A UK Approach to  
Buyer's Risk-Externalities**

Daughters of Themis: International Network of Female Business  
Scholars

# Partners in Social Entrepreneurship: A UK Approach to Buyer's Risk-Externalities

Yue S. Ang<sup>1</sup>

## 1 Introduction

Social entrepreneurship is a fairly new concept.<sup>2</sup> This article utilises this concept as a practice opened to all kinds of businesses doing things together towards a social objective. It is neither a label which is placed on a business, nor it is an act performed only by a specific business such as a social enterprise. This article advances the idea that social entrepreneurship is achievable through partners working together within a supply chain. Following the 2008 economic crisis, three business trends have emerged in the UK. First, there is an increase in outsourcing activities. Second, recent UK laws have created an atypical workforce mostly composed of women. Third, there is an increase in social enterprises. This article highlights that the creation of buyer's risk-externalities underpins these three trends' *modus operandi*. This is where a business creates of a value-chain by buying tasks from others. Risk-externalities are the risks which the buyer passes onto others in the attempt to reduce costs and burdens.

Some social enterprises profit in this kind of environment. However, there are instances of adversities particular in the low-skilled labour sector where workers, especially women, are vulnerable to such risk-externalities. These individuals are the atypical workforce composed of zero-hours workers, fixed-term workers and agency workers. It is advanced in this article that a feasible approach for for-profit businesses pursuing both profit and the common good can be achieved through forming partnerships with a view of social entrepreneurship. This article begins in section 2 with addressing the impact of the 2008 crisis on the low-skilled labour sector. It also addresses the emergence of the three business trends and their *modus operandi* within the supply chain. Since the 2008 financial crisis, the following problems have arisen: a rise in the unprotected rights of the low-skilled labour sector highlighted in section 3 with respect to legislations enabling precarious work, while section 4 highlights an increase in precarious and uncertain work arrangements addressed<sup>3</sup> and an increase in the irresponsible conducting of buyer's risk-externalities as observed by the Organisation for Economic Co-operation and Development (OECD). Section 5 unpacks the concept of social entrepreneurship and advances a feasible approach to these addressed problems. The practice of this concept is not reserved only for social enterprises. On the contrary this chapter advances that all businesses should engage in social entrepreneurship. Through forming partnerships with a social

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<sup>1</sup> Senior Lecturer in Law, Oxford Brookes University.

<sup>2</sup> See Justin Blount and Patricia Nunley, 'What is a "Social" Business and Why Does the Answer Matter?' (2013–2014) 8 *Brook. J. Corp. Fin. & Com. L.* 278, 278. See also Shaker Zahra, Lance Newey and Yong Li, 'On the Frontiers: The Implications of Social Entrepreneurship for International Entrepreneurship' (2013) 38(1) *Entrepreneurship Theory and Practice* 137, 142. See also Reza Zaefarian, Misagh Tasavoriand and Pervez Ghauri, 'A Corporate Social Entrepreneurship Approach to Market-Based Poverty Reduction' (2015) 51 *Emerging Markets Finance & Trade* 320, 325, and see Samer Abu-Saifan, 'Social Entrepreneurship: Definition and Boundaries' (2012) *Technology Innovation Management Review* 22, 25. And see Gregory Dees and Beth Anderson, 'Framing a Theory of Social Entrepreneurship: Building on Two Schools of Practice and Thought' in Rachel Mosher-Williams (ed), *Research on Social Entrepreneurship: Understanding And Contributing To An Emerging Field* (ARNOVA 2006) 39.

<sup>3</sup> See Arne Kalleberg, 'Precarious Work, Insecure Workers: Employment Relations in Transition' (2009) 74(1) *American Sociological Review* 1–22.

objective, businesses stemming from the three trends could find joint solutions to the addressed socio-economic concerns in low-skilled labour sector.

## 2 Post-2008 Crisis: The Emergence of Three Business Trends

Three business trends have emerged from the 2008 crisis. They are: (1) the increase in outsourcing,<sup>4</sup> (2) the use of atypical workforce,<sup>5</sup> and (3) the increase in social enterprises. All three are connected. Following the 2008 financial crisis, for-profit businesses found it difficult to maintain sustainability. Outsourcing provides a for-profit business with leverage where it contracts out its tasks to third parties for less.<sup>6</sup> An outsourcing business shifts its role from being the ‘maker’ of product and the ‘provider’ of services to ‘buyer’.<sup>7</sup> A business which outsources will be labelled as the buyer. A value chain is created and leverage is achieved through using other businesses’ resources (the suppliers) to advance a buyer’s products or services. Thus, this leverage buffers the buyer’s pressure to cost-cut where it can pass that task onto other suppliers which are situated further down the value chain.

Outsourcing also enables businesses to undergo a ‘finer micro-dissection’ of tasks which helps the buyer to create a leaner operation.<sup>8</sup> In doing so, essential redundancies have to be made. Cost-saving is the buyer’s central focus for survival in a bad economic climate. In addition to outsourcing, a buyer cuts further in cost by switching permanent staff contracts to fixed-term work arrangements. A buyer could also replace its staff with an atypical workforce such as agency workers, temporary workers or zero-hours workers. Less resource is required in maintaining an atypical workforce because little is invested. Career paths are replaced with fragmented demands of the skill and labour which reflects the business operation’s ‘finer micro-dissection.’ Atypical workers pursue the minimal short-term subsistence, instead of focusing on the long-term goals such as financial stability or career certainty.<sup>9</sup>

The two trends have an impact on low-skilled workers, women in particular, and the greater community. The low-skilled sector is described by the OECD to be ‘the skills required for the job performed, or according to the educational level of the worker... “low skilled” can be either a

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<sup>4</sup> Deloitte’s 2014 Global Outsourcing and Insourcing Survey show an increase in outsourcing activities globally. It is noted that 2012 saw a trend of insourcing following the great recession. However, that trend was short lived and outsourcing picks up owing to maturity in sectors such as information technology, human resources, finance and accounting and procurement <http://www2.deloitte.com/content/dam/Deloitte/us/Documents/strategy/us-2014-global-outsourcing-insourcing-survey-report-123114.pdf>. For an empirical showing an increase in outsourcing across sectors, see George Geis, ‘An Empirical Examination of Business Outsourcing Transactions’ (2010) 96(2) *Virginia Law Review* 241, 258.

<sup>5</sup> An atypical workforce is understood here as any worker with no permanent contract. This covers most informal employment and flexible employment. For informal employment, see Colin Williams and Mark Lansky, ‘Informal Employment in Developed and Developing Economies’ (2013) 152(3–4) *International Labour Review* 355. For flexible employment, see Gary Minda, ‘Workers in the Era of Financial Crisis’ (2013) 17 *Employee Rights and Employment Policy Journal* 211.

<sup>6</sup> This is evident in the apparel supply chain. See Gary Gereffi and Stacey Frederick, ‘The Global Apparel Value Chain, Trade and the Crisis: Challenges And Opportunities For Developing Countries’ (2010) The World Bank’s Policy Research Working Paper 11.

<sup>7</sup> The shifting role from ‘maker’ to ‘manager’ or ‘buyer’ creates leverage. This is evident in agriculture. See Jennifer Clapp, ‘ABCD and Beyond from Grain Merchants to Agricultural Value Chain Managers’ (2015) 2(2) *Canadian Food Studies* 126.

