

Seven ways platform workers are fighting back



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Summary

Platform working is an expanding part of the economy. Globally the number of platforms has grown five-fold in a decade.¹

And the coronavirus pandemic seems to have been the catalyst for further surge in platform growth in the UK and elsewhere as many homebound workers opted for internet shopping and food delivery.²

New polling data published in this collection shows that 14.7 per cent of working people in England and Wales, equivalent to approximately 4.4 million people, now undertakes platform work at least once a week. Almost a quarter (22.6 per cent) of workers have done platform work at some point.

It can seem that practices like casualisation, management by algorithm rather than human and a complete absence of trade unions are baked into the way that platform economy is run. There are fears that it is therefore only a matter of time before these spread to other jobs.

Yet platform workers, who range from private hire drivers to translators, and their representatives are fighting back in many important areas and have secured notable victories.

However, often this activity is conducted in isolation: the labour lawyers plot improvement to employments rights in one corner while the tech enthusiasts highlight discriminatory algorithms in another. Meanwhile, union organisers plug away in the vital work of signing up new members.

This essay collection seeks to unite these experiences to build a picture of the various areas where platform workers are fighting for their rights with the aim of informing and inspiring future union activity. All work should be decent work. These essays set out ways this might be achieved in the platform economy.

¹ International Labour Organization (2021). *World employment and social outlook: the role of digital labour platforms in transforming the world of work*, ILO

² Fairwork (2021). UK Ratings 2021: labour standards in the gig economy, Fairwork p. 8 fair.work/en/fw/blog/new-report-ratings-fairness-in-the-uk-platform-economy/#continue

Introduction – Tim Sharp, TUC

When the GMB trade union announced it had signed a recognition with private hire giant Uber, its national officer Mick Rix declared: “This agreement shows gig economy companies don’t have to be a wild west on the untamed frontier of employment rights.”³

Companies that employ platform workers like Uber, food delivery business Deliveroo and online retailer Amazon have become emblematic of poor employment practices.

Evidence abounds of overworked delivery drivers forced to urinate in bottles⁴, safety failings⁵ and the use of discriminatory technology⁶.

The terms “gig economy” and “platform economy” are often used interchangeably. One way to understand the difference is that the gig economy refers to work based on short-term tasks and platform economy to transactions that take place through digital means.

What this set of essays is concerned with is where the two intersect, where there is the exchange of labour for money between individuals or companies via digital platforms that actively facilitate matching between providers and customers, on a short-term and payment by task basis.⁷

This encompasses a wide range of activities. On online web-based platforms such as Upwork and Fiverr, workers undertake work in areas like translation, financial services, legal services, patent services, design and data analytics. Location-based platforms are involved in activities like taxi services and food delivery.⁸

Location-based platforms have been among the highest profile, perhaps due to the visibility of these workers. During the coronavirus pandemic, when many workers

³ Butler S (26 May 2021). “Uber agrees union recognition deal with GMB”, *The Guardian* www.theguardian.com/business/2021/may/26/uber-agrees-historic-deal-allowing-drivers-to-join-gmb-union

⁴ Reuters (3 April 2021). “Amazon acknowledges issue of drivers urinating in bottles in apology to Rep. Pocan,” *Reuters* www.reuters.com/article/us-amazon-com-workers-pocan-idUSKBN2BQ0DC

⁵ Goodwin, K (22 April 2021). “Food delivery firms must address rider safety concerns, say campaigners,” *The Ferret* theferret.scot/food-delivery-companies-must-address-safety-concern/

⁶ Kersley A (1 March 2021). “Couriers say Uber’s ‘racist’ facial identification tech got them fired”, *Wired* www.wired.co.uk/article/uber-eats-couriers-facial-recognition

⁷ This draws on the definition employed in Department for Business, Energy and Industrial Strategy (2018). *The characteristics of those in the gig economy*. Department for Business, Energy and Industrial Strategy

⁸ International Labour Organization (2021). *World employment and social outlook: the role of digital labour platforms in transforming the world of work*, ILO pp. 74-77

remained at home, the likes of delivery drivers kept supplies moving to households, often with inadequate protective equipment.⁹

But there are issues relevant to platform working generally including the role of the platform in price-setting and pay-setting, charging of fees to workers and clients, matching of workers with clients, allocation and evaluation of work through algorithms, monitoring of work using digital tools, and the use of rating systems.¹⁰ Common to virtually all platforms is an effort by operators to deny those who work through them an employment relationship and avoid obligations, such as the payment of minimum wages and trade union rights.¹¹

This presents workers with unpredictable scheduling, inconsistent earnings, and unreliable long-term employment prospects.¹²

The rise of platforms has been assisted by the prevalence of digital devices, the availability of cheap data and the development of algorithms. But it has also been based on the willingness of operators to use weak labour laws to organise work with very little investment in physical assets and by avoiding the hiring of employees.

The availability of workers also appears to have been driven by the desire to top up rock-bottom wages¹³ and the difficulty in securing flexible work in conventional roles.¹⁴

This set of essays starts with analysis of new polling data on platform working by Professors Neil Spencer and Ursula Huws. This reveals the continued growth of platform working. People in England and Wales who said that they performed work they had found via an online platform at least once a week grew from 5.8% of the working population in 2016 to 11.8% in 2019 rising to 14.7% in 2021 (equivalent to approximately 4.4 million people

⁹ Fairwork (2020). *The gig economy and Covid-19: looking ahead*, Fairwork fair.work/wp-content/uploads/sites/97/2020/09/COVID-19-Report-September-2020.pdf

¹⁰ ILO (2021) p77

¹¹ Croft, J and Venkataramakrishnan, S (19 February 2021). "Uber loses landmark UK battle as Supreme Court rules drivers are workers," *Financial Times* www.ft.com/content/9ef3a1c5-328c-460d-9261-33ea991cae62; Butler, S (5 December 2018). "Deliveroo riders lose high court battle to gain union recognition," *The Guardian* theguardian.com/business/2018/dec/05/deliveroo-riders-lose-high-court-battle-gain-union-recognition

¹² Johnston, H and Land-Kazlauskas, C (2019). *Organizing On-Demand: Representation, Voice, and Collective Bargaining in the Gig Economy*, International Labour Organization

¹³ University of Hertfordshire et al (2019). *Platform work in the UK*, University of Hertfordshire www.feps-europe.eu/attachments/publications/platform%20work%20in%20the%20uk%202016-2019%20v3-converted.pdf

¹⁴ TUC (2 September 2019). "One in three flexible working requests turned down, TUC poll reveals", TUC www.tuc.org.uk/news/one-three-flexible-working-requests-turned-down-tuc-poll-reveals

This has presented challenges to trade unions including in organising workers who often operate in isolation from their colleagues;¹⁵ in enforcing workers' rights in the face of employers who are willing to use misleading contracts and fight lengthy court battles;¹⁶ and in tackling exploitative uses of data and algorithms by platform employers.¹⁷

It is therefore tempting to regard the platformisation of work as inevitable. Casualisation, management by algorithm rather than human and a lack of a worker voice appear baked into how the platform economy operates. In time, it appears, this will spread further into other forms of work.¹⁸ This fear is supported by a survey conducted by the TUC showing significant numbers of workers report that artificial intelligence is used by their employer for issues like absence management, performance ratings and work allocation. In time, it is argued, this will spread to other forms of work.¹⁹

But seeing the platformisation of work and the downgrading of terms and conditions as inevitable would overlook the fact that workers and their representatives have developed strategies for fighting back against this trend. The notable victories that they have secured offer an insight into how platform work could become decent work.

This essay collection seeks to unite these experiences and highlights seven areas where workers are fighting back. Too often this work is conducted in isolation: the labour lawyers plot improved employment rights in one corner while the tech enthusiasts fight discriminatory algorithms elsewhere. Meanwhile, the union organisers plug away trying to recruit new members while corporate governance specialists seek to get workers' rights issues taken seriously in City boardrooms.

One of these arenas of struggle is in the courts. Employment law is based both on the legislation passed by Parliament and the case law: how courts interpret those provisions. This is why the recent defeat of private hire giant Uber in the Supreme Court is so significant.²⁰ The judges found that Uber couldn't rely on misleading contracts: the key factor was what Parliament wanted to achieve in protecting vulnerable workers. Therefore, drivers were entitled to rights including the minimum wage and holiday pay. This has paved the way for the GMB to sign a groundbreaking

¹⁵ Johnston and Land-Kazlauskas (2019) p. 24

¹⁶ Ford, M, & Bogg, A (2019). "Between Statute and Contract: Who is a Worker?" *Law Quarterly Review*, 135, pp. 347-353

¹⁷ TUC (2020). *Technology managing people: the worker experience*, TUC www.tuc.org.uk/research-analysis/reports/technology-managing-people-worker-experience

¹⁸ ILO (2021). p. 3

¹⁹ ILO (2021). p. 3

²⁰ Uber BV and others (Appellants) v Aslam and others (Respondents) (2020) UKSC 5 www.supremecourt.uk/cases/uksc-2019-0029.html

recognition deal with Uber which includes access for GMB to worker hubs to talk to drivers.²¹

But the implications of the case could reach further. In their essay, Professors Alan Bogg and Michael Ford QC explain how unions can use the Uber judgment to challenge the spurious use of substitution clauses in the contracts of some platform workers. These purport to allow workers to give their work to others. The real aim is to show that those they engage are not the platform's workers or employees with employment rights. This looks unsustainable now that courts are invited to examine the employment relationship in the round.

Worker Info Exchange founder James Farrar also draws on the implications of the *Uber* judgment in his essay. Now that platform employers have less scope to rely on dodgy contract clauses, the next battle is over the use of data to control workers.

This chimes with a recent report for the TUC that set out the legal routes available to workers when AI decision-making goes wrong.²² This was accompanied by a manifesto for change.²³

In his contribution, Farrar sets out how platform workers can use data protection rights and collective structures to take control of their personal data at work.

This theme is picked up by Dr Christina Colclough of The Why Not Lab. She shares Farrar's concerns about the power handed to employers by their access to worker data. Colclough set out what amounts to a route map to worker collectivisation of data, starting with the means for sharing of data that are becoming available to workers and data. But it is not just a case of downloading a few apps: unions and workers need to capacity build, including developing a movement-wide understanding of data and algorithms.

The UK is by no means the only country where the employment model used by platforms is being challenged in the courts. In Spain delivery platforms faced a succession of legal defeats. This has resulted in a hugely important sector-wide agreement on rights for deliver drivers, as Carlos Gutierrez, secretary of youth and new realities of work at the union federation CCOO, sets out in his essay.

But in the UK sector-wide deals are rare, due in part to hostile labour laws. This has required unions to be innovative about the ways they seek to organise at enterprise level in the platform economy. Mick Rix, national officer at the GMB, explains in his contribution how his union has sought to combine legal routes with new ways of

²¹ GMB Union (26 May 2021). "Uber and GMB strike historic union deal for 70,000 UK drivers". www.gmb.org.uk/news/uber-and-gmb-strike-historic-union-deal-70000-uk-drivers

²² Robin, A and Masters, D (2021). Technology Managing People – The legal implications, Cloisters and TUC www.tuc.org.uk/sites/default/files/Technology_Managing_People_2021_Report_AW_0.pdf

²³ TUC (2021). Dignity at work and the AI revolution, TUC www.tuc.org.uk/sites/default/files/2021-03/The_AI_Revolution_20121_Manifesto_AW.pdf

organising. The union's persistence has resulted in a recognition deal at notoriously anti-union Uber, including rights of access to driver hubs.

Investor concern at employment practices appears to be rising. This became most apparent when Deliveroo founder Will Shu listed his company on the stock market earlier this year. While not the only reason for the shares plunging, many investors were worried about what they saw. Tom Powdrill, head of stewardship at corporate governance advisor PIRC and Janet Williamson, senior policy officer at the TUC, explain in their essay that the pressure will continue.

A further front in the battle for decent work in the platform economy has been opened up by the academics at Fairwork. Long responsible for highly influential work on the sector, the organisation has now published rankings for some of the most prominent platforms in the UK.²⁴ Informed consumer power could yet become another driver of better worker conditions. In their contribution, Dr Alessio Bertolini and Dr Matthew Cole explain why platforms' approaches to worker engagement and trade unions plays such a prominent role in their ratings.

Between them these essays build a picture of a diverse sector that has hitherto thrived by denying its workers basic rights. But pressure to observe workers' individual and collective rights is coming from the courts, unions, via investors and potentially through consumers. Platform work can be decent work and this collection is intended to inform, encourage and inspire platform workers and their representatives in their ongoing struggle.

²⁴ Fairwork (2021). *UK Ratings 2021: labour standards in the gig economy*, Fairwork fair.work/en/fw/blog/new-report-ratings-fairness-in-the-uk-platform-economy/#continue

Background: how platform work is changing and growing

Platformisation and the pandemic: changes in workers' experiences of platform work in England and Wales, 2016-2021 – Prof Neil H. Spencer, University of Hertfordshire and Prof Ursula Huws, Analytica Social and Economic Research

This essay reports on a follow-up survey, carried out in in 2021 by BritainThinks for the TUC, to two surveys carried out by the University of Hertfordshire with Ipsos MORI in 2016 and 2019 covering the working population of England and Wales. Key findings include:

- There was a continuing strong growth of platform work in all categories during the period which included national lockdowns. People in England and Wales who said that they performed work they had found via an online platform at least once a week grew from 5.8 per cent of the working population in 2016 to 11.8 per cent in 2019 rising to 14.7 per cent in 2021 (equivalent to approximately 4.4 million people²⁵). Other forms of income generation from online sources declined or were static from 2019 to 2021.
- There has been a notable shift in the gender balance among platform workers during this period. In 2016 men made up 48.6 per cent of frequent platform workers. By 2019 this had risen to 57.4 and by 2021 to 68.4 per cent. Platform workers are most likely to be in the 25-44 age group.
- There was a continuing spread of digital management practices across the workforce. More than two out of ten (21.9 per cent, approximately 6.5 million people) of the total workforce now use apps to be informed when a new task is awaiting them and three out of ten (approximately 9 million people) to record the work done. These are higher among platform workers (at 73.7 per cent and 76.7 per cent respectively) but still significant among workers who do *not* work for online platforms, at 9.4 per cent and 18.7 per cent respectively. More expectedly, there was considerable growth in using email and text communication from home for work purposes: from 47.5% in 2016 to 53.3% in

²⁵ Numbers based on an estimate of 29,883,000 people in the target population for the 2021 survey: 18 to 75-year-olds in England and Wales in employment or unemployed for less than 16 months (i.e. since the start of the pandemic). Details of calculations (based on Office for National Statistics figures) available on request.

2019 to 71.2% (approximately 21.25 million people) in 2021. More than nine out of ten frequent platform workers now communicate with employers or clients by email from their homes, compared with two thirds (65.7%) of non-platform workers.