<sup>8</sup> Farok Contractor, Vikas Kumar, Sumit Kundu and Torben Pedersen, ‘Global Outsourcing and Offshoring’ in F Contractor, Vikas Kumar, Sumit Kundu and Torben Pedersen, *Global Outsourcing and Offshoring: An Integrated Approach to Theory and Corporate Strategy* (CUP 2011) 3.

<sup>9</sup> With the erosion of job opportunity post global financial crisis, precarious work is a form of survival. See (n5).

characteristic of the job or a characteristic of the worker'.<sup>10</sup> This will be discussed in full in section 4. Crucially, these atypical workers who are in precarious positions face income uncertainty, and as a result, their immediate family also suffers. Urban poverty,<sup>11</sup> the manifestation of financial strains into mental illness mostly in women,<sup>12</sup> and youths being deprived of a safe environment<sup>13</sup> are to name a few of the household problems. These private problems bleed into the community's societal issues such as unemployment, and crime. Social enterprises profit in respond to these societal issues. These are for-profit businesses designed to prioritise the community's interests. They provide solutions to the community's societal issues.

Social enterprises play a vital role in absorbing the problems arising from outsourcing. However, it is viewed that social enterprises' involvement circumvents the core issue, which is the need to protect workers' rights in the low-skilled labour sector in the first place. This involvement also skews the gravity of the sector being gendered against women.<sup>14</sup> The next section analyses connections between the three trends. It advances a feasible reinforcement of the need for social entrepreneurship in the interest of workers' protection which can be achieved through the participation of all actors involved in outsourcing, the atypical workforce and social enterprises.

### **3 Risk-Externalities: The Underpinning *Modus Operandi* of the Three Business Trends**

Risk-externalities are the costs and burdens being contracted out by the buyer to its suppliers. Through value-chain creation, risk-externalities takes the form of the following: (1) the indemnifying independent contractor;<sup>15</sup> (2) the atypical workforce where the risks of income certainty, job security, fair pay and sustainability are internalised by the atypical worker;<sup>16</sup> and (3) social enterprises.<sup>17</sup> Risk-externalities born out of the business's total disregard for workers' job security and income certainty

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<sup>10</sup> Jonathan Chaloff, 'Management of Low-Skilled Labour Migration' (2008) OECD International Migration Outlook 125, 127.

<sup>11</sup> Urban poverty is experienced by the urban poor who 'work long hours in low-paid, insecure and unsafe jobs and are exposed to a wide range of environmental hazards...', see Ceclia Tacoli, Gordon Mc Granahan and David Satterthwaite, 'Urbanisation, Rural-Urban Migration and Urban Poverty' (2015) IIED Working Paper 27. For poor housing affecting physical health and mental health, see Matt Egan, Louise Lawson, Ade Kearns, Ellie Conway, Joanne Neary, 'Neighbourhood Demolition, Relocation and Health. A Qualitative Longitudinal Study Of Housing-Led Urban Regeneration In Glasgow, UK' (2015) 33 *Health and Place* 101, 106-107. Fuel poverty contributes to poor physical health and mental health, see Deborah Roberts, Esperanza Vera-Toscano, Euan Phimister, 'Fuel Poverty in the UK: Is There A Difference Between Rural And Urban Areas?' (2015) 87 *Energy Policy* 216, 221.

<sup>12</sup> Low-income mothers and mental health, see Rob Whitley and Martin Prince, 'Fear of Crime, Mobility and Mental Health in Inner-City London, UK' (2005) 61(8) *Social Science & Medicine* 1678, 1686.

<sup>13</sup> There is a special correlation between the rise in poor mental health in adolescents and the 2008 financial crisis, see Kate Levin, David Walsh and Gerry McCartney, 'No Mean City' (2014) 37 *Journal of Public Health* 258, 267.

<sup>14</sup> See (n3).

<sup>15</sup> Douglas Brodie, *Enterprise Liability and the Common Law* (CUP 2010) 75. This article views any agent who takes a task of indemnifying out of a buyer is an independent contractor. The term independent contractor includes a self-employed worker or a business partner.

<sup>16</sup> The regulations and laws governing the atypical workforce are Agency Workers Regulations 2010; Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002; and Small Business, Enterprise and Employment Act 2015.

<sup>17</sup> The regulations and laws governing social enterprises are Public Services (Social Value) Act 2012; Co-operative and Community Benefit Societies Act 2014; Companies Act 2006, s6; Charities Act 2011, s205 for a charitable incorporated organisation.

are considered to stem from irresponsible acts of externalisation and therefore they are also irresponsible.

It is argued that these irresponsible risk-externalisations create societal problems such as household financial instability, urban poverty,<sup>18</sup> poor physical and poor mental health,<sup>19</sup> and depriving youth of a good and thriving environment.<sup>20</sup> It is advanced that the underpinning *modus operandi* in the three trends feeds a cycle which is described as follows.

Outsourcing initiates buyer's risk-externalities. Some of these risk-externalities is passed to the low-skilled atypical workforce.<sup>21</sup> This workforce internalises a fraction of the buyer's risk-externalities. However, the inefficient absorption of these risks produces the mentioned societal issues. For example, urban poverty and poor mental health. Social enterprises complete the cycle by providing solutions to a smaller fraction of the addressed societal issues. For example, running a profitable Café to fund a charity soup kitchen. Thus, social enterprises internalise a non-substantial portion of the buyer's risk-externalities, which, however, is enough to justify businesses conducting more outsourcing.

From a social perspective, the production cycle of buyer's risk-externalities is inefficient because very little of the risks created by the buyer are internalised by other agents. It is advanced here that the societal issues, especially those affecting women and children, are the by-products of the non-absorbed buyer's risk-externalities.

This section explores each business trend and then assesses from where the creation of irresponsible risk-externalities might stem.

### *3.1 Business Trend (1): Outsourcing and the Independent Contractor*

The leverage created by outsourcing enables a buyer to situate itself higher up the value chain. Being further away from the end-user (or the consumer), a buyer has an advantage over suppliers who are further down the value chain. The closer a business is to the end-user; the pressure to cost-cut becomes greater.<sup>22</sup> The supply chain's elongation creates business opportunities and employment for individuals. For-profit suppliers operating on economies of scale such as garment manufacturers,<sup>23</sup> and high technology manufacturers<sup>24</sup> are thriving on this kind of business arrangement.

A buyer utilises a supplier who is an independent contractor to create a value chain. Here, an independent contractor is taken to be any agent who takes away the indemnifying role from the buyer.

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<sup>18</sup> See (n11).

<sup>19</sup> See (n12).

<sup>20</sup> See (n13).

<sup>21</sup> See (n5).

<sup>22</sup> For an example in the low value supply chain, see Jennifer Gordon, 'Global Labour Recruitment in a Supply Chain Context' (2015) International Labour Organization.

<sup>23</sup> For the apparel industry, see Gary Gereffi and Stacey Frederick, 'The Global Apparel Value Chain, Trade and the Crisis' (2010) The World Bank's Policy Research Working Paper. For labour migrants in low value supply chain, see Jennifer Gordon, 'Global Labour Recruitment in a Supply Chain Context' (2015) International Labour Organization.

<sup>24</sup> See examples and case studies in the United Nations Conference on Trade and Development, *Integrating Developing Countries' SMEs into Global Value Chains* (2010) New York and Geneva: United Nations. For examples of high value chain production like R&D, high tech processing, see Ilan Oshri, Julia Kotlarsky and Leslie Wilcocks, *The Handbook of Global Outsourcing and Offshoring* (3rd Edition, Palgrave 2015), 239–252. See also Siou Chew Kuek *et al*, *The Global Opportunity in Online Outsourcing* (2015) World Bank Group, 51–60.

This agent includes the self-employed workers and business firms. When a buyer engages with a supplier, the responsibility which arises with the supplier does not flow back to the buyer because the supplier is regarded to have a separate legal identity from the buyer.<sup>25</sup> If the supplier is self-employed, their status juxtaposes an employee's status. In theory, the self-employed operate under a contract for services,<sup>26</sup> as opposed to a contract of service.<sup>27</sup> However, in practice, these workers' statuses are difficult to decipher and the crux of the legal issue largely centres on the 'reality of the relationship'.<sup>28</sup> In *Nadeem*, it was found that the claimant is classified as a 'worker' under Employment Rights Act 1996, s230. However, the court found that the claimant does not appear to have employee status.<sup>29</sup> Therefore, responsibility and liability (which in *Nadeem's* case was the excessive bullying suffered by the claimant from other workers and his resulted psychiatric illness) lie with the worker and not with the buyer.

With this sort of arrangement, the independent contractor is left with the cost-cutting pressures. At times, they might have to bear the resulting damages and liabilities of cost-cutting without having the resources available to them. The 2013 Rana Plaza disaster is one example where resources were not available to the respective independent contractors.<sup>30</sup> The ill-maintained factory building and the buyers' pressures to mass produce in short schedules resulted in the factory's collapse and thousands dead.<sup>31</sup>

Such buyer's risk-externalities are irresponsible because these externalities and their related responsibilities are not shared with the supplier. It is argued that the responsibilities which stem from the buyer's risk-externalities ought to be shared with the supplier, or at least apportioned between the buyer and supplier. Ideally in cushioning the demands for cost-cutting, the buyer ought to provide the supplier with support. Re-investments made into the supply chain by the buyer (evidenced in 3.3) could be an alternative management of these risk-externalities.

Although the burden-sharing of externalities between supplier and buyer in a supply chain seems a feasible solution, few incentives are there to initiate the buyer to make those reinvestments. One of the reasons being the supplier is often an independent contractor.

### 3.1.1 The Independent Contractor

In law, an out-dated emphasis is being placed on the *independence* of the independent contractor, which will have different repercussions for the self-employed and the business firm. For the former, independence disregards the dependency and mutual obligation between the self-employed and the buyer, which leaves the self-employed in a vulnerable position.<sup>32</sup> For a business

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<sup>25</sup> For the self-employed, *contra* the principles in *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance* [1968] 2 QB 497.

<sup>26</sup> *Nadeem v Shell UK* [2014] EWCH 4664 (QB) para 38-41.

<sup>27</sup> *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance* [1968] 2 QB 497.

<sup>28</sup> *Autoclenz Ltd v Belcher* [2011] UKSC 41, para 22. (Lord Clarke).

<sup>29</sup> Employment Rights Act 1996, s230(3b). Modification made by the Small Business, Enterprises and Employment Act 2015 c.26 Part 11, s149(3) to the 1996 Act suggesting that all workers may not be employees. *Per Nadeem* in para 41 where the claimant was accepted to be a worker under the ERA, but the claimant did not qualify to have a contract of service with the employer (para 48-40).

<sup>30</sup> Yue Ang, 'A Tale of Outsourcing: The Enhanced Presence and Absence of Law through the Senses' in Sarah Marusek (ed.) *Synesthetic Legalities* (Routledge 2017) 74.

<sup>31</sup> *Ibid.*

<sup>32</sup> For the discussion of mutual obligation, see *Dacas v Brooks Street Bureau (UK) Ltd.* [2004] EWCA Civ 217, paras 52-53 (Mummery LJ). For the vulnerability of the self-employed, see Sandra Fredman and Judy Fudge,

firm, this label is most often true for large-sized suppliers as they truly exhibit economic independence from their partners. They also have an almost equal, and at times, a stronger bargaining power compared with their partners. For these large-sized suppliers, they would have the resources to either internalise the buyer's risk-externalities, or that they would have the know-how to pass on these externalities to other partners. The full essence of Atiyah's 'independent contractor' can be justified here where it is expected that the contractor who is financially independent can fully indemnify the buyer if liability were to incur.<sup>33</sup>

The term 'independent contractor' can be critiqued as disadvantaging small businesses and free-lancers. They would not be able to achieve the economies of scale to justify a low production cost. They would not have the same bargaining power compared with the large-sized buyers. In terms of economic independence, small businesses and free-lancers rely heavily on the buyer's risk-externalities for business. An asymmetrical relationship between buyer and the small-scale supplier might occur in terms of size, bargaining power, and economic reliance. In this regard, the totality of the outsourcing relationship ought to be taken to consideration.<sup>34</sup> This economic reality or the entrepreneur approach attempts to relax the strict demarcation between the buyer and the independent contractor.<sup>35</sup> The test focuses on the asymmetrical relationship and suggests whether the supplier could be regarded as an integral part of the buyer's business.<sup>36</sup> And so, responsibility ought to be shared between the supplier and the buyer.

The entrepreneur approach seems promising; however, the recent case of *Nadeem* indicates that the courts are still applying the traditional legal treatment of an independent contractor. Such a strict and out-dated view has adverse repercussions on the low-skilled labour sector, especially the small-scale independent contractors such as farmers and raw product suppliers utilising low-skilled labour.

### 3.2 Business Trend (2): The Atypical Workforce

Post-2008 financial crisis, the employer-employee relationship has changed dramatically.<sup>37</sup> This section explores the legislations which have created an atypical workforce composed of fixed-term employees, zero-hours workers and agency workers. It assesses the impact of these laws on workers, especially women workers. It is viewed that the recent laws have given employers a buyer's leverage which enable them to utilise atypical workers. In addition, employers can create a buyer's risk-externalities onto them.<sup>38</sup>

Fixed-term employees, zero-hours workers and agency workers are part of the atypical workforce mostly utilised for short-term work<sup>39</sup> ranging from a period of less than a month to a number of years. It facilitates flexicurity (the combination of flexibility and security) in women workers.<sup>40</sup> In the low-skilled sector, short-term work aids employers because they can react better to

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'The Legal Construction of Personal Work Relations and Gender' (2013) 7(1) *Jerusalem Review of Legal Studies* 112.

<sup>33</sup> See (n15), 75.

<sup>34</sup> Paula Giliker, *Vicarious Liability in Tort* (CUP 2010) 71.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Hollis v Vabu* (2001) 207 CLR 21.

<sup>37</sup> See (n5). In addition, the growth of the personal worker prompted the need of a legal framework, proposed in Mark Freedland and Nicola Kountouris, *The Legal Construction of Personal Work Relations* (OUP 2011).

<sup>38</sup> Charles Woolfson, 'Pushing the Envelope: the "Informalization" of Labour in Post-Communist New EU Member States' (2007) 21(3) *Work, Employment and Society* 555.

<sup>39</sup> Employment Rights Act 1996, s198.

<sup>40</sup> See Sandra Fredman, 'Women At Work' (2004) 33(4) *Industrial Law Journal* 299–319.

changes in the business environment. Employers can recruit temporary workers to cover seasonal demands, or in response to unprecedented consumer demands.