- Demand for platform services continued to grow, with platform workers themselves amongst the greatest users of platform services. While the growth in driving and delivery platform work may be attributed in part to the special conditions pertaining under lockdown during the pandemic, the rise in other forms of platform work appears to be part of a longer-term trend, with little evidence of any specific COVID-related impact.

Introduction

This essay reports on a follow-up survey, carried out in in 2021 by BritainThinks for the TUC, to two surveys carried out by the University of Hertfordshire in association with the European Foundation for Progressive Studies, UNI Europa and the TUC with Ipsos MORI in 2016 and 2019.²⁶

These earlier surveys showed a strong growth in the numbers of UK workers working for online platforms, with nearly doubling during this relatively short period. Not only was work for online platforms increasing rapidly, so too were the digital management

²⁶ See Huws, U, Spencer, N H, & Coates, M (2019). *Platform Work in the UK 2016-2019*, Foundation for European Progressive Studies. And Huws, U, Spencer, N H & Coates, M (2019). *The Platformisation of Work in Europe: Results from research in 13 European countries*, Foundation for European Progressive Studies.

Technical note

This document reports on the analysis of a July 2021 survey of 18 to 75-year-olds in England and Wales. The target population for the survey was individuals in work and those who had lost their employment as a result of the Covid-19 pandemic. The question responses analysed here concern online activity, undertaking platform work and using the services of platform workers. The data from the 2021 survey are presented alongside results of surveys undertaken in the UK in 2016 and 2019 by the University of Hertfordshire in association with the European Foundation for Progressive Studies (FEPS) in collaboration with UNI Europa and the TUC. As the target populations for these earlier surveys were drawn more widely than that for the 2021 survey, the samples obtained in 2016 and 2019 have been trimmed in order to align the three surveys as closely as possible. As a result, the figures presented in this report for the 2016 and 2019 surveys will not match those published for these surveys elsewhere.

The samples from the 2016 and 2019 surveys were reduced in size in order to only cover England and Wales rather than the whole of the United Kingdom and the age range was reduced from 16 to 75 to 18 to 75. In addition, those respondents who reported they were "Unemployed and not looking for a job/Long-term sick or disabled", a "Full-time parent, homemaker", "Retired" or a "Student/Pupil" were excluded to better match the scope of the 2021 survey. Those in the 2016 and 2019 surveys who reported they were in full-time, part-time or self-employment or "Unemployed but looking for a job" were retained in the sample analysed, the latter category because the vast majority of these would have been unemployed for less than 16 months, approximating the inclusion of those who had lost their job since the March 2020 start of the pandemic in the July 2021 survey. In the analyses, the 2016 and 2019 surveys are weighted to better reflect the general population and the 2021 survey is similarly weighted to better reflect its target population. Differences attributable to the different survey methodologies are likely to be slight.

practices associated with platforms, a trend we described as ‘platformisation’. Workers who did *not* work for online platforms were reporting growing requirements to use a digital ‘app’ or website to be informed of new tasks or to record the hours they had worked. They were also more likely to be communicating digitally with managers or colleagues from their homes.

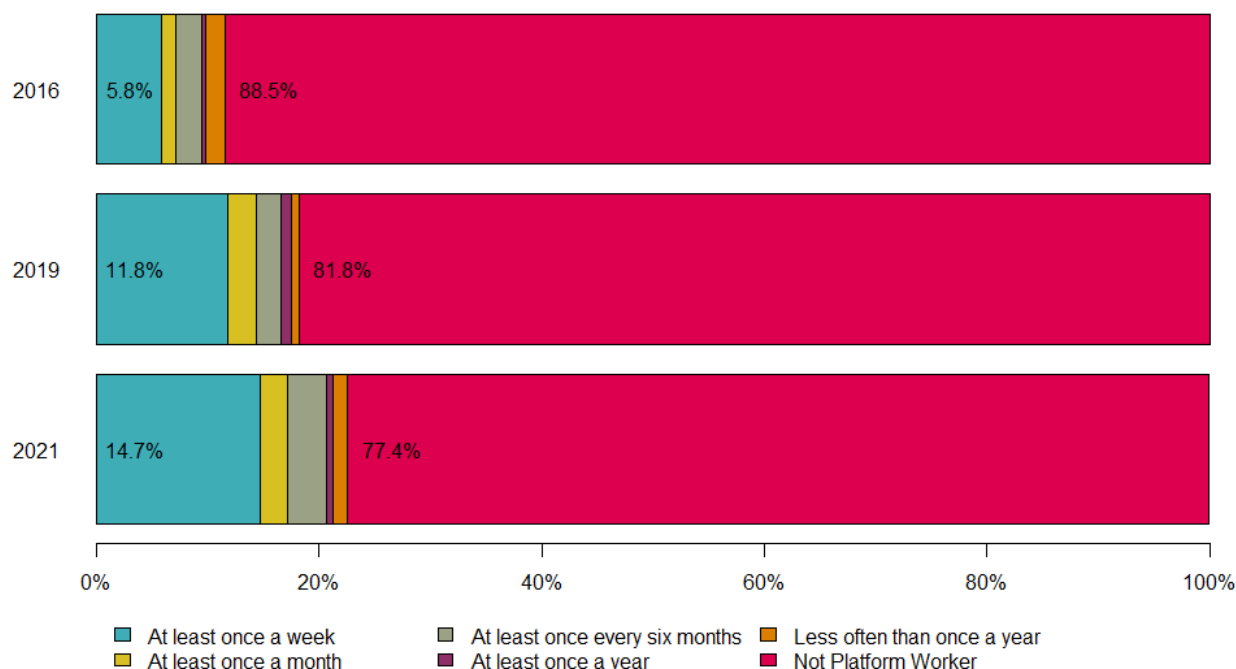
How these trends would be impacted by the advent of the Covid-19 epidemic which arrived in early 2020 was difficult to predict. It seemed likely that the growth in online ordering of goods during lock-down might lead to a growth in platform-enabled delivery work, but might the reduction in travel lead to a reduction in platform-based ride-hailing services? Might the widespread use of furlough schemes lead to a reduction in other types of home-based platform work, or, on the contrary, might homebound workers turn to online platforms for additional sources of income? And how might other kinds of internet-based income generating activities be affected?

The opportunity to repeat some of the same question in the 2021 survey carried out by BritainThinks for the TUC provided a welcome opportunity to address some of these questions, which are examined in the remainder of this report.

Trends in platform work

One striking finding from these results is that there has been a considerable increase in platform work, continuing previous trends. People in England and Wales who said that they performed work they had found via an online platform at least once a week grew from 5.8 per cent of the working population in 2016 to 11.8 per cent in 2019, rising to 14.7 per cent in 2021. Meanwhile, those who had never worked for a platform fell from 88.5 per cent in 2016 to 81.8 per cent in 2019 to 77.4 per cent in 2021. Between a fifth and a quarter of the working population can thus be said to have some experience of platform work.

Platform work in 2016, 2019, 2021



Source: Ipsos MORI in 2016 ($n = 1359$) and 2019 ($n = 1347$) and BritainThinks in 2021 ($n = 2201$)

This continuing growth was by no means confined to delivery work, as might have been anticipated. On the contrary, it was found across all types of platform work.

Here, we distinguish four types of platform work. The first of these is driving and delivery work, grouped together because of strong overlaps between these forms of work, for instance with drivers working for platforms such as Uber providing both taxi services and food delivery services. The proportion of the working population carrying out this type of work grew dramatically from 1.9 per cent in 2016, to 6.1 per cent in 2019, rising to 8.9 per cent in 2021.

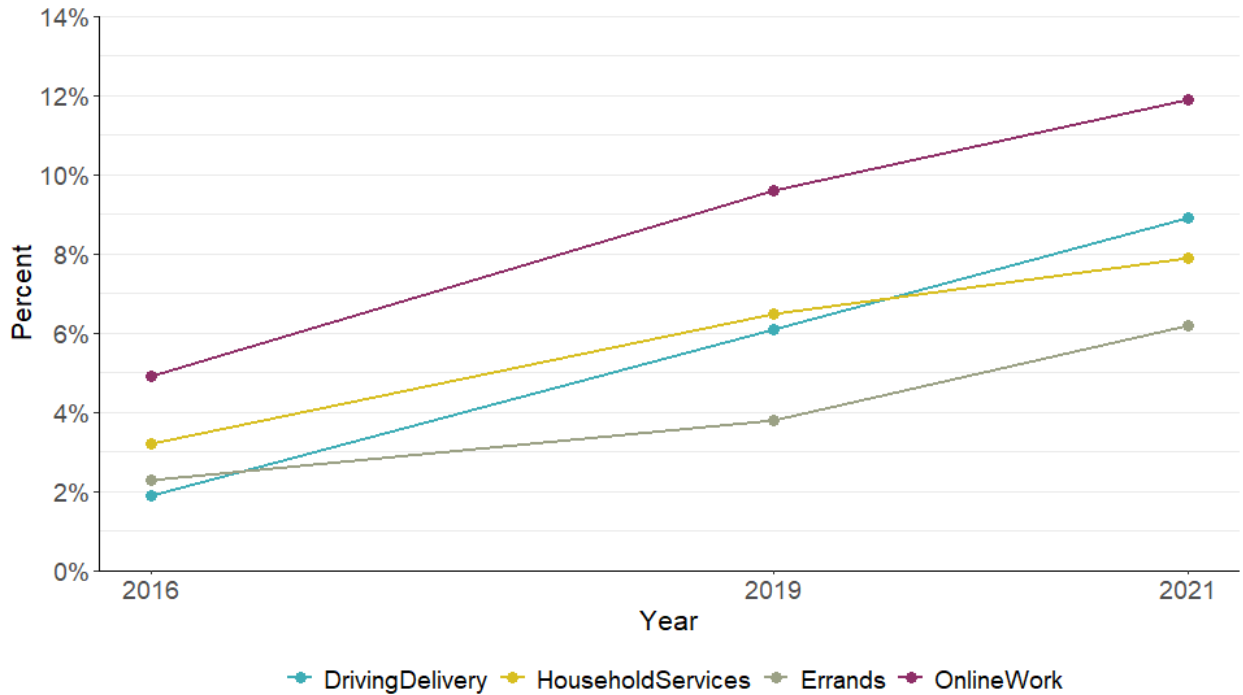
Platform work involving the provision of household services (previously a larger category) rose from 3.2 per cent in 2016 to 6.5 per cent in 2019 to 7.9 per cent in 2021.

There was also a growth in platform work involving running errands from 2.3 per cent in 2016 to 3.8 per cent in 2019 and to 6.2 per cent in 2021.

Still the largest category of platform work was online work involving digital tasks carried out remotely. This covers a large spectrum of work ranging from very low-skilled 'click work' at one extreme to highly-skilled professional, technical or creative work at the other. Here, the proportion of workers doing this type of work at least weekly grew from 4.9 per cent in 2016 to 9.6 per cent in 2019 to 11.9 per cent in 2021.

It should be noted that many platform workers do more than one type of platform work so there are overlaps between these categories.

Engaging in Platform work at least weekly in 2016, 2019, 2021

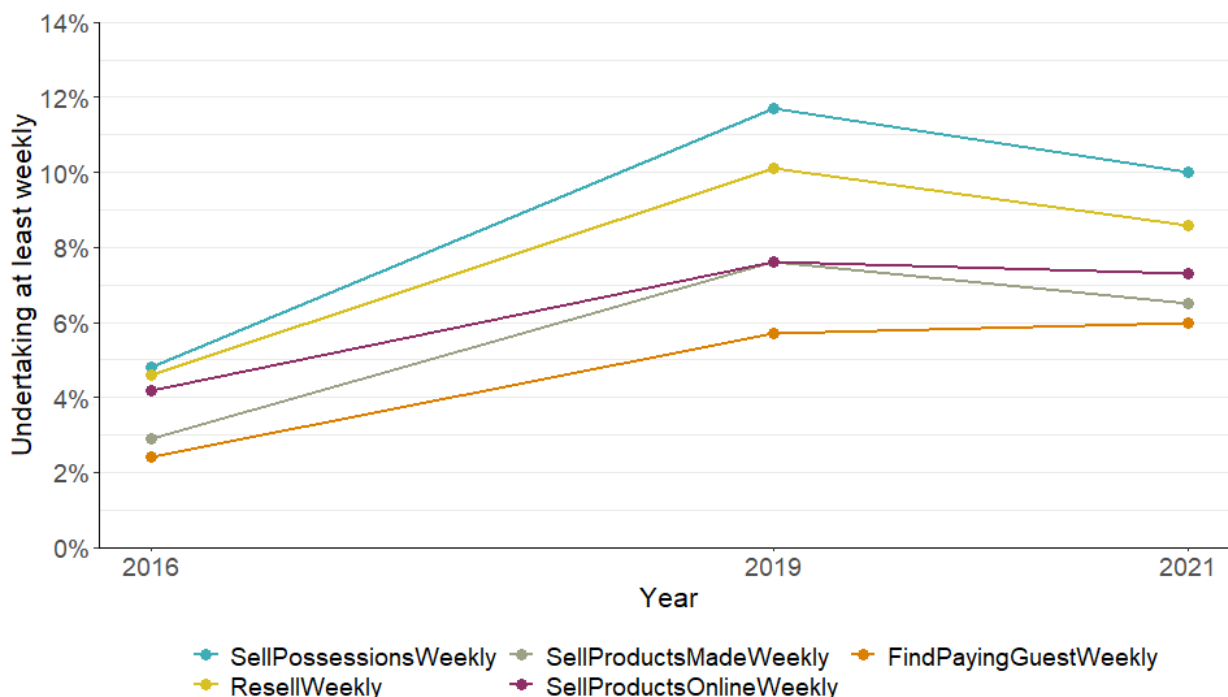


Source: Weekly platform workers from Ipsos MORI in 2016 (n = 77) and 2019 (n = 152) and BritainThinks in 2021 (n = 324)

This growth in platform working during the pandemic is all the more remarkable in a context in which other forms of income generation from online sources declined or remained static during the period covering the pandemic.

After an increase from 2016 to 2019, there was a slight decline in the proportions selling their possessions/belongings, reselling products, selling products they made personally or selling products on their own website. There was a very small, statistically insignificant, increase in those finding paying guests via platforms such as Airbnb between 2019 and 2021.

Figure 1: Selling online and finding guests online in 2016, 2019, 2021



Source: Ipsos MORI in 2016 (n = 1359) and 2019 (n = 1347) and BritainThinks in 2021 (n = 2201)

The turn to platform work by large numbers of workers cannot therefore be explained simply as a search for additional means of supplementing income via the Internet.

Further research will be required to investigate the motivations of the new platform workers, but the evidence points to this being a major labour market trend in England and Wales, with platform work perhaps being taken up as one of the forms of work most readily accessible to job seekers.