Fixed-term employees are regulated under the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 whereby regulation 3 stipulates that employers have to provide fixed-term employees with the same treatment as permanent employees. Fixed-term employees are given the same opportunities and training as permanent staff if, and only if, they hold a similar position.<sup>41</sup> Fixed-term employees tend to be in a vulnerable position as they may be excluded from protection such as unfair dismissal. Owing to their term, they may also lack collective bargaining which places them in a vulnerable position when their employers decide to make redundancies. Employing individuals on fixed-term contracts might be favourable in the event of down-sizing.

Zero-hours workers are regulated under the Small Business, Enterprise and Employment Act 2015, s153 which inserts s27A into the Employment Rights Act 1996. Zero-hours workers can work under two types of contracts: (1) a zero-hours contract where the worker contractually undertakes work or services which is provided by the employer, but there is no certainty that any such work or services are made available by the employer to the worker,<sup>42</sup> (2) a non-contractual zero-hours arrangement where the employer is not required to make any work available to the worker. If a work opportunity arises and the employer makes it available to the worker, the worker can choose either to accept or not accept it.<sup>43</sup> Zero-hours workers are more favourable to employers as they have a pool of workers on stand-by and that they can utilise (or buy) their services as when needed. This type of agreement could save on recruitment costs.<sup>44</sup> Furthermore, the 2015 Act enables zero-hours workers working for multiple employers.

Agency workers are regulated under the Agency Workers Regulations 2010. Unlike fixed-term workers and zero-hours workers whose contracts are with their employers; an agency worker is contracted with a temporary work agency.<sup>45</sup> A temporary work agency supplies agency workers to hirers. These workers are meant to work temporarily for and under the supervision and direction of their hirer.<sup>46</sup> The focus is on temporary hire, which the agency worker might be entitled employment rights provided that the qualifying period is satisfied.<sup>47</sup>

An agency worker is disqualified from employment rights if she does not retain the same role with the same hirer for 12 continuous weeks.<sup>48</sup> Under regulation 5, a qualified agency worker is entitled to the same working and employment conditions as a permanent staff, payments and rewards under regulation 6(3) *inter alia* occupation sick pay, holiday pay. Both the hirer and the temporary agency worker may be liable for breaching regulation 5.<sup>49</sup> Agency workers are protected from unfair dismissal,<sup>50</sup> and they are entitled to make complaints to the employment tribunal.<sup>51</sup> In any case, hirers may be prone to offer 12-week contracts or less to prevent an agency worker from gaining

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<sup>41</sup> *Manchester College v. Cocliff* [2010] UKEAT/0035/10/CEA.

<sup>42</sup> Employment Rights Act 1996, s27A(1)

<sup>43</sup> Employment Rights Act 1996, s27B(4)

<sup>44</sup> See (n40).

<sup>45</sup> Agency Workers Regulations 2010, reg3.

<sup>46</sup> *Ibid*, reg3.

<sup>47</sup> *Ibid*, reg7.

<sup>48</sup> *Ibid*, reg7(2).

<sup>49</sup> *Ibid*, reg14.

<sup>50</sup> *Ibid*, reg17.

<sup>51</sup> *Ibid*, reg18.

employment rights. Hirers might also move the agency worker to different roles in the attempt to discontinue the qualifying period.

In essence, the employer's costs of maintaining a protected workforce are reduced through utilising the atypical workforce. Fixed-term workers working under a year or less are not protected from unfair dismissal. They do not have collective bargaining power. Thus, irresponsible employers have the upper hand to down-size without incurring costs. Zero-hours workers are not expected to receive regular amount work from their employer. They are remunerated for the amount of work or services they have provided. Irresponsible employers would only pay for work or services done, and thus invest very little in the workforce's well-being. Only the agency workers who passed the qualifying period are entitled to employment rights, and thus giving employers the opportunity to circumvent this period. Women workers in the low-skilled sector are not promised flexicurity, rather they are exposed to the precarious nature of informal employment.<sup>52</sup>

The atypical workforce is dismantled in terms of the workers' continuity of employment and in the workforce, being a collective. Each individual has to internalise the risks of job security, the management of uncertainty, the continuity of income and the maintenance of career path (if any). In regard to low-skilled sector, the proliferation of atypical workers amounts to an increased in irresponsible buyer's risk-externalities. These kinds of burdens which are placed on vulnerable individuals (and more so on the women workers) add to the societal problems that will be addressed in section 4.

### 3.3 Business Trend (3): Social Enterprises

The emergence of social enterprises is designed to profitably solve or alleviate a community's problem. This trend has become popular with its number increasing from 58, 000 in 2012 to 178,000 in 2016.<sup>53</sup> One of the many reasons for setting up social enterprises is the search for a favourable business plan for a steady recovery from the endured series of financial crisis. Resilience and sustainability are the forefront agendas of operation.<sup>54</sup> In addition, some social enterprises are set up for the following purposes: (1) to fundraise for their parent charity body;<sup>55</sup> (2) to rehabilitate individuals,<sup>56</sup> (3) to empower individuals,<sup>57</sup> (3) to sustain local businesses,<sup>58</sup> and (4) to champion ethical business.<sup>59</sup> Social enterprises complete the cycle of buyer's risk-externalities because they absorb some of those risks from the leverage-gaining buyers.

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<sup>52</sup> See (n40).

<sup>53</sup> The UK Cabinet Office, *Social Enterprise: Market Trend* (2016) 12.

<sup>54</sup> See Reza Zaefarian, Misagh Tasavoriand and Pervez Ghauri, 'A Corporate Social Entrepreneurship Approach to Market-Based Poverty Reduction' (2015) 51 *Emerging Markets Finance & Trade* 320–334. See also Robert Esposito, 'The Social Enterprise Revolution in Corporate Law' (2013) 4(2) *William and Mary Business Law Review* 639, 648.

<sup>55</sup> For example, the proceeds of Café Crisis – Oxford, and The Turl Street Kitchen are used to fund the respective charity bodies Crisis Skylight and The Oxford Hub.

<sup>56</sup> For example, the partnership between the social enterprise Skill Mill Ltd. and the Newcastle Youth Offending team aims at rehabilitating young offenders through cleaning up the rivers in Newcastle.

<sup>57</sup> For example, Skillnet Group CIC are supporting people with learning disabilities through unlocking these individuals' full potential in life.

<sup>58</sup> Café Crisis-Oxford and The Turl Street Kitchen are locally sourced.

<sup>59</sup> The Co-operative Phone & Broadband is a social enterprise which supplies ethically sourced products like the Fairphone. The co-operative is also committed to paying its staff the living wage.

A detailed discussion of a social enterprise is found in section 5. Essentially, a social enterprise is a business with a social objective.<sup>60</sup> It should not pay more than 50 per cent of profit or surplus to its owners or shareholders.<sup>61</sup> It should not generate more than 75 per cent of its income from grants and donations. It should not generate less than 25 per cent of income from trading.<sup>62</sup> There is evident success in social enterprises' involvement in public procurement since the Public Services (Social Value) Act 2012 (hereafter, PS(SV)A) endeavours to create a conducive environment for profitable ventures. The social enterprises operating under the PS(SV)A is an encouraging example of effective completion of the buyer's risk-externalities cycle. A review has showed that not only the buyer's risk-externalities are well absorbed by the social enterprise; the Act has also embedded a culture into the local councils' procurement behaviour where the focus is on sustainability and the community's environment.