It is interesting to note that the growth in platform work is overwhelmingly made up of people reporting doing so at least once a week (see 0, a tabular form of 0). The numbers doing occasional platform work remained largely stable between 2019 and 2021, with a slight drop in people doing platform work ‘at least once a month’ and ‘at least once a year’ and a small drop in those doing so ‘at least once every six months’.

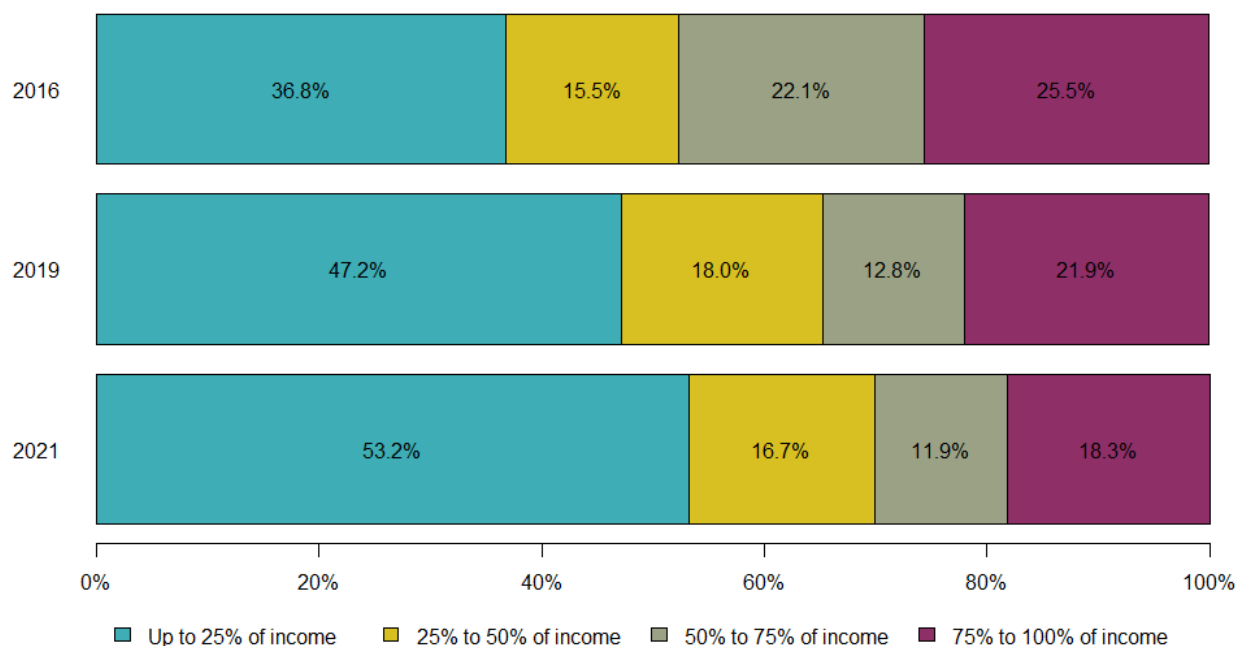
Platform work in 2016, 2019, 2021

	Platform work in 2016	Platform work in 2019	Platform work in 2021
At least once a week	77 (5.8%)	152 (11.8%)	324 (14.7%)
At least once a month	17 (1.3%)	33 (2.6%)	54 (2.4%)
At least once every six months	30 (2.3%)	28 (2.2%)	76 (3.5%)
At least once a year	5 (0.4%)	11 (0.9%)	14 (0.6%)
Less often than once a year	24 (1.8%)	8 (0.7%)	29 (1.3%)
Not Platform Worker	1182 (88.5%)	1049 (81.8%)	1704 (77.4%)
Total	1336 (100%)	1281 (100%)	2200 (100%)

A main job or a supplement to other forms of income?

Because of the relatively small numbers of occasional platform workers, we focus in this essay on those who undertake platform work at least once a week. Here we find that, despite the increase in frequency, platform work remains an activity that is used to top up other forms of income rather than constituting the main source of earnings. In fact, the data show an increase over time in the proportion for whom platform work only makes up 25 per cent or less of their income.

Percentage of income provided by platform work in 2016, 2019, 2021 for those undertaking platform work at least once a week



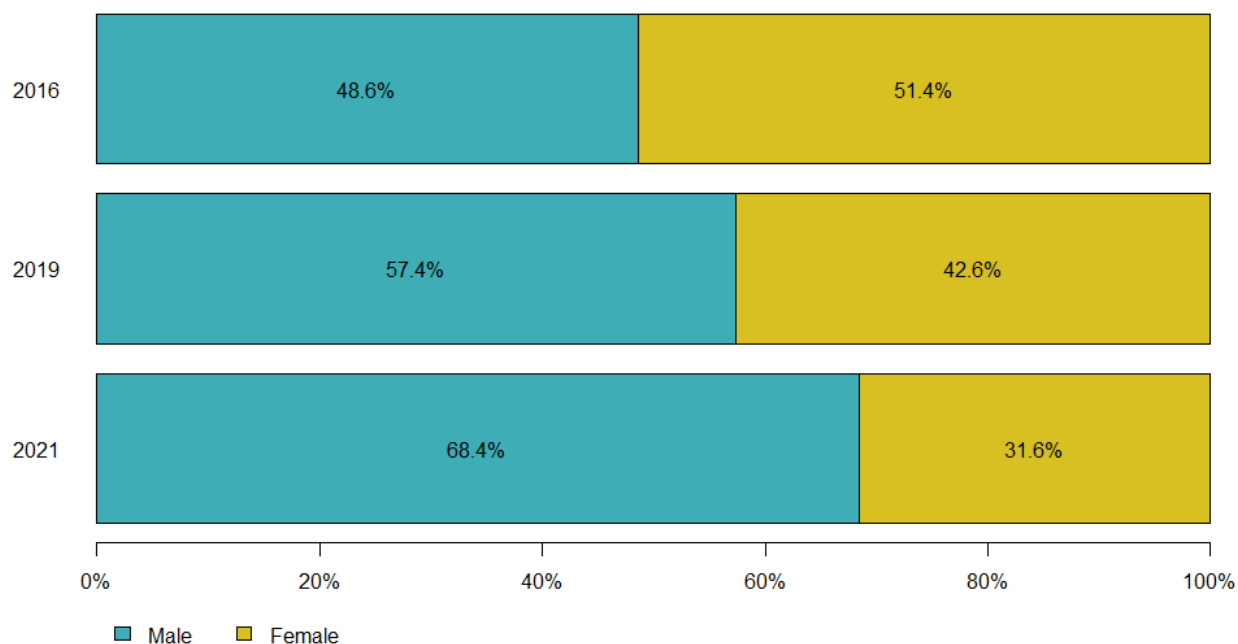
Source: Weekly platform workers from Ipsos MORI in 2016 (n = 77) and 2019 (n = 152) and BritainThinks in 2021 (n = 324), "Don't know" and refusals omitted

Gender of frequent platform workers

Our results show that there has been a striking change in the gender balance among those doing platform work at least once a week. From being almost equal in 2016 (with a slight preponderance of women) it is becoming an increasingly male activity, with men now making up more than two thirds of the platform workforce. In 2016 men made up 48.6 per cent of frequent platform workers. By 2019 this had risen to 57.4 per cent and by 2021 to 68.4 per cent.

The reasons for this change remain speculative but one possible explanation may be the particularly strong growth in driving and delivery work, which is rather more male-dominated than other forms of platform work. It is also possible that the unequal gender division of labour in the home may have played a part during lockdown, with women taking on the primary responsibility for home-schooling children and housework and thus having less time available to seek paid work.

Gender of those undertaking platform work at least once a week in 2016, 2019, 2021



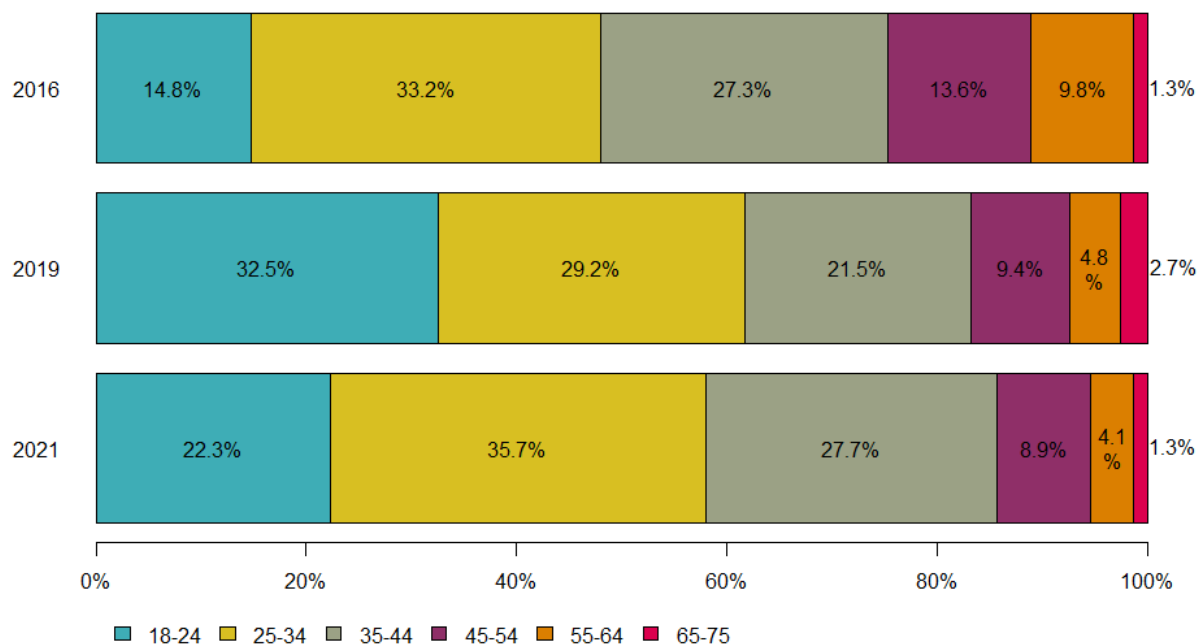
Source: Weekly platform workers from Ipsos MORI in 2016 (n = 77) and 2019 (n = 152) and BritainThinks in 2021 (n = 324)

Age of platform workers

While undertaking platform work at least once a week had swung to younger ages between 2016 and 2019, by 2021 the pattern had reverted somewhat. There was a decline in the number of over 45s, but also in the youngest (16-24) age group, with the

largest growth among those aged 25-44. The drop in the youngest age category might reflect the fact that students were less available as platform workers during lockdown.

Age of those undertaking platform work at least once a week in 2016, 2019, 2021



Source: Weekly platform workers from Ipsos MORI in 2016 (n = 77) and 2019 (n = 152) and BritainThinks in 2021 (n = 324)

Trends in digital management

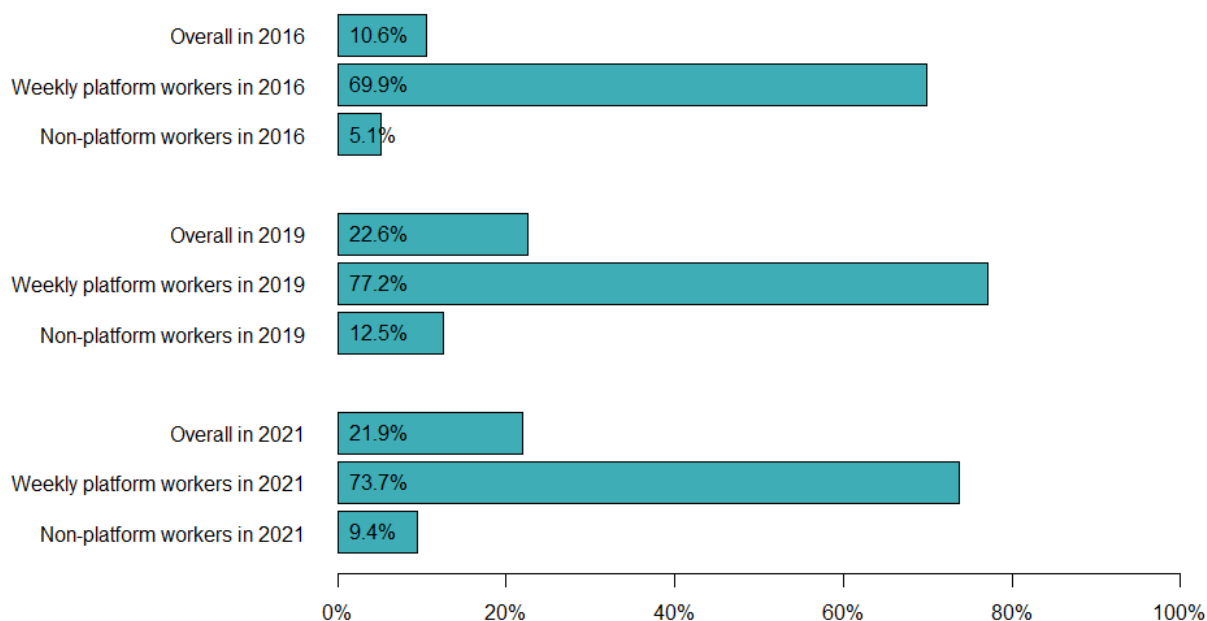
A unique feature of this series of surveys is their ability to capture details, not just of whether or not individuals are working for online platforms but also whether their work features some of the digital management practices associated with online platforms. Our previous surveys, carried out in 2016 and 2019, found that these practices extend across the UK workforce, affecting many workers beyond those who work directly for platforms in a phenomenon we described as ‘platformisation’.

In this section we compare the prevalence of some of these digital management practices among frequent platform workers and non-platform workers.

Use of apps to be notified when work is available

Between 2016 and 2019, the use of an ‘app’ to be notified when work is available more than doubled overall, from 10.6% to 22.6% of the working population. By 2021 this growth trend had stopped, with a slight fall (to 21.9%) overall.