The PS(SV)A allows local councils procure or buy services and products from private businesses for their day-to-day activities. It places social value central to a public procurement project.<sup>63</sup> These values are focused on social benefits, economic benefits and/or environmental benefits. The Act changes the local council's public spending habits in health, social care, and education where emphasis is placed on 'getting more money out of a procurement'.<sup>64</sup> Two years into the Act's implementation, Lord Young's 2015 review showed much is needed to be done for better incorporation of social value in public procurements. More guidance is needed for the measurement of social value which can be incorporated into the Act's legal framework.<sup>65</sup>

Nevertheless, public procurement habits across the UK have since changed for the better. Local councils are engaging with more local social enterprises in the supply chain for health, social care, and education.<sup>66</sup> There has been an increase in employment for youths and disadvantaged individuals, and there are training opportunities for those who needed to be reabsorbed into employment.<sup>67</sup> Local councils are also focusing on better financial investments and environmental improvements.<sup>68</sup> This approach transforms the procurement projects' short-termism to something that is long-term and more sustainable.<sup>69</sup>

Interestingly, large businesses are also getting involved in this movement. For example, Fujitsu has played a significant role in supporting its UK-based suppliers, which are SMEs.<sup>70</sup> Some large businesses are utilising the supply chain as a study to improve on the incorporation of social value and unlocking best practices because they consider this as good business sense.<sup>71</sup> In addition, the upcoming Social Value Awards provide incentives for all social enterprises and their public procurement commissioners to engage in good supply chain management.<sup>72</sup> The earned recognition

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<sup>60</sup> s26 Companies (Audit, Investigation and Community Enterprise) Act 2004.

<sup>61</sup> s30(1) Companies (Audit, Investigation and Community Enterprise) Act 2004. The amount is set by the Regulator under s30(5). The latest figures can be found in The UK Cabinet Office, *Social Enterprise: Market Trend* (2016) 9.

<sup>62</sup> See (n53). See also BMG Research, *Social Enterprise Market Trends* (2012) 1.

<sup>63</sup> Public Services (Social Value) Act 2012, s1(3).

<sup>64</sup> The UK Cabinet Office, *Social Value Act Review* (2015) 13.

<sup>65</sup> *Ibid*, 11, and 35.

<sup>66</sup> *Ibid*, 16.

<sup>67</sup> *Ibid*, 16.

<sup>68</sup> *Ibid*, 16.

<sup>69</sup> *Ibid*, 13.

<sup>70</sup> *Ibid*, 18-19.

<sup>71</sup> *Ibid*, 18.

<sup>72</sup> *Ibid*, 24.

builds good business reputation for social enterprises, their large business partners and the public procurement commissioners.

Local council public procurement seems to have created conducive environment for social enterprises' role in the responsible management of buyer's risk-externalities. In essence, the PS(SV)A has made some positive changes to the local councils' practices. It seems that a balance is struck between outsourcing's fine micro-dissection (through procuring products and services) and the maintenance of a sustainable supply chain. Public procurement commissioners are taking the holistic view where every micro-dissection is a part of the whole. This also includes the businesses which are closest to the end-users.

UK public procurement may be seen as totally juxtaposed to mainstream outsourcing. Nevertheless, it serves as a useful example for the social enterprises' role in the absorption of buyer's risk-externalities.

### *3.4 A Reflection on the three Business Trends*

The three business trends depict how buyer's risk-externalities are created and how these risk-externalities affect other businesses and individuals in the supply chain. This impact can be either positive or negative. The positive impact of these externalities results in the flourishing of other businesses and individuals. As mentioned, SMEs and social enterprises benefit from leverage-seeking buyers. Individuals whose lifestyle suits atypical work can absorb risk-externalities well and thus resulting in them flourishing. Such creations of risk-externalities are therefore responsible.

The negative impact of these externalities occurs when there is no effective absorption. The negative impact can be found in trend (2), where the fragmented atypical workforce would result in burdening individuals with buyer's risk-externalities. Businesses tend to invest in the medium- or high-value supply chain.<sup>73</sup> The individuals in the medium or high-skilled sector such as health, social care and education might have better resources,<sup>74</sup> and hence they might be resilient to these risk-externalities.<sup>75</sup> The problem lies in the low-skilled sector where outsourcing is prevalent.<sup>76</sup> With low-pay, low-hours, job uncertainty, and little labour protection, workers are in a vulnerable position. The added absorption of externalities by them are unnecessary and straining. Moreover, the added risk-externalities might also place a strain on the workers' immediate dependents such as children, and partners. These are therefore irresponsible externalities.

Although it is evident that good practices are emerging in UK public procurement; the absorption of buyer's risk-externalities through social enterprises is at a small scale.<sup>77</sup> Furthermore, the absorption of risk-externalities is much likely to occur in medium and high-skilled sectors. Absorption in low-skilled sector might take a while as workers might undergo training. Nevertheless, the example of responsible procurement habit might be a good model for the low-skilled sector. The next section addresses the concerns for the low-skill sector, in particular for women workers.

## **4 A Cause for Concern in Low-Skilled Labour Sector and the affected Community**

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<sup>73</sup> See (n24).

<sup>74</sup> For example, they might have better job security through having better pay and better training.

<sup>75</sup> See (n33).

<sup>76</sup> For example, in retail, services, low-skilled manufacturing, etc.

<sup>77</sup> The UK Cabinet Office, *Social Value Act Review* (2015) 39-48.

This section explores the impact of the 2008 financial crisis, which affects not only the low-skilled workers but also their immediate family. Thus, the concern has a wider implication which cuts into society's fabric. Addressing this issue places importance on workers' protection and questions the efficacy of the current labour regulations that are designed to protect them.

#### 4.1 Recovery from 2008's Financial Crisis?

The OECD Employment Outlook 2015 indicates that recovery from the 2008 financial crisis is far from complete.<sup>78</sup> Further to this assessment, it highlights that the deep recession has resulted in many job losses<sup>79</sup> of which, in some sectors such as manufacturing, these jobs are irrecoverable.<sup>80</sup> The 2015 Outlook places special focus on the low-skilled labour sector because the OECD has identified these affected workers as the most vulnerable in the economic climate.<sup>81</sup> Owing to a slow economic rise,<sup>82</sup> UK low-skilled households have experienced a decrease in their income.<sup>83</sup> Furthermore, an increase in fixed-term and part-time employment contracts place these workers in a precarious position with very little job security. They are also offered low-hours and low-pay.<sup>84</sup>

#### 4.2 Low-Skilled Labour

The OECD's definition for low-skilled labour mentioned in section 2<sup>85</sup> ties in with the UK Office for National Statistics (ONS)'s skill levels 1 and 2.<sup>86</sup> Both levels identify with the characteristic of the job. A level 1 job requires 'competence associated with a general education, usually acquired by the time compulsory education is completed. Jobs at this skill level may require short periods of on-the-job-training and knowledge of health and safety regulations'.<sup>87</sup> A level 2 job requires the 'same level of competence associated with a general education as level 1, but jobs at this level typically require a longer period of on-the-job-training and/or work experience'.<sup>88</sup>

Some examples of labour sectors at level 1 and 2 are administrative and secretarial occupations; caring and leisure; sales and customer services; process, plant and machine operatives; and elementary operatives.<sup>89</sup> With the decline of UK manufacturing,<sup>90</sup> most of the low-value low-production jobs have disappeared. Post-2008, the UK had shifted to high-value manufacturing. However, in a 2013 government report this shift had not solved the problems of the mass redundant individuals.<sup>91</sup> Reabsorption of surplus labour back into the economy required a conducive

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<sup>78</sup> Stijn Broecke, Andrea Garnero, Herwig Immervoll and Pascal Marianna, 'Recent Labour Market Developments with a Focus on Minimum Wages' in Mark Keese and Paul Swaim *OECD Employment Outlook 2015* (OECD 2015) 20, 24.