Use an 'app' provided by your employer or client to notify you when there is work available in 2016, 2019, 2021

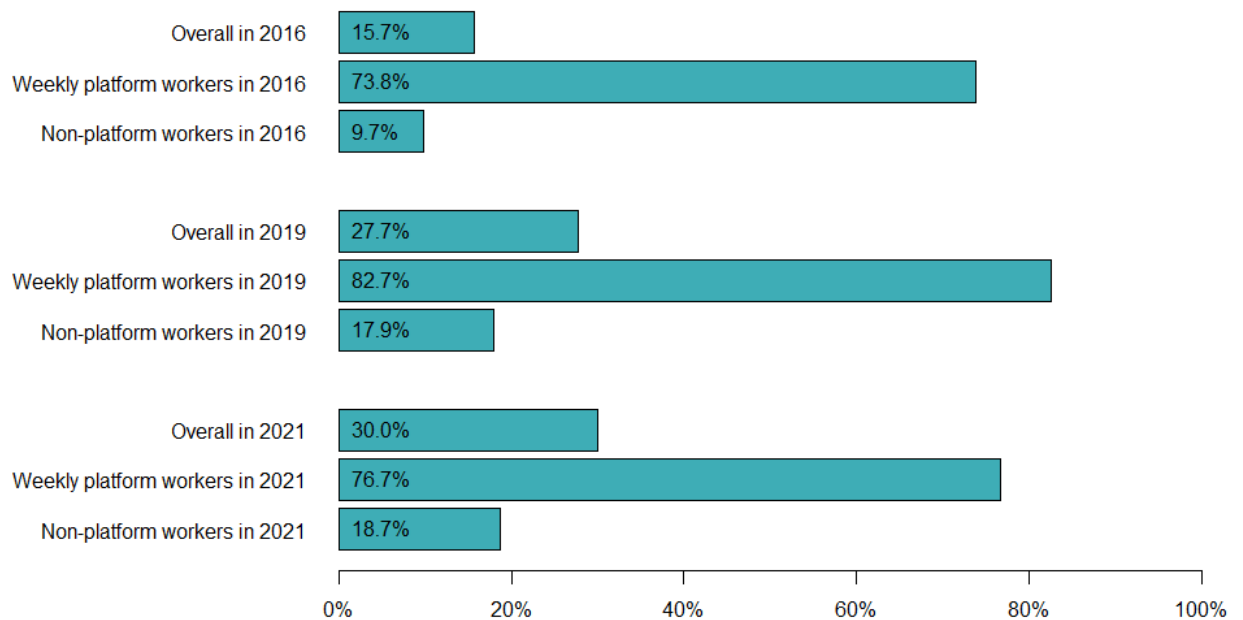


Source: Ipsos MORI in 2016 (n = 1359) and 2019 (n = 1347) and BritainThinks in 2021 (n = 2201)

Use of apps for logging work done

Another practice was the use of specialised 'app' or website to log work done. This saw increases from 2016 to 2019 and 2019 to 2021. There was a slight fall among frequent platform workers (from 82.7 per cent in 2019 to 76.7 per cent in 2021) but a continuing growth among non-platform workers. Three out of every ten workers in England and Wales can now be said to have to fill in 'online time sheets'. While the proportion is higher (at over seven out of ten) among platform workers, it is still significant (at nearly two out of ten) among workers who do *not* work for online platforms.

Use a specialised 'app' or website to log your work in 2016, 2019, 2021 by frequent platform working or not



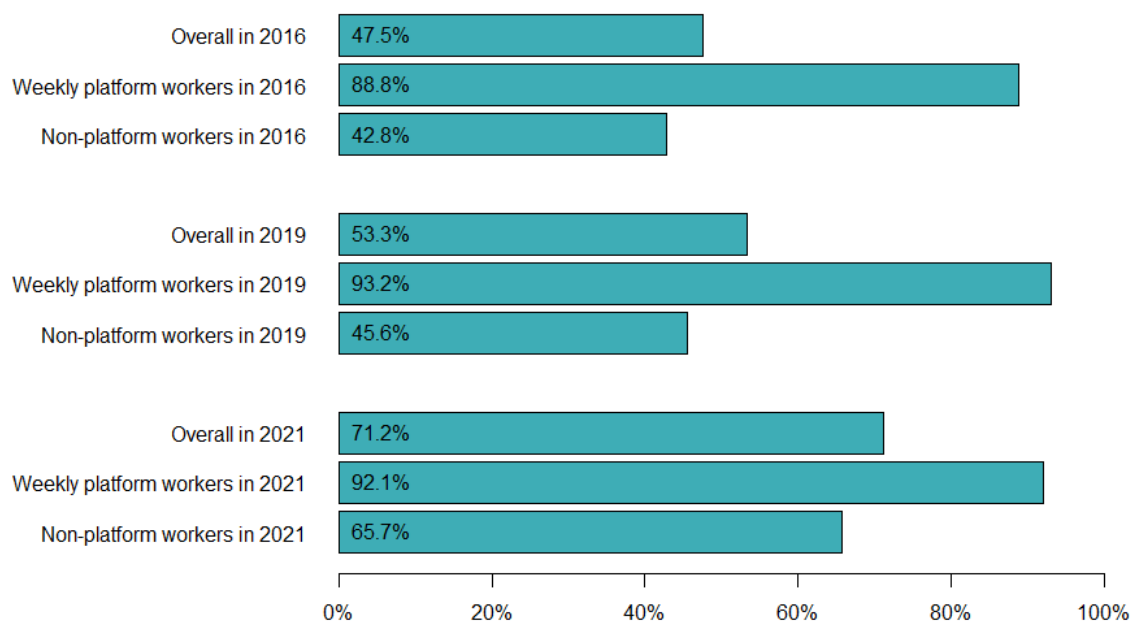
Source: Ipsos MORI in 2016 (n = 1359) and 2019 (n = 1347) and BritainThinks in 2021 (n = 2201)

Sending/receiving work-related texts and emails from home

These examples of digital management practices spreading across the workforce must be placed in a broader context of digitally-enabled remote working – a practice which became more widespread under lockdown conditions in 2020 and 2021.

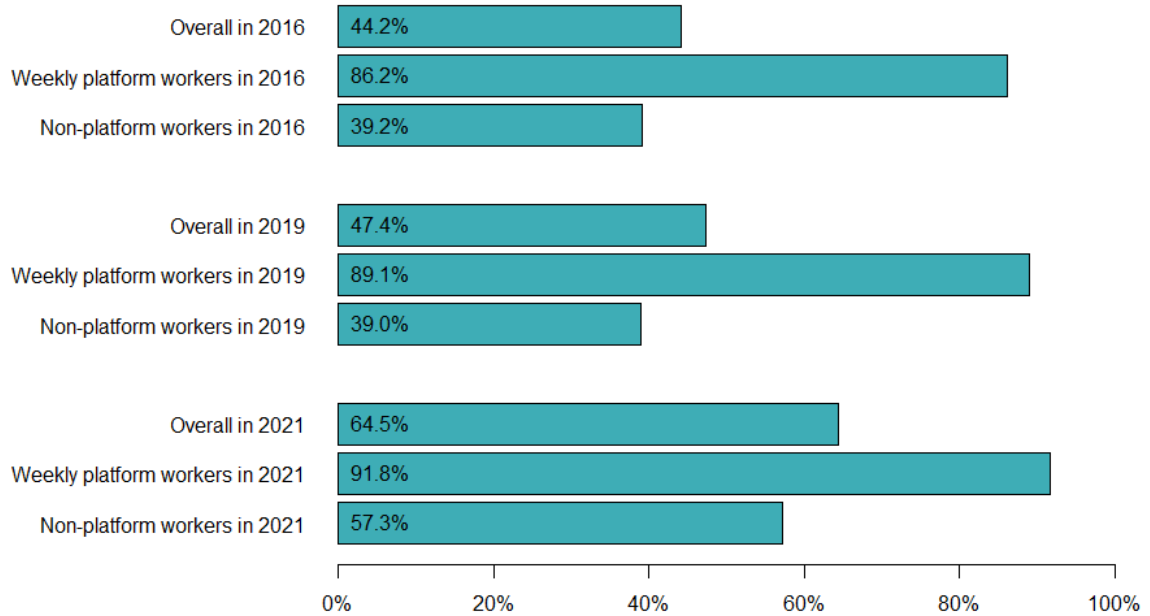
Unsurprisingly our data show that, although little changed between 2016 and 2019, instances of sending/receiving emails and texts/instant messages while at home showed higher levels in 2021. Its frequency amongst frequent platform workers rose between 2016 and 2019 but stayed at similar levels in 2021 whereas amongst non and less regular platform workers almost no change between 2016 and 2019 was followed by a much greater rise in 2021.

Send or receive emails from your employer or client while at home in 2016, 2019, 2021



Source: Ipsos MORI in 2016 (n = 1359) and 2019 (n = 1347) and BritainThinks in 2021 (n = 2201)

Send or receive texts or instant messages from your employer or client while at home in 2016, 2019, 2021



Source: Ipsos MORI in 2016 (n = 1359) and 2019 (n = 1347) and BritainThinks in 2021 (n = 2201)

Use of online platforms

The growth in platform work cannot be understood without an insight into trends in the demand for platform services. Our surveys also provide information on this, providing some clues as to the way in which this demand may have changed during the pandemic. This in turn casts light on the question whether the trends captured in the survey are a continuation of existing growth patterns or an exceptional historical blip associated with lockdown conditions.

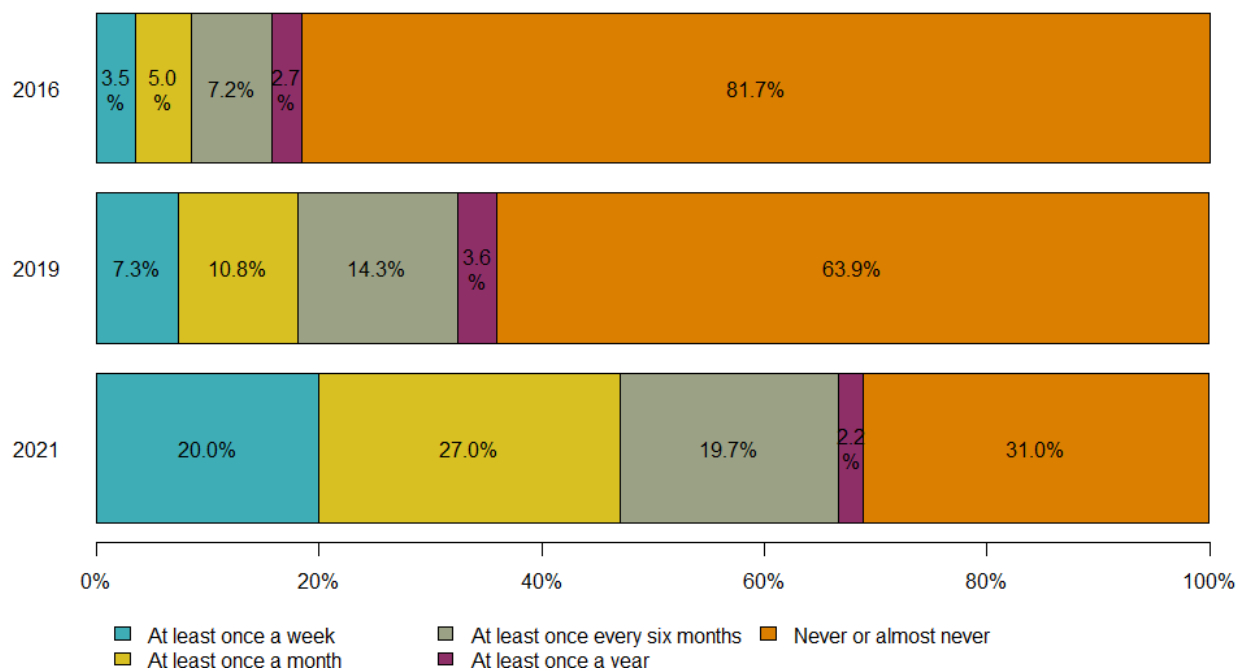
Driving and delivery services

As might be expected, we can see a distinct increase in the use of delivery services from 2019 to 2021 after a more modest increase from 2016 to 2019²⁷. Whereas in 2016 only 3.5 per cent of workers reported using these services via an app or website at least once a week, with 5 per cent doing so at least monthly, by 2021 20 per cent were doing so weekly and 27 per cent monthly, with the majority of this growth taking place since 2019 (when the comparable figures were 7.3 per cent and 10.8 per cent).

²⁷ The question about delivery services such as Uber Eats and Deliveroo was not asked directly in the same way in 2016 or 2019, so some caution must be exercised in making direct comparisons.

The proportion who had never done so fell from 81.7 per cent to 31 per cent over the same period.

Find a taxi or delivery service using an app or website or order a delivery using an app or website (latter specified in 2021 only)



Source: Ipsos MORI in 2016 (n = 1359) and 2019 (n = 1347) and BritainThinks in 2021 (n = 2201)

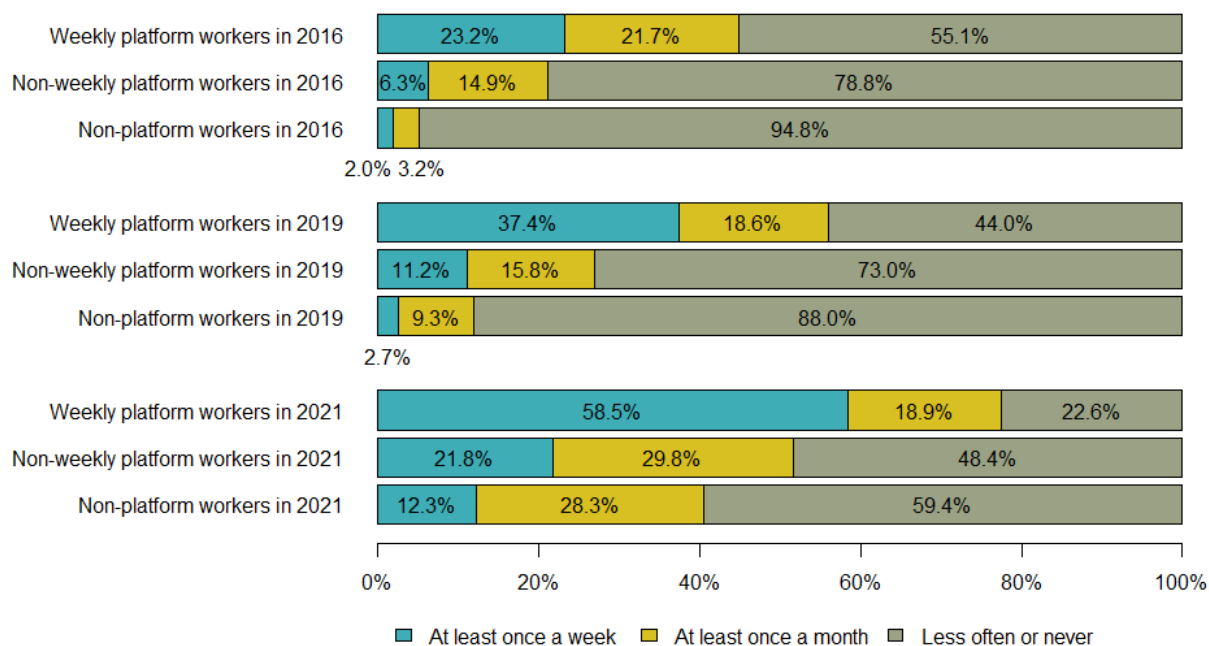
Breaking these figures down reveals a surprising difference among workers. Those who are themselves platform workers are considerably more likely also to be users of driving and delivery platform services, in a trend that appears to have been strengthening over the five-year period covered by the three surveys.