<sup>79</sup> *Ibid*, 23.

<sup>80</sup> *Ibid*, 32.

<sup>81</sup> *Ibid*, 22.

<sup>82</sup> *Ibid*, 32.

<sup>83</sup> *Ibid*, 29.

<sup>84</sup> *Ibid*, 30. See also, Anne Green, Gabby Atfield, Teresa Staniewicz, Beate Baldauf and Duncan Adam, *Determinants of the Composition of the Workforce in Low Skilled Sectors of the UK Economy* (2014) Warwick Institute for Employment Research 39–43.

<sup>85</sup> Jonathan Chaloff, 'Management of Low-Skilled Labour Migration' (2008) in *OECD International Migration Outlook 2008* (OECD 2008) 125, 127.

<sup>86</sup> Migration Advisory Committee, *Migrants in Low Skilled Work: The growth of EU and non-EU labour in low-skilled jobs and its impact on the UK* (2014) 22.

<sup>87</sup> *Ibid*, 22.

<sup>88</sup> *Ibid*, 22.

<sup>89</sup> *Ibid*, 23.

<sup>90</sup> Steve Fothergill and Tony Gore, *The Implications for Employment of the Shift to High-Value Manufacturing* (2013) UK Government Office for Science 8.

<sup>91</sup> *Ibid*, 13.

environment and a strong local economy.<sup>92</sup> Lacking a strong local economy and the non-revival of the low-skilled low-production sector, the surplus labour joins other competitive markets, namely, retail and social care.

There was a boom in the late 2000s where employment in the retail, services and social care sectors increased.<sup>93</sup> The rapid change in the delivery of demand meant that these sectors required workers meeting 24/7 consumer expectations, businesses aligning with a just-in-time ethos and reacting to unprecedented seasonal demands. This change resulted in the embrace of the atypical workforce.<sup>94</sup> Again, the low-skilled labour sector becomes precarious, uncertain, too flexible and highly volatile to changes.

#### 4.3 *The Impact on the Community*

In 2013, the UK low-skilled labour sector accounts for 45 per cent (12.9 million people) of the total employment,<sup>95</sup> meaning that one-quarter of the employment population had to engage in precarious working arrangements. For some, this arrangement might suit their lifestyle. For example, the youth aged between 16-25 might benefit from gaining valuable employability skills whilst they juggle other commitments such as education, vocation, or artistry. They could also benefit from an employer who adopts something akin to the three-year UK Employer Training Pilot where under this scheme an employee progresses from a level 1 to either a level 2 or 3 skill set.<sup>96</sup> For others and in particular the surplus labour flowing from the post-2008 extinct low-cost low-production manufacturing sector, this kind of working condition might not be sustainable for their well-being or career.<sup>97</sup> It promises very little in terms of a career progression and it does not promote security, stability or a living wage.<sup>98</sup>

It is advanced here that the impact of precarious low-skilled work on the community cuts deep into its fabric. Owing to the fierce competition for employers to drive down costs, the fragmented employment contracts or having no contracts at all, it brings up a series of concerns.<sup>99</sup> First and foremost, the youth would be affected in which they who would be denied a career path. They would also be denied adequate training as they are forced to compete with other able individuals in the labour market.<sup>100</sup> This might result in youth unemployment or youths signing up for jobseeker allowances. Second, those who are in their mid-career and finding themselves redundant<sup>101</sup> are

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<sup>92</sup> *Ibid*, 14.

<sup>93</sup> Anne Green, Gabby Atfield, Teresa Staniewicz, Beate Baldauf and Duncan Adam, *Determinants of the Composition of the Workforce in Low Skilled Sectors of the UK Economy* (2014) Warwick Institute for Employment Research 1.

<sup>94</sup> See (n86).

<sup>95</sup> See (n84), 279.

<sup>96</sup> See Laura Abramovsky, Erich Battistin, Emla Fitzsimons, Alissa Goodman and Helen Simpson, 'Providing Employers with Incentives to Train Low-Skilled Workers' (2011) 29(1) *Journal of Labour Economics* 153. Abramovsky *et al* suggest only a minority of employers would continue with the training scheme independently without support from the UK government. They also concluded that the pilot 'had no statistically significant effect on the take-up of training among eligible employers and employees in the first three years of the programme' (182). Meaning an employer's incentive to adopt a training scheme like the pilot seems unlikely.

<sup>97</sup> See (n90), 90.

<sup>98</sup> See (n78). The living wage is one of the primary concerns of the OECD in 2015. Furthermore, the minimum wage requirement seems to benefit employers and offers inadequate protection to low-skilled workers. See also Hartley Dean, 'Poor Parents? The Realities of Work-Life Balance in a Low-Income Neighbourhood' (2007) 15(3) *Benefits: A Journal of Poverty and Social Justice* 271.

<sup>99</sup> See (n5).

<sup>100</sup> See (n85). With the increase of EU and non-EU migrants, the competition to secure a job in this sector has risen.

<sup>101</sup> See (n90).

required to adapt to a new work culture as a precarious working which might be unusual to them. If they fall short of the relevant skills, they might enter into long-term unemployment.<sup>102</sup> If they have the relevant skills, fierce competition on the labour market would add to the volatility and uncertainty.<sup>103</sup>

Third, those who have had long engagement with precarious working arrangement would have had experienced a decrease in hours and pay. The result of this would have forced them to either undertake more than one job to make ends meet; or turn to government support programmes. They would have had their work-life balance disrupted.<sup>104</sup> Women workers are especially affected as they may have to juggle both paid and unpaid workload.<sup>105</sup> Fourth and finally, an imbalanced work-life would have an adverse effect on the low-skilled worker's immediate family. The OECD 2015 Outlook has highlighted some low-skilled income families falling into poverty.<sup>106</sup> Families who are saving on heating and food to prioritise other expenses such as rent would have disadvantaged their children.<sup>107</sup> Malnourished children would find it difficult to concentrate in school. This will have a bad impact on their academic performance. Lacking the vital knowledge and skills to excel in society would hinder these individuals in later life. They might find it difficult to participate in social mobility.<sup>108</sup> Financial tension within the household could cause abuse or the breaking down of a family unit.<sup>109</sup> These are experiences which are unpleasant to the youths who are caught up in these situations. Without the necessary support, youths might spiral into anxiety, depression and prone to be subjected to different kinds of abuses.

In essence, the current business practices of just-in-time and rapid customer care provided 24/7 are indirectly causing problems in society. This is especially poignant in the low-skilled labour household. It is not only the low-skilled workers are affected resulting in high stress levels, mental health issues and general poor well-being. It also has an adverse effect on their immediate family which would gradually turn into societal issues. The next section explores social entrepreneurship's concept and how it handles these issues and how it can aid society's well-being.

## 5 'Social Entrepreneurship'

Part of social entrepreneurship's spirit is to advance low-skilled workers' protection. Its definition varies between business scholars and legal scholars.<sup>110</sup> However, its underlying *ethos* seems

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<sup>102</sup> Thus, investments ought to be put into skills enriching programmes. See Daniel Oesch, 'What Explains High Unemployment among Low-Skilled Workers? Evidence from 21 OECD Countries' (2010) 16(1) *European Journal of Industrial Relations* 51.

<sup>103</sup> See (n78).

<sup>104</sup> Hartley Dean, 'Poor Parents? The Realities of Work-Life Balance in a Low-Income Neighbourhood' (2007) 15(3) *Benefits: A Journal of Poverty and Social Justice* 271.

<sup>105</sup> See (n40).

<sup>106</sup> See (n78).

<sup>107</sup> See Deborah Roberts, Esperanza Vera-Toscano, Euan Phimister, 'Fuel Poverty in the UK: Is There A Difference Between Rural And Urban Areas?' (2015) 87 *Energy Policy* 216, 221.

<sup>108</sup> Poor housing affecting physical health and mental health, see Matt Egan, Louise Lawson, Ade Kearns, Ellie Conway, Joanne Neary, 'Neighbourhood Demolition, Relocation and Health. A Qualitative Longitudinal Study Of Housing-Led Urban Regeneration In Glasgow, UK' (2015) 33 *Health and Place* 101, 106--107. Low-income mothers and mental health, see Rob Whitley and Martin Prince, 'Fear of Crime, Mobility and Mental Health in Inner-City London, UK' (2005) 61 *Social Science & Medicine* 1678, 1686.

<sup>109</sup> See (n12).

<sup>110</sup> See (n2).

consistent which is this: the running of a for-profit business in the community's interest.<sup>111</sup> This concept is neither purely philanthropic nor it is purely profit maximising. This section attempts to dissect the term 'social' and 'entrepreneurship'. First, it begins with the business agenda: 'entrepreneurship', and then its 'social' element. The section then utilises this concept in the context of low-skilled workers' protection. This section advances the need to reconcile the business relationship between buyers, the atypical workforce and social enterprises. Social entrepreneurship being a concept executable by all businesses regardless of their legal forms is the crucial step towards better management of buyer's risk-externalities.

### 5.1 Entrepreneurship

Entrepreneurship is a concept where a business advancing the social good operates beyond the state of being self-sufficient.<sup>112</sup> Self-sufficiency implies the need for a business to at the very least break even. These are the missions of charities which are largely dependent on donations or government support.<sup>113</sup> Entrepreneurship implies making a profit and also operating on a sustainable business plan. Timmons and Spinelli describe it as 'a way of thinking, reasoning, and acting that is opportunity obsessed, holistic in approach and leadership balanced'.<sup>114</sup> At first glance, it is glaringly obvious that this approach is not taken up by majority of businesses in the low-skilled labour sector.<sup>115</sup> The operation's fine micro-dissection for outsourcing purposes is a reductionist approach as opposed to holistic, so is the fragmented atypical workforce.

It is nevertheless logical to have an entrepreneur running an entrepreneurship. Schumpeter describes this individual as a person who 'introduces a new good, a new method of production, who opens a new market, exploits a new source of supply and carries out a new organisation of an industry'.<sup>116</sup> Schumpeter's description aligns with the rise in atypical work in the low-skilled labour sector which is a new method of production and it has indeed opened a new market and a source of supply. Furthermore, the increase in atypical work has benefited some businesses, but, as mentioned above it has also disadvantaged others, namely, the vulnerable low-skilled workers, especially women and their families.

Schumpeter's approach to entrepreneurship separates the entrepreneur (or the 'merchant') from the worker (or the manual labourer),<sup>117</sup> and thereby the two disciplines of entrepreneurs and capitalists are separated. He observes that 'capitalists were no entrepreneurs and entrepreneurs were no capitalists'.<sup>118</sup> This divide rings true in today's business activities; social enterprises are largely restricted to social businesses. Merchants and innovative entrepreneurs who are mostly in the high-skilled labour sector are secluded from the mainstream capitalist business activities where the low-skilled workers are found. Low-skilled workers who are not entrepreneurs are casted into the category

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<sup>111</sup> Samer Abu-Saifan, 'Social Entrepreneurship: Definition and Boundaries' (2012) *Technology Innovation Management Review* 22, 24.

<sup>112</sup> *Ibid.*, 26.

<sup>113</sup> If a business is a charitable incorporated organisation, it is governed under the Charities Act 2011, s205. If a business is registered a society with charitable status under the Co-operative and Community Benefit Societies Act 2014, s12.

<sup>114</sup> See (n111), 23.

<sup>115</sup> Outsourcing has caused the holistic vision of entrepreneurship to become fragmented, especially in the low-skilled sector as highlighted in Rosario Crino, 'Offshoring, Multinationals and Labour Market: A Review of the Empirical Literature' (2009) 23(2) *Journal of Economic Surveys* 197.

<sup>116</sup> *Ibid.*

<sup>117</sup> Joseph Schumpeter, *Essays on Entrepreneurs, Innovations, Business Cycles, and the Evolution of Capitalism* (Richard Clemence ed., Tenth Printing, Transaction Publishers 2008) 253.

<sup>118</sup> *Ibid.*, 256.

under capitalism making them a commodity. The burden for women workers is greater as some might have caring responsibilities for others.<sup>119</sup> In the light of capitalism, products and services are subjected to mass production at low cost which has an effect on workers' interests, especially for women. In addition to the unfavourable treatment of workers, the low-skilled sector is considered a business's periphery which can be severed from the main organ of a business and thus its tasks can be passed onto other business partners. The gap between entrepreneur and worker widens.

Schumpeter, however, remains optimistic. He takes the holistic view where it is possible for manual workers to raise onto the social ladder and become entrepreneurs.<sup>120</sup> He envisages that the social value of a human being could transform into the business's corporate personality through the aggregation of the individual entrepreneurs' social value.<sup>121</sup> Oddly, Schumpeter's idea of entrepreneurship aligns with UK company law's principles underpinning the role of the company director. The director is required to act in the company's interest.<sup>122</sup> Profit maximisation can occur. However, the enlightened shareholder value<sup>123</sup> under s172 Companies Act 2006 imposes certain conditions when undertaking profit maximisation.

The directors' duty to promote the success of the company is shaped by several other interests. To an extent, s172 imposes no mandatory requirements which a critique of it is that businesses can engage in its principles voluntarily. Nevertheless, the following considerations are to be made: the long-term implications of the company's operation, the interests of its employees, the business relationship with suppliers, customers and others (that may include the creditors), the operation's impact on the community and the environment, the maintenance of business conduct's high standards and the need to treat all its members fairly.<sup>124</sup>

In principle, UK companies ought to exhibit these entrepreneurial features. The Companies Act 2006 codifies entrepreneurial skills which directors ought to perform. Furthermore, these skills ought to resonate in a company's corporate governance and leadership. The adaptation of atypical work contracts in the low-skilled labour sector does not go in favour of the low-skilled workers. Therefore, there is a disparity between principles and practices in the low-skilled labour sector.

## 5.2 Social

'Social' implies the need to go beyond the remit of a for-profit business. Thus, social entrepreneurship and its operations seem to require a business to go beyond company law's principles. The current UK legislation has arguably evolved away from the traditional concept of profit maximising. UK social enterprises are allowed to reflect all forms of business models so long as they 'fit' its definition.<sup>125</sup>

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<sup>119</sup> See n(3).

<sup>120</sup> *Ibid*, 256.

<sup>121</sup> *Ibid*, 259–261.

<sup>122</sup> *JJ Harrison (Properties) Ltd v Harrison* [2001] EWCA Civ 1476, *Item Software (UK) Ltd v Fassihi* [2004] EWCA Civ 1244 and *Mutual Life Insurance Co of New York v Rank Organisation Ltd* [1985] BCLC 11. Companies Act 2006, s172.