In 2016, 23.2 per cent of workers who worked for online platforms at least weekly said that they used taxi or delivery apps at least once a week, compared with only 2.0 per cent of those who never worked for platforms or 6.3 per cent of those who did so only occasionally. In 2019 the comparable proportions were 37.4 per cent, 2.7 per cent and 11.2 per cent. By 2021 this had grown to 58.5 per cent, 12.3 per cent and 28.3 per cent. We have suggested elsewhere²⁸ that this huge discrepancy can most plausibly be explained by the extreme time poverty that prevails in the households of platform

²⁸ See Huws, U, Spencer N H & Coates, M (2019). *The Platformisation of Work in Europe: Results from research in 13 European countries*, Foundation for European Progressive Studies; Huws, U (2019) 'Changing world of work and gender equality: work-life balance, household labour and the platform economy' in Crowley, N & Sansonetti, S (eds) *New Visions for Gender Equality, 2019*: 29-33; Huws, U. (2019). The Hassle of Housework: Digitalisation and the Commodification of Domestic Labour', *Feminist Review*, 123: 8-23

workers, most of whom, as we have seen, are combining platform work with some other form of income generation.

Find a taxi or delivery service using an app or website or order a delivery using an app or website (latter specified in 2021 only) by intensity of platform work



Source: Ipsos MORI in 2016 (n = 1359) and 2019 (n = 1347) and BritainThinks in 2021 (n = 2201)

Other services

Similar, but less extreme, patterns were found in relation to platform-based services provided in the home and remotely. However, because of relatively small numbers, these results must be interpreted with caution and we have not included them here.

Conclusions

These results point to a major structural shift in the labour market in England and Wales over the past five years with a continuing growth not only in the proportion of workers turning to online platforms to provide them with supplementary income but also in the spread of digital management practices across the rest of the workforce.

It appears that the specific circumstances surrounding the pandemic (most notably the impact of national lockdowns) has shaped and accelerated these trends in some ways, for example by encouraging the growth of online delivery platforms and increasing the propensity of workers to communicate remotely with employers and clients by email or other electronic means. Nevertheless, the majority of the trends observed can be seen as continuations of existing trends that were set in motion in the mid-2010s,

which have continued to develop with very little distortion from the pandemic conditions.

The platform workforce is diverse, but increasingly male-dominated and concentrated in the 25-44 age group. The majority of platform workers do so to top up other forms of income rather than as a main job. The evidence suggests that this leads to exceptionally long working days, leaving them time-poor and thus much more reliant than other workers on purchasing online services in the market. This helps to create a vicious cycle in which time poverty interacts with financial poverty to drive the further expansion of online platforms.

These trends have major implications for trade unions. Not only are they faced with new challenges in how to organise and represent platform workers. The spread of digital management practices to other parts of the workforce also creates a need for a new agenda of demands to protect workers in the age of algorithmic management.

1. In the courts

Uber: cutting the Gordian Knot of substitution clauses – Prof Alan Bogg and Prof Michael Ford QC, Bristol University

Long ago the courts decided that an employment contract requires personal service. More recently, it has become an orthodoxy that this requirement can be defeated by a valid substitution clause with a wide power to use substitutes (allowing the worker to pass the work to another person).

The same approach has been read across to ‘worker’ status - which gives access to some limited statutory rights such as paid holidays although far short of those accorded to an employee - and to the wide concept of employment in the Equality Act. This is because the various statutory definitions all refer to contracts under which an individual undertakes to “perform personally any work or services” for the other party. Drawing on the cases concerned with the common law contract of employment, the courts have decided that a wide “unfettered” substitution clause is inconsistent with such an obligation to work personally.

The prize for an employer of a carefully crafted substitution clause is, therefore, very valuable: no minimum wage, no discrimination claims, no working time limits or holiday pay, no unfair dismissal or redundancy rights – in fact, no employment rights of any kind.

To date, the courts have struggled to address the legal problems of substitution clauses. The cases draw distinctions which are often hard to rationalise, so that the meaning and effect of clauses is not always easy to predict even for experts in the field. But, as a crude summary, two things stand out. One is that employers’ lawyers often include such terms in written contracts because they have the potential to shut the door on all employment rights. The second is that, where clauses have been litigated, the courts have often held that they succeeded in blocking claims.

To what extent does the recent Supreme Court judgment in Uber lead to a reappraisal of personal work and substitution clauses and the cutting of this Gordian Knot?

Uber itself did not address the issue of personal work specifically. There were no substitution clauses in the Uber contracts, perhaps because the business model is highly dependent upon disciplinary control through personal ratings by customers. Nevertheless, we think that the Uber judgment has wider implications for all elements of the legal tests for employment status, including personal work, and this is as true for employees as it is for workers.

Current law

Before we consider the impact of Uber, it is worth recounting the current law on personal work and substitution clauses.

Probably the case which started the trend was *Express Echo v Tanton* in 1999. Mr Tanton worked as a driver picking up and delivering newspapers in Devon. His written contract said that if he was “unable or unwilling to perform the services personally”, then he was to arrange for “another suitable person to perform the services”. Mr Tanton used the clause for six months while he was sick and on some other occasions. The Court of Appeal quickly dismissed his claim for a redundancy payment. According to Peter Gibson LJ, the clause was a “remarkable” one to find in a contract of employment and was “wholly inconsistent” with employee status.

In many ways, *Tanton* is a very unsatisfactory decision. Mr Tanton, the applicant, appeared in person. The Court of Appeal barely scratched the surface of the case-law. When Mr Tanton tried to explain that was forced to work on two days even though he was sick, because the substitute could not work those days – highly relevant to a duty to work personally - the Court of Appeal quickly dismissed this as an attempt to introduce new evidence which did not, in any case, detract from the substitution clause being a term of the contract. But despite its small beginnings, *Tanton* soon spawned other cases following its logic and it did not take lawyers long to appreciate the great potential of substitution clauses.

The latest case to consider such clauses was the Supreme Court in [Pimlico](#).²⁹ Lord Wilson accepted that Mr Smith had the right to substitute another Pimlico operative in a wide range of circumstances, not limited to when he was unable to do the work but including when he found more lucrative work elsewhere. Although Lord Wilson declined to rewrite the statutory test, his formulation of the relevant question came very close to doing just that:

“But there are cases, of which the present case is one, in which it is helpful to assess the significance of Mr Smith’s right to substitute another Pimlico operative by reference to whether the dominant feature of the contract remained personal performance on his part.”

In light of the other provisions of the contract which were addressed to Mr Smith personally, and the restriction of the substitution clause to other Pimlico operatives, Lord Wilson concluded the tribunal was entitled to find Mr Smith was a ‘worker’ (and, therefore, was ‘employed’ for the purpose of the Equality Act).

A focus on whether the “dominant feature” of the contract is personal performance by the individual probably reduces the potential for substitution clauses to negate employment protection. Despite this, the Pimlico approach appears to have had a limited impact. The problem was that, although Lord Wilson talked of whether personal performance was the “dominant feature”, he also appeared to endorse the early cases, including *Tanton*.

The result was that substitution clause continued to work their magic post-Pimlico. Most notoriously, where Deliveroo riders sought union recognition, the company introduced new contracts with a wide substitution clause. The Central Arbitration Committee (CAC) held that a wide substitution clause defeated worker status under s. 296 of the Trade Union and

²⁹ Pimlico [2018] UKSC 29 www.supremecourt.uk/cases/uksc-2017-0053.html

Labour Relations (Consolidation) Act 1992³⁰ and, to date, the ruling of the CAC has survived a challenge in the High Court, though an appeal to the Court of Appeal has yet to be decided.

How does the Uber case change things?

Might Uber make a difference to the judicial approach to substitution clauses in cases like Deliveroo?

In *Uber* Lord Leggatt referred to an earlier case *Autoclenz*, which concerned 'sham' written contracts the terms of which were different from the reality of working practices. For Lord Leggatt, the statutory dimension to the employment status enquiry is now the crucial matter:

"Critical to understanding the Autoclenz case, as I see it, is that the rights asserted by the claimants were not contractual rights but were created by legislation... In short, the primary question was one of statutory interpretation, not contractual interpretation."

In short: what did Parliamentarians intend the law to do? What was its purpose?

This entailed an approach, in which the question is whether legislation aimed at protecting workers, was intended to apply to the relevant relationship, viewed realistically. This test demotes the written terms to the background. Rather than seeing whether the person is an employee or worker based on the written terms, it invites tribunals to step back and look at the facts, to determine whether the individual is vulnerable to exploitation and in need of statutory protection.

We consider that this same purposive analysis should inform the application of all the relevant criteria for defining employment status, including the undertaking to do any work personally.

Furthermore, it should apply to the personal work requirement for employees as much as workers and the wider concept of employment in the Equality Act: there is no suggestion in *Uber* that the purposive approach is confined to workers.

It is possible some cases involving substitution clauses might now be addressed through the statutory prohibitions on "contracting out" of employment rights. You can't give up rights that legislation says you should have; and, stepping back and looking at the bigger picture, the occasional use of a substitute doesn't seem to have much relevance to whether someone is an employee or worker.

One means of attacking at least some substitution clauses would be to treat them as unlawful attempts to contract out of rights. In some of his observations Lord Leggatt suggests that where the object of the relevant clauses was to exclude or limit statutory protections, the 'contracting out' prohibition will be triggered.

Would this approach render void a clause, the object of which was to exclude statutory protection, but which is not contradicted by the facts on the ground? A good example is

³⁰ CAC Outcome: IWGB Union & Rooffoods Limited t/a Deliveroo
www.gov.uk/government/publications/cac-outcome-iwgb-union-rooffoods-limited-ta-deliveroo

Deliveroo itself, where it appears the substitution clause was introduced to prevent the riders being workers for the purpose of statutory recognition, where the clause was in fact only used by very few riders, and where its introduction hardly changed the substantive nature of the overall relationship. .

Because the clause had been operated in practice, the CAC felt it could not hold it to be a “sham”. It is plausible, however, that Lord Leggatt’s “contracting out” argument should apply in these circumstances, where the “object” of the inclusion of the term was to exclude statutory protections.

But there is a second means of challenge. Even in situations where it is not clear that the employer’s “object” is to exclude statutory employment rights, following Uber it will be necessary to view the whole relationship “purposely” and “realistically” in light of the facts on the ground to see if the statutory provisions were intended to apply to it.

To date, the case law on substitution clauses has examined them in isolation from the wider contractual context, assessing the extent to which the worker’s power to designate substitutes has been fettered by the clause. We think this is where the approach went wrong in *Tanton* and still goes wrong. It has led to tribunals focusing on whether the clause is “unfettered”, whereas the better question is whether the relationship, viewed realistically, meant that the individual claiming to be a worker owed no obligation *ever* to do the work him- or herself.

Even after the Supreme Court in *Pimlico Plumbers* suggested a more holistic question, of whether the dominant feature of the relationship remained personal service despite a right to substitute, the case-law has continued to examine the minutiae of the clauses and their operation, in isolation from the overall work arrangement.

Uber, with its emphasis at looking at the protective purpose of employment rights and its focus on the factual relationship, points the way to a reappraisal of the approach in the case law. Following Uber, we suggest that a substitution clause could be relevant in two ways.

The first is to establish whether someone is a genuinely independent entrepreneur operating his or her own business, and hence not vulnerable to the exploitation against which employment legislation is intended to protect. Here the clause is no more than an element in a much bigger picture, assessing the individual’s vulnerability to exploitation and whether statutory protection is warranted by the facts. Where a worker has a wide power to employ substitutes to do the work, this *may* support a finding that she is an independent entrepreneur not needing statutory protection. But it is no more than one piece in a much bigger jigsaw; it is not, to mix our metaphors, the keystone to all employment rights.

Additionally, there is the narrower issue for limb (b) workers that the clause might mean that the individual owed no obligation to do “any work” personally and so failed to meet this specific element of the statutory definition. Here too the clause needs to be viewed realistically and against the backdrop of the purpose of legislation. But the focus is now on whether, looked at realistically, the relationship was one in which the parties contemplated the individual never doing any work personally. On that approach, Mr Tanton may well have been an employee, just as Mr Smith was a worker.

Supporting such an interpretation is another aspect of Uber, holding a worker's contract existed while drivers were logged onto the app because they were then subject to an obligation to accept some minimum amount of work.

Once more, Deliveroo serves as an example for applying the Uber approach to substitution clauses. The riders had no influence over the written contractual terms and delivery fees were fixed by the company.

This context should inform the determination that the riders were not independent entrepreneurs but instead in a relationship of subordination and dependence, and so within the intended scope of the statutory protections.

The existence of written substitution clauses may sometimes be a factor pointing towards autonomy and independence; but in Deliveroo it should be accorded little weight given how rarely it was exercised by the workforce, the wider context of contractual inequality and the fact that it appears the clause was introduced deliberately to get round worker status.

Nor does the fact that the clause was on a very few occasions exercised in practice mean riders owed no obligation to perform any work personally. The question after Uber is whether, viewed realistically, this was a relationship in which the individual riders were free never to do any work personally and could have provided services exclusively via a substitute.

In Deliveroo, the substitution clause should never have been treated as determinative in negating worker status under domestic law. It was introduced into the written contracts with the 'object' of avoiding statutory rights.

It is absurd to think that it would have been in the parties' reasonable contemplation that the rider would never make a delivery personally. The addition of a substitution clause had, it seems, almost no effect on the way the riders operated on the ground. There was no evidence of any rider who used a substitute more than occasionally; none used a substitute to deliver all the services.

While it is not clear whether in Deliveroo the Court of Appeal will be able to consider these arguments – permission to appeal was only granted on the narrower ground of Article 11 of the ECHR - Uber provides the way for cutting the Gordian Knot of personal work, and for finally interring substitution clauses as the weapon of choice by 'armies of lawyers' drafting written contracts to avoid statutory rights. It is vital that trade unions are bold and exploit the full potential of Uber's purposive approach.

2. Using data to build collective power

How to use worker data trusts – James Farrar, Worker Info Exchange

The recent Supreme Court ruling³¹ in favour of Uber drivers is undoubtedly a significant step forward for worker rights in the gig economy. However, it would be a mistake to think that the struggle is over: it has barely begun.

Having lost a six-year battle to stop their drivers being classified as workers, Uber has now opened a new field of conflict over when they should be recognised as protected workers.

Contrary to the Supreme Court ruling, Uber now argues that working time should only be protected from the time of dispatch to drop off. This means that Uber will not agree to pay waiting time which amounts to around 40 per cent to 50 per cent of total working time.

The company justifies this stance by claiming that the working practices dictated by the app have changed enough that the Supreme Court ruling based on evidence heard in 2016 would not apply in today's work context.

The unpaid waiting time in question goes to the heart of the Uber freeloader problem. Since the company is not paying waiting time, it can continue to oversupply the market and further expand its market share with incentives that are ultimately paid for by the drivers and local communities that must bear the unnecessary extra congestion.

Uber strengthens its competitive advantage further as the oversupply and under-utilisation enables an ever-faster response time.

Customers might like to think that it is cool consumer tech that has caused a car to appear within seconds of the push of a button. But it is simply old-fashioned exploitation and wage theft.

All of this is a sobering reminder of the limitations of litigation in seeking to solve one, let alone all the problems that workers experience with employers like Uber. Such platforms have enormous power over labour and they can re-configure working practices at the stroke of a key in an endless game of legal hide-the-ball to avoid their responsibilities as an employer.

And since the government has shown little or no appetite to enforce the law, workers can and must build collective power to bargain with Uber otherwise we will reel from one legal dispute instance to next to the next. The question is how to build collective power?

³¹ Uber BV and others (Appellants) v Aslam and others (Respondents) (2020) UKSC 5
www.supremecourt.uk/cases/uksc-2019-0029.html

Management by algorithm

The significance of the Uber Supreme Court ruling is that the judiciary has called time on dodgy, artificial contracts concocted by too-clever-by-half lawyers.

But this is only part of the picture: worker control in the gig economy has always been exercised by algorithmic means. There is no need for communication, training or change management – as a worker you'll figure out how to adapt to algorithmic command or you will starve. Besides there are far more workers out there than are needed.

In place of tea-and-sympathy human resources or overt performance management, there is psychological nudging and covert performance management by machine.

It is something like a workplace equivalent of the Hotel California described in that 1970's Eagles song: you are your own boss, but you'll never be free. In Uberland, a job becomes "an economic opportunity to earn", to be fired is to be "deactivated" or as another platform puts it, to be "disaffiliated". A worker is known as a "partner", and the employer becomes some sort of technology "community" curator. The absurdity of it all would be laughable if it were not so insidious and dangerous.

Quoting a previous Canadian Supreme Court case, the UK Supreme Court noted in the recent Uber case:

"The more the work life of individuals is controlled, the greater their dependency and, consequently, their economic, social and psychological vulnerability in the workplace."

Imagine then the psychological cruelty of being promised that you have autonomy in your work life but all the while intense control and surveillance over work is wielded by management from behind the digital curtain.

How to gain leverage over the platform giants

Despite wanting to give the appearance of a scrappy start up, Uber has significant financial power with a market valuation of \$113 billion which is equivalent in the UK to HSBC bank or spirits giant Diageo.

Yet, despite this immense power of capital, there is a way that workers can wield great influence at the heart of Uber's business model. They can take control of their personal data at work as is their right to do under the EU General Data Protection Regulation which, despite Brexit, is enshrined in the Data Protection Act 2018.

Data protection law is fiendishly complex but there are some basic rights that workers can immediately leverage including:

- The right to access all personal data held by the platform – for drivers this means all data personally identified with them including for example, all fares, trips, and tracking details. It also includes profiling data the platform may have compiled about them.
- The right to have an explanation of how such data is processed including the existence of automated decision making. This helps a worker understand if and how they have been subject to algorithmic management control. This might include personal profiling

used in crucial workplace decision making such as work allocation, performance management and dismissals.

- The right to challenge unfair automated decision making that cause detriment. This might include automated decisions to cause detriment in unfair work allocation, deductions from earnings or dismissals.

Worker Info Exchange's mission is to promote digital rights as means for building collective power among gig workers and their unions. There are three immediate strategies for achieving this.

1. To establish gig worker data trusts. Worker Info Exchange assists workers to make a lawful data access request and help ensure they receive a complete response. Workers can then pool that data in a data trust to immediately collectively and individually answer the following immediate questions:

- How much did I earn – over time, relative to national minimum wage, compared to others?
- How was my time utilised as measured by time en route to a job, on a revenue earning trip and time waiting for work – as measured personally, relative to others and over time?
- What was the quality and quantity of work offered to me by the platform as measured individually, compared to others and over time?

2. To increase transparency in algorithmic management. For the purposes of asserting legal worker rights, it is vital to expose hidden algorithmic control. Algorithmic management is an expression of management control over workers and as such it must be exposed to prove that a true employment relationship exists. Moreover, workers must fight for and insist on full transparency over all aspects of working practices, procedures, and controls. They must then demand a say about how and when algorithmic controls are deployed at work, especially in automated decision making.

3. To challenge automated decision making that causes detriment to workers. Increasingly, workers may face detriment at work due to unfair automated decision making. This might include dismissal for a facial recognition test failed due to faulty software. Detriment might take the form of an unfair deduction of wages not disclosed or a decision to throttle back work offered to you due to an unfair, discriminatory profile used to inform an automated work allocation decision.

It is early days, but the result of our work so far is promising. Gig workers operate individually, but they can be brought into the collective by the time-honoured means of trust, presence, communication, and shoe leather organising. The individual and collective insight that a worker-controlled data trust can provide is a powerful organising force and a catalyst for driving transformational collective workplace action.

This year we have had significant rulings in our favour confirmed in the courts in digital rights cases taken against Uber and Ola Cabs. The courts agreed that workers had the right to be represented by their trade union and that personal data at work could be accessed for the purpose of establishing a data trust.

Uber was ordered to provide the data to substantiate the decision to dismiss two drivers accused spuriously of 'fraudulent activity'. It was also told to provide the ratings for every trip to drivers. Until now ratings were only disclosed on a 500-trip rolling average even though historically ratings below 4.4 would lead to dismissal.

Ola was ordered to explain how drivers had been monitored at work by their so-called Guardian system. Ola had failed to convince the court that such information provided to workers would compromise the security of the platform. Ola was also ordered to make transparent driver profiling used in work allocation decision making including the 'earnings profile' and the 'fraud probability score'. The former would seem to indicate that historically higher earning drivers are provided greater work opportunities than those who earn less. Such automated decisions of the former could compound discrimination and cause a negative reinforcing effect. The latter is a mathematical calculation of a person's moral propensity to act, and as such it is entirely inappropriate for Ola Cabs to maintain or use such a profile in work allocation decisions.

Separately, Worker Info Exchange and the App Drivers & Couriers Union succeeded in having a court overturn an Uber algorithmic decision to dismiss six workers. We believe it is the first time a court in Europe has made such a decision. Uber had accused the six of unspecified allegations of alleged 'fraudulent activity', often a euphemism for a performance related dismissal without appeal. Five of the six in turn had their private hire license revoked by Transport for London on the back of Uber's allegations. Uber failed to defend the cases in court and so a default judgment was entered in favour of the workers. To date, two of the six have had their licensing revocation appeals considered at the Magistrates Court and both have had their licenses restored.

Despite this new front of legal action, we are at the beginning of a long road to exposing management control and building a strong collective voice for platform workers. Data lies at the heart of platform business models and winning control and transparency for workers over how their data is held and processed will catalyse the development of collective power.

Beyond the gig economy, in a rapidly digitised workplace, the same forces are also at play. In the longer run we must insist on collective framework agreements to govern the right to access our personal data at work, a say in how our personal data is used by employers. We must also have a collective settlement to govern transparency and fairness of algorithmic management of workers. For now, once again, gig economy workers are canaries in the coal mine.

3. Social partnership

Spanish delivery riders are salaried workers - Carlos Gutierrez, CCOO

On March 10, an agreement was reached on the regulation of delivery riders, thanks to social dialogue negotiation between Spain's Government, employers' organisations and trade unions.

This brought an end to a large period of social and judicial disputes, as well as an intense negotiating process.

Over a period of years, the labour authority has issued numerous decisions acknowledging the labour relationship between delivery workers and these new delivery companies known as digital platforms (Glovo, Deliveroo, Uber Eats and Stuart). The status of these employees has been confirmed by more than twenty court judgments.

The latest, and most substantial, judgment, was issued on September 25 last year by the Supreme Court, which declared that a labour relationship exists between the Glovo company and its delivery workers. This confirmed what had previously been decreed by the labour authority and the lower courts.

These condemned companies have continuously disobeyed Spanish court judgments. By means of such infringements, along with constant lobbying, they tried to force and persuade the Government to establish special regulations specifically for the workers that provide their delivery service.

Their ultimate goal was always to avoid respecting the collective and individual rights of their salaried workers, as well as the responsibilities that our social protection system demands of companies. This was evidently detrimental to the workers, to our social protection and welfare system as a whole. It also meant that companies that comply with their labour and social responsibilities would have to compete at a disadvantage.

However, these delivery companies were unsuccessful.

The social agreement reached between the Government, employers' organisations and trade unions is in line with the Supreme Court's latest judgment. The trade union movement would not have accepted anything else.

The agreement recognises the labour situation of workers that deliver or distribute any product or goods by means of so-called digital platforms. In this regard, employed workers are presumed to be those that provide paid delivery services by means of companies that carry out the employer responsibilities of organisation, direction and control in a direct, indirect or implicit way, based on the algorithmic management of the service or working conditions.

Need to tackle wider platform sector

However, the work carried out by means of digital platforms is not limited to delivery activities. We are aware that a wide range of activities are currently being performed, and increasingly so, by way of these new business models. This is the Uberisation of work.

The infringement of labour frameworks by these companies endangers the individual and collective rights enjoyed by workers, as well as our social protection systems.

It is vital that steps are urgently taken to regulate and organise these new types of work guarantee workers' rights. This is a challenge that the European Union is now dealing with.

In effect, the European Commission has promised to approve, this year, the regulation of the work carried out by means of these platforms. A period of consultation has been initiated and the European Trade Union Confederation has submitted its contributions. Once approved in Europe, member states will have to adapt their legislation to the new rules. Therefore, sooner or later in Spain, and in all Member States, this matter will have to be dealt with.

Transparency of algorithms

Meanwhile, the attained agreement here in Spain is a step forward in the transparency of the algorithms and artificial intelligence systems used by any type of company, when these have an impact on workers' labour conditions.

According to the law, the workers' legal representatives must be informed about the parameters, rules and instructions used by these algorithms and artificial intelligence systems that affect working conditions, access to and maintenance of employment, including profiling.

The data protection law treats this merely as an individual right, pushing collective bargaining into the background and ignoring the importance of collective rights in the labour sphere. However, the unequal relationship between employers and workers, required converting these individual rights into collective ones. The new agreement solves this problem in part.

We have thereby started to put an end to the opacity of these new systems, which can be used by employers to wield their power in a biased and discriminatory way, and which have an impact on the organisation of labour, intensity of labour, occupational health and workers' rights to privacy. The reception of information is a first step. The path we have undertaken should enable us to gradually start to consult and negotiate with companies regarding the content of these systems.

In conclusion, the recent social agreement enables us to advance towards CCOO's objective of managing the technological transformation affecting our societies and, naturally, the field of labour. In our opinion, it is essential to manage the process of digitalisation with the workers' participation, so that a social majority can benefit and not merely a minority. This is our goal. We continue working towards it.

4. Building union data capacity

Empowering workers: using tech responsibly - Dr Christina Colclough, The Why Not Lab

Digital labour platforms come in many forms. Some specialise in food delivery, some taxis, others admin tasks, graphical designs or homecare. What is common to all of them is that they through their app-based management extract and generate massive amounts of data and data inferences. Some of these data are used to allocate, manage, optimise, and evaluate workers. Algorithmic management is no small business. It has a real-life impact on workers - do they get hired, disciplined, hidden from the impatient clicks of the customer - do they manage to earn a living?

One thing is certain, the balance of power between worker and management is tipping as a consequence. Companies are the ones extracting the data, analysing it, selling it and profiteering from it. They create the "stories" based on these data, and these stories in turn affect policies, public opinion and indeed workers' opportunities. When workers' actions are turned into numerous data points that are then fed into predictive analysis, workers are at a very real risk of being turned into a commodity. Objects that are evaluated for efficiency and productivity and measured against values and norms that have been mathematically defined. It is those who have the data who can analyse it. It is their version of reality the rest of us get fed and are subject to. It is them who have the power. At stake is worker autonomy, our human rights, and indeed our right to be human.

Speaking to Reuters in 2019, an anonymous source said:

"Uber has 'a wildly successful data collection on who uses it and how they use it and where they go,' said a person familiar with the business, who declined to be named. All of this data 'can become profitable,' the person said."³²

The data and the inferences (profiles made) distribute work, reward or penalise workers and for example send signals to management about workers' performance. The automated evaluations based on these inferences can determine for example whether a worker gets a "task", is likely involved in organising efforts, gets removed from the platform, or has their ratings lowered.

Data when structured, aggregated and churned through these algorithms to create predictions and profiles is a major revenue stream for many digital platforms. As indicated in the Reuters article above, predictions about customer or worker preferences can be sold to third parties. This market for data is what the author Shoshana Zuboff calls "the market in human futures". She, rightly claims, that it is an attack on human autonomy and therefore also on our human rights.

³² Somerville, H (9 May 2019). "The answer to Uber's profit challenge? It may lie in its trove of data", *Reuters* www.reuters.com/article/us-uber-ipo-profit-idUKKCN1SF005

Legally, workers in the UK (at least as long as the UK follows the European General Data Protection Regulation - the GDPR) have certain rights to know what data is extracted and to a certain extent what inferences are being made. But a recent ruling in Amsterdam in the case of Uber vs workers, showed a weakness in the wording of article 22 of the GDPR. It says:

"The data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her."

The court took the word "solely" literally. Uber claimed that the algorithms were overseen by two humans and therefore the workers had not been automatically removed from the platform. The court accepted this. Concessions were made though and Uber in this case are now obliged to reveal the data that "formed the basis for the decision to deactivate their accounts, in such a way that they are able to verify the correctness and lawfulness of the processing of their personal data." This is significant - it gives workers the right to know on what basis they were deactivated from the platform. Whether Uber indeed has two humans overlooking this remains unknown.

Workers must respond!

So how do we turn the tides, and tip the scales so workers can be empowered and protect their rights? Digital platform workers and their unions could beneficially tap into the powers of digital technologies to form their responses. While it would be ill-advised to simply duplicate, or increase, the surveillance of workers and the commodification of work they are already subject to, here are two inspiring possibilities, a helpful guide and a vision for the future. Common for them is that they empower workers through the responsible collectivisation of worker data.

WeClock

One responsible and privacy-preserving way for unions to utilise tech for good and gather information about their members' working conditions is through the use of the new open-source app, [WeClock](#). I developed this with a team of specialists and [UNI Global Union](#). It launched as a working prototype in 2020.

Featured in [Wired](#)³³ and in Mozilla's Health of the Internet Report 2020³⁴, WeClock aims to support workers in combating wage theft and promoting worker wellbeing. While still a prototype, it is available on Android, iPhone and Apple Watch. Worker groups across the world are currently testing it. WeClock works by tapping into some of the 14 sensors on a mobile phone. By doing so it gets a copy of the data that many of the apps on your phone are already logging.