<sup>123</sup> See Company Law Review Steering Group, *Modern Company Law for a Competitive Economy* (URN00/656) (London: DTI, 2000), para 2.11.

<sup>124</sup> See Charlotte Villiers, 'Directors' Duties and the Company's Internal Structures Under the UK Companies Act 2006: Obstacles for Sustainable Development' (2011) 8 *International and Comparative Corporate Law J.* 47, available at <<http://ssrn.com/abstract=1712791>> (last visited on 16 May 2013); Elaine Lynch, 'Legislative Comment, Section 172: a ground-breaking reform of director's duties, or the "Emperor's New Clothes"?' (2012) 33 *The Company Lawyer* 196; Andrew Johnston, 'Reforming English Company Law to Promote Sustainable Companies' (2014) 11 *European Company Law*.

<sup>125</sup> UK Cabinet Office, *Social Enterprise: Market Trends* (2012) 20.

Social enterprises' legal form ranges from sole trader, general partnership, limited partnership, limited liability partnership, limited companies, benefit societies and co-operatives.<sup>126</sup> One legal form in particular is the community interest company (CIC) which is enshrined under s6 Companies Act 2006. No further explanation is provided in the legislation as to what CICs are. Nevertheless, in light of s6 on CICs and s172 on a directors' duty, it is suggested that the social element of business is embraced in UK law.

Further to the inclusion of CICs, the PS(SV)A makes it mandatory for local councils to engage with s172 Companies Act and regard the economic, social and environmental well-being in public procurement contracts. The PS(SV)A creates a market for social entrepreneurship where companies in connection with local councils' procurements are advancing community interests. In addition to this market creation, the Co-operative and Community Benefit Societies Act 2014 reconsolidates the legal formation of charitable organisations, for-profit co-operatives and community benefit societies. Through these legislations, the plethora of social enterprises expands. Company law's principles of separate personality, limited liability and dissolution also underpin these business models.

CICs, benefit societies and co-operatives are for-profit legal forms with a social objective, and therefore they are *prima facie* social enterprises. There are other social enterprises which fit the concept of having a social objective, but they run on other legal forms. The existence of both *prima facie* social enterprises and the businesses that fits demonstrates that the social element requirement is not restricted to only *prima facie* social enterprises. There is flexibility in conducting a for-profit business with a social objective. Thus, the meaning of 'social' in the term social entrepreneurship seems to have departed from its old function which was the labelling of a business entity. It is critical to point out however that the practice of social entrepreneurship in the low-skilled sector seems absent.

### 5.3 Social Entrepreneurship and Social Enterprises

This article takes the view that the terms 'social enterprise' and 'social entrepreneurship' should not be labels for a business entity. It is viewed that a social enterprise need not require a unique legal status.<sup>127</sup> It also considers a 'social business' not a necessary pre-requisite for conducting social entrepreneurship.<sup>128</sup> Having these views avoid the question of 'what is a social business?' Or, 'what is a social enterprise?' It also demystifies the need to have the label 'social enterprise' to undertake the act of 'social entrepreneurship'. This act can be performed by all businesses regardless of their legal form.

Such considerations are important because law is critiqued to be trapped when dealing with such a label. The fine hair-splitting category of 'what is' and 'what is not' is counterproductive to Schumpeter's holistic vision.<sup>129</sup> The low-skilled workers being entrepreneurs in their own capacity have been excluded from the holistic vision and the remit of business social objectives. It is advanced here that a better question ought to be this: should more (or, dare one say all) businesses advance community interests? The UK approach to social enterprises seems to embrace businesses advancing

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<sup>126</sup> The UK Cabinet Office, *Social Enterprise: Market Trend* (2016) 21.

<sup>127</sup> See Robert Esposito, 'The Social Enterprise Revolution in Corporate Law' (2013) 4(2) *William and Mary Business Law Review* 639, 648.

<sup>128</sup> *Contra* Justin Blount and Patricia Nunley, 'What is a "Social" Business and why does the Answer Matter?' (2013–14) 8(2) *Brook J Corp Fin and Com L* 278.

<sup>129</sup> *Ibid.*

social objectives regardless of their legal status. It is the business activities and/or transactions which warrant a business its social enterprise label, and not the other way around.

In terms of social entrepreneurship, any for-profit business can conduct this activity. Dees' definition concentrates on the business operation rather than its entity. Conducting a social entrepreneurship requires a blending of entrepreneurship and social innovation.<sup>130</sup> Meaning, entrepreneurship is a profitable social objective which has the potential for large-scale impact.<sup>131</sup> These kinds of business activities or transactions do not provide temporary relief to societal issues. Rather, they seek profitable and sustainable solutions to the issues addressed in the community they operate.

Taking the view that social entrepreneurship is not confined to social businesses or social enterprises places more emphasis on the way in which business activities are undertaken. Thus, purely for-profit businesses and social enterprises can engage in social entrepreneurship. The discussion which attempts to depart from the labelling of a business entity as it views that the label only restricts the function of business activities. Moreover, the 'social enterprise' label excuses or excludes potential businesses (such as multinational corporations) from getting involved in social entrepreneurship. And so, it is argued that partners in social entrepreneurship are not restricted to social enterprises. The reconciliation between for-profit businesses which are buyers, the atypical workforce and social enterprises can be done through social entrepreneurship in the light of managing buyer's risk-externalities.

## 6 Conclusion

Social entrepreneurship ought to be a partnership between the participants in the three business trends namely the social enterprises, for-profit corporations, and the atypical workforce in the low-skilled sector. It ought to be an act of doing a task together and more crucially in the advancement of a social objective.<sup>132</sup> Lord Young's 2015 report citing an excellent example in Fujitsu's regard demonstrates that big corporations can re-invest their resources (be it money or money's worth) into their supply chain. Acting together for a social objective boosts the reputational value of all participants which incentivises big corporations to get involved. It is advanced here that social entrepreneurship partners ought to include a body that represents atypical workers. In doing so, all participants engage in the management of buyer's risk-externalities. That ensures re-investments into the supply chain which protect the atypical workforce's well-being. Thus, partners in social entrepreneurship cultivate responsible resilience in the workers, especially women workers.<sup>133</sup> Perhaps, that might increase security and certainty in their work. The precariousness in their job arrangement would not be viewed as a damaging factor, but a symbol of the workers' empowerment. In view of a protected atypical workforce in the low-skilled sector through social entrepreneurship, it will have a good impact on the community. A healthy and resilient workforce would entail a strong family unit. Partners in social entrepreneurship could be one possible approach to alleviate the present UK societal problems of

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<sup>130</sup> Gregory Dees and Beth Anderson, 'Framing a Theory of Social Entrepreneurship: Building on Two Schools of Practice and Thought' in Rachel Mosher-Williams (ed), *Research on Social Entrepreneurship: Understanding and Contributing to an Emerging Field* (ARNOVA 2006) 39, 50.

<sup>131</sup> *Ibid*, 52.

<sup>132</sup> Yue Ang, 'Ethical Outsourcing and the Act of Acting Together,' in Ruth Wolf, Theodora Issa and Monica Thiel (eds.), *Empowering Organizations through Corporate Social Responsibility* (IGI 2015) 126–127.

<sup>133</sup> See (n30).

urban poverty, youth being deprived of resources, the rise in the populations' physical and mental health issues.