³³ Marshall, A (24 April 2021). "Gig Workers Gather Their Own Data to Check the Algorithm's Math" *Wired* www.wired.com/story/gig-workers-gather-data-check-algorithm-math/

³⁴ Mozilla (2020). Health of the internet report, Mozilla 2020.internethealthreport.org/spotlights/labor-rights-unlock-data-power/

Think of WeClock as a self-tracking app - a Fitbit for work. It logs location data, movement indicators, distances, app usage and speed. On Android it can measure how often, when and for how long you use work-related apps. Central to WeClock is that no third party has access to this data. It is stored on the worker's device exclusively. He or she can then decide to share it with their organiser, their union or a trusted third party.

For example, workers can track the exact distance they cover during a working day. The movement data can reveal if a worker is on their feet all day, or when he or she is getting a break. On Android, workers can track how often they use work apps outside of core working hours. This gives a good indication of rest breaks, the "always on culture" and even stress levels if workers wake at night and begin sending work messages. Home care workers and delivery riders, for example, can track their location and distance travelled and compare that to fix-mile fuel cover or compensation levels.

With a data analyst at hand, unions can begin their journey into data storytelling and visualisation by campaigning and collectivising the workers' data. For example, in New York a data analyst overlaid the workers' location data with figures for Covid cases. The union could use this to raise awareness to the health risks the workers were subject to. In another example, the analyst could see how often the workers were within two metres of one another during working hours. This visualisation could be used to discuss pandemic related health and safety measures. A [UnionKit](#) helps organisers and unions campaign using WeClock.

Driver's Seat

Another great example of empowering workers through the collectivisation of data is [Drivers Seat](#). It is a delivery and rideshare driver cooperative in the US committed to data democracy. By collecting the drivers' data and analysing it, Driver's Seat can tell the drivers where the customers are, the highest prices (surge pricing) really is and what areas of town they should head towards. As such, Driver's Seat's algorithm is a check and balance on the platforms' algorithms. Often, where the platform wants to send them, is the least lucrative route. As a cooperative Drivers' Seat has decided that aggregated driving pattern data can be sold to local councils to support their traffic planning processes. The income is shared equally between the cooperative's members.

A handy tool - Lighthouse

If unions start collecting bespoke data from their members, they should ensure they are stewards of good data governance. A data breach could be very harmful. Meet Lighthouse - an open-source guide to help unions with their own data governance. It puts privacy and data minimisation centre stage. Lighthouse helps users score their current data governance methods and practices along a range of topics:

1. Having a plan, 2. Building a community, 3. Handling data, 4. Assigning responsibility, 5. Writing rules and 6. Managing risk.

Once complete, users are provided with an overall score and get helpful tips as to where, why and how they can improve their data-governance to really make a positive change. Find Lighthouse [here](#).

The Vision - towards worker data collectives

With data collectivised and used to empower workers in a way that respects privacy rights, prevents data misuse and offers a means to responsibly quantify worker realities, the next step would be to institutionalise this into a worker data collective - or what some call a data trust.

Research The Why Not Lab did with the MIT opens up the possibility that union-owned credit unions could offer the legal structure to form worker data collectives. A data collective could ensure that the one-sided version of work realities we are subject to today would be a thing of the past. A worker data collective needs governing, it needs firm red-lines, it needs to ensure it benefits the collective and it needs to be placed in a legal infrastructure that ensures it is compliant with its statutes and the law.

But first things first. To fully utilise the potentials of digital technologies responsibly, unions and workers need to capacity build. We need to understand the ins and outs of data and algorithms. We need strong demands and policies, and we need access to data analysts.

This will require a union transformation, but one that unions must dare engage in. Work as conducted on digital labour platforms gives us strong indications of what the futures of work could look like for many workers. The datatification of work and workers simply must be met by strong union demands. Without a union alternative to the digital ethos of today, the commodification of work and workers will be complete at the detriment of our fundamental rights.

5. Organising

Fighting back against “disruptors” pursuing old-fashioned casualisation - Mick Rix, GMB

According to TUC-backed research published in 2019, around 7.5 million people have worked in the platform economy, with the majority predominantly undertaking work for a single provider (employer).³⁵

Many of these workers have been classed as self-employed by their company. Some of these companies engage tens of thousands of people, yet the vast majority of these companies assume no moral or legal responsibility for these workers.

Some people may find it strange that workers in the gig or platform economy have their employment status determined by a company, and not a recognised body set up by the government.

Many in our movement have used the phrase at one time or another that there is a “race to the bottom”.

I would contend that race has now been won by capital. Once we have accepted that premise, we can see that it is only a matter of time before other groups of workers that are employed become precarious too.

Casualisation becoming the norm for many

One sign that the pendulum is swung against workers is the reintroduction of old-fashioned forms of working with the rapid growth in recent years of the return of “casualisation” which was so popular amongst employers in the 18th and early parts of the 19th Century.

On some measures, casualisation in terms of the employment relationship is now the norm for nearly a third of the UK workforce.

The consensus established after the second world war with civilising the world of work has now been ripped up by various employers across a range of sectors and encouraged by successive governments.

Many of these employers are global, trading on the claim that they are tech companies, and that they the vanguard of a new industrial revolution, and attempting to fly the “disruptors” flag.

³⁵ University of Hertfordshire et al (2019). *Platform work in the UK 2016-2019*, TUC. See also TUC (28 June 2019). “UK’s gig economy workforce has doubled since 2016, TUC and FEPS-backed research shows”, TUC www.tuc.org.uk/news/uks-gig-economy-workforce-has-doubled-2016-tuc-and-feps-backed-research-shows

Those who would be described in policy wonk language as “precarious” are employed in in the gig economy, in temporary jobs or by employment agencies, on zero-hours contracts or in the cash economy.

What these workers have in common is that they do not know whether they will be working the next day, they have no rights to demand work or money from an employer, and as such they cannot work out whether they can pay the rent or put food on the table on a week-to-week basis. This is now the stark reality for many workers in the casualised, exploited “precariat”.

What you hear from the platforms’ expensive PR gurus is that “being self-employed allows you to determine when you work” and “you have flexibility, you don’t want to lose that”.

Anyone who has dealt with the conditions of working people in the casualised labour markets, knows there is no flexibility, that work is withdrawn at the drop of a hat, and in some cases (such as the parcel sector) to have a day off, you pay the company for the privilege of doing so.

Challenges for union organising

From a union point of view, there might appear to be many reasons to avoid trying to organise in the gig economy from “it does not yet affect us”, to “they cannot yet do this in our work expertise”, to “it’s in the too difficult box, they have no identified place of work, they mainly work from home”.

In fact, in many cases workers do work together and many employers are moving back to a “grouping” model because it is more cost effective for their operations.

Look at key sectors with rising precarity: education, social care, the NHS, various administrative functions, logistics (especially in the last mile drop) and private hire driving. In the majority of these sectors there are still areas where there are large groups of workers that will encounter each other in their work, and who may come into contact with organised workers and trade unions.

If we work on the principle that every sector of work is vulnerable to the “casualisation” of work, and for some it is just a matter of time, then the movement has a chance to bring about change, through workplace justice.

Can the organised movement fight back, can it speak on behalf of the dispossessed, those that are just managing, and the exploited? Can it grow again, can it organise, can it collectivise, and importantly can it win for workers in the “precariat”? The stark answer is yes to all those questions.

For their own good reasons there are those in our organised movement who will not want to organise in these areas, and there are unions in those sectors that are turning a blind eye to the growing precariat that is encroaching into their sectors. Those unions will eventually face challenging decisions regards their future existence.

At GMB Union we have tried to face up to many challenges regarding the pace of exploitation in the changing world of work. We have suffered some setbacks, and we have had victories in trying to organise and put a collectivist agenda forward for working people

whose work is being deliberately individualised and where workers are made to compete against each other for the crumbs that are offered them.

Fighting in the courts

For many years it was the mantra of the movement to argue for new legislation rather than the enforcement of existing legislation. But government promises of legislative change now seems a distant memory. The movement cannot wait on governments to enact workplace justice, we have to do it for ourselves.

For GMB Union this has meant taking powerful global companies and submitted court proceedings, while reaching out to those workers affected, and in so doing we have challenged companies' bogus classification of workers.

We have not lost a court decision on bogus self-employment. We have won in every UK court against Uber, Addison Lee, DX, Amazon courier companies, and Hermes.

Did we get our tactics completely correct? No, we did not, but we have learnt some valuable lessons in our organising approaches.

A do-nothing strategy was not acceptable to us as a union. We have a proud history fighting exploitation, and for the betterment of work, why should we not adopt the same strategies adopted by our founders Will Thorne and Eleanor Marx 132 years ago?

Organising in different ways

There are many challenges that we face in organising workers in the precariat. There are some organisations that have sold free membership because they are funded by other organisations, or crowdfunded and use pro bono lawyers. This has presented a challenge that some workers feel that union membership should be free, and that the services of trade unions should be free.

There are some workers who are sceptical about the value of trade unions, fear they are a threat to their ability to work and earn, because some employers will withdraw work if they find out that workers are members of a union. Let us not assume that workers will always welcome trade unions with open arms: trust has to be built and earned.

A lot of time has to be spent organising in different ways. We have to be accessible. Reaching out to workers digitally is one good example, via social media groups, online forums, and engaging through WhatsApp groups. Being prepared to have your email and mobile number published is often the way too.

Reaching out to workers in their communities is essential if trade unions are to make solid inroads into the precariat. GMB has piloted the use of pop-up centres to create bases in communities to help our outreach. Language and culture are some of the most important challenges to understand and overcome.

If our movement was to start today, we probably would set up and organise differently. However, if we look at our movement as a whole, there is a potential of a couple of thousand full time trade union organisers in our movement, there are thousands of branches and branch officials, there are thousands of shop stewards/ representatives, they

just have a different membership card. There is the trades council movement and hundreds of sympathetic political and community-based groups in our communities. The ground and community resources are there, there is also evidence that trades unionists can show solidarity.

There is probably a need to evaluate and discuss, is this just becoming a priority of a few organisations within the movement? If this was a priority for the whole movement it would be easier to invest and combine those resources and be able to supply the education and training to give this potential huge army of paid officials and volunteers the organising skills needed to unionise, collectivise, and gain collective bargaining rights.

The recent Supreme Court decision against Uber provides further leverage.

If our movement only invested in a quarter of its resources, we would make serious inroads into the millions of unorganised workers in the labour market, including many platform workers.

The movement needs a massive injection of ambition, and collaboration of resources, and a recognition that we can no longer tolerate the way the world of work is returning to the widespread casualisation and ill treatment of workers that existed in the 19th and early years of the 20th century.

6. Investor activism

Deliveroo listing – what does it mean for workers? - Tom Powdrill, PIRC and Janet Williamson, TUC

The listing of meal delivery firm Deliveroo's shares on the stock market in March has been called the worst initial public offering (IPO) in London's history, and with good reason.

Alongside an immediate plummet in the share price on the first day of trading, there was an unprecedented public rejection of the stock by a string of large UK investors. A combination of concerns about the business, its governance and its employment practices saw major shareholders sit the listing out, leading to days of negative press coverage.

But the experience of this disastrous listing may provide pointers for both further challenges to platform employers, and ways that investors and others can engage with them.

It is important to be clear that Deliveroo's IPO flop was not primarily driven by investors' concerns about its labour practices in their own right. Many felt that the offering was overvalued for a business that is currently loss-making. Only last year the Competition and Markets Authority allowed Amazon to take a major stake in the company due to concerns that otherwise it might face financial difficulties. It is also unclear whether consumer demand for deliveries, bolstered by the Covid lockdown, is firm.

The dual class share structure of the company, giving founder Will Shu more voting rights than other shareholders, was also criticised by many investors who support the 'one share one vote' principle. Investors have been offered class A shares representing 54.5 per cent of company shares on the basis of one share, one vote. However, Deliveroo founder Will Shu has retained class B shares representing 6.3 per cent of company shares on the basis of one share, 20 votes. This gives Will Shu 57.5 per cent of the voting rights in Deliveroo – for now. It's a corporate governance no-no for many investors.

But labour concerns were part of the mix too, and in two ways.

First, some investors will have felt that the company's future profitability could be put at risk by successful challenges to its current employment model. Deliveroo spelt out in considerable detail in its IPO prospectus that this was indeed a significant risk and noted developments in a number of different jurisdictions. Undoubtedly Uber's defeat at the Supreme Court shortly before the IPO, in which its drivers were found to be workers with rights including the minimum wage and holiday pay, can only have increased the salience of this risk.

This is an important consideration for gig economy employers in the future. It is clear that financial market participants are paying closer attention to the legal fights about employment status being played out across the globe. Significant rulings can have a major impact on valuations. Uncertainty over the durability of the employment model may make it

harder for companies to raise capital. This is an important point to bear in mind for similar future events.

Second, clearly some investors were concerned by the company's labour practices in themselves. In the run up to the IPO trade unions and others put considerable effort into lobbying investors, including through a well-attended briefing organised by campaign group ShareAction.

It does appear that, after a long wait, some investors are starting to take the S in ESG (environmental, social, and corporate governance) more seriously, devote more attention to workforce issues and this should be actively encouraged. Events aimed at investors that feature workers from the company talking about their experiences always seem to help shareholders look up from their spreadsheets. After Deliveroo, there may be more interest in holding these before companies list.

Labour issues climbing corporate agenda

Back to the IPO, the overall result of these various concerns was that a string of UK and some overseas asset managers publicly announced that they would not be participating in the IPO. Aviva Investors was the first to speak out and was quickly followed by other major investors including Aberdeen Standard and Legal & General Investment Management, the UK's largest managers. In most cases investors cited a mix of the factors listed previously as their reasons for not participating.

There is likely an element of marketing in some of this. Investors not planning to participate in a listing they considered over-priced might talk more about their ESG concerns than the factors that really made them hold off. But equally it would be a mistake to think that these decisions were purely PR.

More generally, for unions and others who are interested in ensuring that labour and other ESG factors are properly taken into account during an IPO the precise mix of motives doesn't hugely matter. In corporate campaigning more broadly, it is often very difficult to identify the specific factor that finally tips the scales but what matters is the outcome. If the experience of Deliveroo makes other companies consider they need to adopt a better approach on labour issues in order to win over investors all the better.

Deliveroo and its advisers tried to paint a brighter picture, talking of substantial investor demand from leading global institutions including three anchor investors. According to market announcements released by Deliveroo since the float, major shareholders in the business include T Rowe Price, with around 7 per cent, and Amazon with 6 per cent.

But the IPO was unquestionably a flop, with the float price reduced to the bottom of the target range and the share price dropping significantly on the day, and further since. According to research by City think tank New Financial, of 1,775 IPOs by UK companies from 1999 to 2020 Deliveroo ranks 1,765th in terms of its first day performance.³⁶

That matters, because very few companies with that kind of performance go on to perform well quickly. In addition, it is not hard to imagine future successful legal challenges that

³⁶ Figures published here: twitter.com/williamw1/status/1377535613579227136

would crystalize the risk in the employment model that Deliveroo laid out in its prospectus. The shambolic IPO may not be the end of the story.

The float has also pulled others into the Deliveroo story. Bankers that advised on the IPO, including the optimistic valuations that subsequently had to be scaled back, have taken flak. There has been some anonymous criticism of their fees, so it remains to be seen if there is any scope to really challenge them. Once again this may provide some pointers for future campaigns. Given the importance of concerns about employment models to gig economy employers, should advisers to a future IPO be expected to engage with unions as part of their due diligence? And if they fail to do so should unions make investors aware of this?

How to influence in future

Now that the company has listed, there are some limited opportunities for influence, although these will increase over time. For all listed companies, there are rules that they must stick to that don't apply to private or non-listed companies.

However, Deliveroo has chosen to list on what is called a standard listing rather than a premium listing. Crucially, companies listing on a standard listing do not have to comply with the Corporate Governance Code,³⁷ which now includes provisions on workforce engagement. Unfortunately, this does not apply to Deliveroo as a member of the standard listing.

The dual-class share structure poses a significant challenge to any investor engagement. It is time-limited and will expire automatically after three years (or sooner in various unlikely scenarios). But in the meantime, no shareholder resolution can be passed without the support of Deliveroo's founder and no director elected without his support. Nor can any management resolutions be defeated.

So the way that Deliveroo has chosen to list limits the opportunities for workers and unions to influence the company and its employment practices – but there are still things we can do.

Although it won't be possible to win a shareholder resolution, investors will still be able to make their voices heard with the Deliveroo board, providing a potential route to influence the company. If lots of investors want to sell out of the tradable shares, the price will fall for all investors, which could help to focus the minds of those who set up the company.

The Deliveroo IPO prospectus makes clear that legal challenges to the employment status of Deliveroo workers is a significant risk to the company's future and its investors. Fear of a legal challenge could make investors open to putting pressure on the company to improve its treatment of riders – albeit this is likely to fall short of the change in employment status that the workers are fighting for.

The opportunities for influence will increase significantly in three years when Will Shu's shares cease to have their additional voting rights. At this point, investors will be able to elect directors and pass resolutions regardless of Will Shu's support, and by engaging with Deliveroo

³⁷ The Corporate Governance Code is a set of principles companies are meant to abide by www.frc.org.uk/directors/corporate-governance-and-stewardship/uk-corporate-governance-code

shareholders, workers and unions will be able to exert pressure on the Deliveroo board for a change of direction in their employment practices. Developing a three-year strategy of shareholder engagement working up to the point at which Will Shu loses his automatic veto would be a sensible post-IPO approach.

7. Analysis and ratings

A new terrain of struggle: from platform work to Fairwork - Dr Alessio Bertolini and Dr Matthew Cole, Oxford Internet Institute, University of Oxford

The UK labour market has undergone significant changes over the past decade or so. Many non-standard and atypical forms of employment have become increasingly more 'standard' and 'typical'. Zero-hour contracts, temporary agency work and self-employment have all become increasingly more common, especially for the most disadvantaged segments of the UK workforce.

The rapid rise of self-employment has partly been attributed to the rise of the so-called platform economy, of which digital labour platforms form a significant share. Research by University of Hertfordshire found that the number of people working for online platforms at least once a week has doubled from 4.7 per cent of the adult population in 2016 to 9.6 per cent in 2019.³⁸ A study by the Office for National Statistics estimated the size of the gig economy workforce in 2017 to be 4.4 per cent of the population or about 2.8 million people.³⁹

Key to the platform model has been the use of bogus self-employment contracts, which are an attempt by gig economy companies to absolve themselves of any responsibility they have toward their workers. As most employment rights in the UK are confined to employees and so-called 'limb-b' workers, platform workers find themselves in an especially precarious and insecure situation, being denied access to a number of basic rights, including access to a minimum wage, sick pay, holiday pay, health and safety protection and collective bargaining. At the same time, these workers face specific issues associated with this new working model, including algorithmic management and data protection.

The Fairwork project has evolved to address the rise of insecure and poor-quality work, typical of platform companies. Fairwork is an action-research project aimed at, on the one hand, evaluating the working conditions offered by different digital labour platforms and, on the other hand, to advocate for better working conditions in the platform economy.

³⁸ University of Hertfordshire (2019). This was an online survey of 2,235 UK residents between the ages of 16 and 75, carried out by the University of Hertfordshire from 26th April and 1st May 2019. Fieldwork and data collection were by Ipsos MORI with funding from the Foundation for European Progressive Studies (FEPS), the Trades Union Congress (TUC) and UNI Europa. It was designed to be comparable with an earlier survey carried out between January 22 and January 26 2016 of 2,238 adults aged 16-75 also by the University of Hertfordshire.

³⁹ Lapanjuuri, K, Wishart, R, Cornick, P, (2018). *The Characteristics of Individuals in the Gig Economy*. Department for Business, Energy & Industrial Strategy (BEIS)

The Fairwork UK Project

Among digital labour platforms, there are two broad types. In the first—‘geographically-tethered’ or ‘location-based’ platforms—the work is required to be done in a particular location (e.g. delivering food from a restaurant to an apartment or driving a person from one part of town to another).

In contrast, in the second—‘cloudwork’ or ‘online work’ platforms—the work can, in theory, be performed from anywhere via the internet (e.g. data categorisation or online freelancing).

The UK Fairwork project evaluated the working conditions offered by 11 geographically-tethered digital labour platforms in the UK, in the following sectors: ride-hailing, food delivery, courier and domestic services. We scored each of them against our Fairwork principles. The five Fairwork principles include: Fair Pay, Fair Conditions, Fair Contracts, Fair Management and Fair Representation (for a detailed description of the principles please see Fairwork 2021). The principles were co-developed in collaboration with the International Labour Organisation (ILO) and The United Nations Conference on Trade and Development (UNCTAD) and are updated annually based on feedback from different stakeholders (including policymakers, unions, workers, platforms and lawyers).

These principles should be universally applicable to gig work and represent the terrains of struggle between workers and the companies that rely on them. The principles are as follows:⁴⁰

Principle 1: Fair Pay

1.1 - Pays at least the local minimum wage after costs

1.2 - Pays at least a local living wage after costs

Principle 2: Fair Conditions

2.1 - Mitigates task-specific risks

2.2 - Provides a safety net

Principle 3: Fair Contracts

3.1 - Provides clear and transparent terms and conditions

3.2 - Does not impose unfair contract terms

Principle 4: Fair Management

4.1 - Provides due process for decisions affecting workers

4.2 - Provides equity in the management process

Principle 5: Fair Representation

5.1 - Assures freedom of association and the expression of collective worker voice

⁴⁰ Fairwork (2021), *Gig Work Principles*, Fairwork fair.work/en/fw/principles/fairwork-principles-gig-work/

5.2 - Supports democratic governance

To evaluate each platform, we have very specific minimum thresholds for company policies and their impacts on workers. Each of the five principles is composed of a basic threshold and a more advanced threshold, so that each platform can score from 0 to 10. We assign a score of 1 for each threshold only if we have enough evidence that the principle is satisfied. Therefore, a 0 score means that either that we have evidence that principle is not satisfied, or that there is not enough evidence to prove the platform satisfies the principle. This allows us to score platforms that unwilling to engage with us and share data and other relevant information.

To assign a score for each platform, Fairwork looks at online materials, conducts in-depth interviews with six to 10 workers for each platform and finally interviews with platform managers to request evidence for each of the principles.

The Frontier of Control in the Gig Economy

The Fairwork principles represent five key terrains of struggle in the gig economy. They broadly align with the traditional notion of the “frontier of control” in industrial relations research. Each of the above principles – pay, conditions, contracts, management and representation – encapsulate a dimension of the frontier of control in gig work.

Of the five principles, it is points from Principle 1 and Principle 5 that were least frequently met. Points from Principle 1 were only awarded to two companies -Just Eat and Pedal Me, since they had a minimum hourly wage floor.

These companies are atypical when it comes to the labour strategies of platforms, which typically organise pay according to a piece work system that is essentially a per-item contract. This means that there is no wage floor and why workers at Deliveroo were reported to earn as little as £2 an hour during shifts, as the boss stands to make £500 million.⁴¹

Points from Principle 5 were rarely awarded due to both the antagonistic attitude of platform managers to union and some more objective factors specific to the technologically-mediated nature of the work. The results of our research show that out of the 11 platforms we rated, only Pedal Me approaches the basic threshold for principle five.

The right to freedom of association is a fundamental right for all workers, as established by both the International Labour Organization and the Universal Declaration of Human Rights. And yet, most platforms are unwilling to engage with unions and workers’ organisations. Additionally, the fragmented nature of the work, its physical isolation from other workers and the lack of a specific workplace can make it difficult to organise.⁴² These factors are the

⁴¹ Mellino, E, Boutaud, C, Davies, G, (25 March 2021). “Deliveroo riders can earn as little as £2 an hour during shifts, as boss stands to make £500m”. *The Bureau of Investigative Journalism*.

www.thebureauinvestigates.com/stories/2021-03-25/deliveroo-riders-earning-as-little-as-2-pounds

⁴² Prassl, J and Risak, M (2016). “Uber, Taskrabbit, and Co.: Platforms as Employers - Rethinking the Legal Analysis of Crowdwork”, *Comparative Labour Law & Policy Journal* 37, pp. 619.

fundamental barriers to the ability of workers to organise, to express their interests and to be listened to.

Workers' capacity to shift the frontier of control such that the balance of power is more evenly distributed depends crucially on their bargaining power. Ultimately, without collective organisation and a willingness on the platform's part to recognise and engage with a trade union, platforms will continue to dictate balance of power over the control of labour. Labour organisations therefore need innovative strategies like Fairwork to pressure platforms to recognise and bargain with workers.

Conclusion – Tim Sharp, TUC

It is increasingly understood that the rise of the platform economy owes at least as much to the ability of operators to exploit inadequate labour law as it is on clever technology.

The sight of workers with little protective equipment and often no sick pay during the pandemic ended any remaining illusions that the platform economy created a new breed of entrepreneur who didn't need the protection of employment law.

Workers, unions and their allies have taken great strides in developing strategies for securing wins against exploitative employers.

We need legal strategies, innovative use of data, effective organising approaches and the support of other partners from investors to academics.

What is clear is that strategies work best when they complement each other. For example, a well-organised union can take advantage of a legal victory, such as in the GMB's securing of recognition at Uber in the wake of the private hire operator's Supreme Court defeat.

But these are just the first steps in seeking fair treatment of workers in a rapidly growing part of the economy.

The current government has shown reluctance to put in place reforms to assist insecure workers such as platform workers. Even a modest employment bill announced in the 2019 Queen's Speech⁴³ later fell off its legislative agenda.

But what might a reform agenda for platform workers look like?

Individual employment rights

Current rules on workers' employment status are complex and confusing. Often employers treat those who work for them as self-employed with no rights. Others are accorded limited employment rights as "workers", that fall short of the full rights enjoyed by employees. The creation of a single worker status would ensure that many of those with worker status could enjoy with the same decent floor of rights currently enjoyed by employees. This would mean a wider range of people would benefit from rights, including the right to request flexible working, to return to their job after maternity and paternity leave, to statutory redundancy pay and for union reps to have paid time off for trade union duties.⁴⁴

The task of workers proving their employment status can be long and arduous, as the recent Uber case showed. A statutory presumption that all individuals will qualify for employment rights unless the employer can demonstrate they are genuinely self-employed

⁴³ Prime Minister's Office (2019) *Queen's Speech December 2019: background briefing notes*, Prime Minister's Office www.gov.uk/government/publications/queens-speech-december-2019-background-briefing-notes

⁴⁴ This is set out in greater detail in TUC (2017). *The gig is up*, TUC p. 29 www.tuc.org.uk/research-analysis/reports/gig

would put on the onus on employers to justify their approach. This should be coupled with penalties for employers who mislead staff about their employment status.

Many of the activities of platforms closely resemble those of employment agencies. Employers use them to recruit labour and outsource tasks and services. Workers also use the platforms to look for work and to undertake job-match services. Therefore they should be regulated as employment businesses and agencies.⁴⁵

Regulation of artificial intelligence

A key element of the platform economy is the management of staff by way of algorithm, including in recruitment, allocation of jobs and the ending of the relationship.

The operation of such technology is often opaque and can be discriminatory.⁴⁶

And the government has been slow to react. No new legislation has been passed in the UK to amend and improve labour and trade union laws to make them fit to meet these new challenges.⁴⁷

The TUC has set out an agenda for reform in our report *Dignity at work and the AI revolution*.⁴⁸

Its key principles include:

- There should be genuine and active consultation with unions and workers before new technologies are introduced
- No unlawful discriminatory decisions should be made using technology.
- It is crucial to maintain some degree of human involvement in decision making at work. Without this, unfair decisions made by technology are more likely to go unchallenged and unquestioned.
- It should be clear to people when technology is being used to make decisions about them at work.

Trade union rights

Exploitation in the platform economy is a result of an imbalance of power in the workplace – even if that workplace is two-wheeled or a computer in the corner of a bedroom.

⁴⁵ TUC (2017) pp. 27-28

⁴⁶ Kersley, A (1 March 2021). Couriers say Uber's 'racist' facial identification tech got them fired", *Wired* www.wired.co.uk/article/uber-eats-couriers-facial-recognition Allen, R and Masters D (2021). *Technology managing people – the legal implications*, AI Law Consultancy and TUC p. 19 www.tuc.org.uk/sites/default/files/Technology_Managing_People_2021_Report_AW_0.pdf

⁴⁷ Allen, R and Masters D (2021). *Technology managing people – the legal implications*, AI Law Consultancy and TUC p. 10 www.tuc.org.uk/sites/default/files/Technology_Managing_People_2021_Report_AW_0.pdf

⁴⁸ TUC (2021). *Dignity at work and the AI revolution*, TUC www.tuc.org.uk/research-analysis/reports/dignity-work-and-ai-revolution

As described in the essays in this collection, trade unions have harnessed their collective resources to develop strategies to counteract the highly casualised model of platform working.

Nevertheless, in the UK trade unions are constrained by highly restrictive laws that make it difficult for trade unions to organise and to take collective action to secure better pay and conditions for workers.

The TUC wants unions to have access to workplaces to tell workers about the benefits of union membership and collective bargaining (following the system in place in New Zealand).⁴⁹

A lot of platform workers don't have a physical workplace. Therefore this should be combined with a digital right of access would give unions the right to reasonable electronic communication with workers. Employers would be required to forward union communications to the workforce, but would not pass workers' contact details to the union without their permission.⁵⁰

Coupled with stronger rights for unions to negotiate sector-wide deals, these measures could help to redress the imbalance of powers in the workplace.

Turning platform work into decent work will be a long struggle but it will be an impossible fight without the backing of strong trade unions deploying a range of effective strategies.

⁴⁹ TUC (2019). *A stronger voice for workers*, TUC www.tuc.org.uk/research-analysis/reports/stronger-voice-workers

⁵⁰ *Ibid* p. 19