Policy brief

Protecting workers in the UK platform economy

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Background

The number of people in the UK working for a digital labour platform\(^1\) more than doubled between 2016 and 2021, from 6 to 15 per cent of the adult population, a total of 4.4 million workers.\(^2\)

Digital labour platforms are often presented as a brave new frontier in the future of work, creating livelihoods based on innovative technologies. However, whether they contribute to overall job creation and productivity is highly questionable. They have largely emerged in and remained restricted to established service sectors (with relatively inelastic demand and limited opportunities for labour productivity growth), and they have been characterised by anticompetitive, monopsonistic tendencies, sustained by venture capital.

To the extent to which digital labour platforms can be said to be innovative, this innovation has been concerned with the externalisation of as many costs and risks as possible—which are transferred to workers, the broader public and the state. In short, the way digital labour platforms have thus far cemented their economic position has been by harnessing the scale enabled by digital infrastructure to establish control over existing (essential) service sectors, and engender a race to the bottom in wages and conditions, perpetuating casualisation and the fragmentation of secure jobs.

This business strategy has succeeded in part because platforms have been able to present their employment models as novel—including in relation to the law—and often claim to be technology companies (rather than transport, logistics, etc.). We refute this claim, and instead believe that platforms have excluded workers from the existing labour rights that should protect them, through obfuscation and contractual misclassification. This has been facilitated in turn by a lack of scrutiny and enforcement from regulatory authorities.

However, the growth of platforms has outpaced labour enforcement in almost all countries. It is clear now that policy action including responsive legislation is needed to tackle their predatory and exploitative practices, which have become widespread and institutionalised.

The Fairwork Project, coordinated from the Oxford Internet Institute, traces best and worst practices in the platform economy across more than 25 countries, including the UK. With workers, platforms and other stakeholders, Fairwork has co-produced benchmark minimum labour standards for the platform economy. The Five Principles of Fair Work coalesce under the headings Fair Pay, Fair Conditions, Fair Contracts, Fair Management,

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\(^1\) A digital labour platform is a company that connects supply of and demand for labour via a digital interface. Digital labour platforms exert control over the labour process to a greater or lesser degree, and derive value from the labour transaction.

and Fair Representation. These principles are used to independently rate platform companies’ labour practices. The eleven platforms we evaluated achieved scores ranging from zero to eight out of ten, showing a large variability in the fairness of the work offered by digital platforms in the UK. Despite a few platforms achieving high scores, the majority of the platforms we evaluated failed to evidence that basic standards of fairness are met. Notably, nine out of 11 platforms were unable to evidence that workers’ take-home pay was at or above minimum wage.

Platforms have invested enormously in lobbying for new regulations that validate their business model, for instance the Proposition 22 campaign in California, and ongoing lobbying efforts at the European Commission. These campaigns have been presented as advancing workers’ interests, and advocating for minimal protections to be extended to a class of workers that the law does not currently protect. In fact, platforms have chosen not to meet their responsibilities as employers, and now petition lawmakers to legalise their dubious practices.

Crucially, legislation must avoid endorsing or legitimising platforms’ characterisation of their workers as independent and autonomous, or the assertion that extending full labour rights to platform workers would endanger livelihoods. Employment reform in the UK must be based on the ultimate objective of upholding the same level of rights and protections for all workers.

**The case for Responsive Regulation**

1. The lack of will and resourcing to proactively enforce existing labour protections has shifted the burden of enforcement to the courts, and the burden of proof of misclassification to workers. This has created a vacuum in which contractual misclassification has been allowed to proliferate.
   a. In 2013, an employer could expect an inspection from HMRC once every 250 years and a prosecution once in a million years.6

2. Nevertheless, in certain sectors of the gig economy, workers are prevailing against platforms in litigation around employment status and unfair management practices. Recent examples in the UK include the 2021 Supreme Court decision in Uber v Aslam, in which the Court found that Uber had misclassified drivers as independent

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3 Fairwork. [Gig Work Principles](https://www.fair.work).
5 Fairwork. 2020. [California’s Proposition 22 Reinforces the Need for Fair Working Conditions Worldwide; Fairwork. 2021. Uber’s Call for Change in Europe Shirks Responsibility while Highlighting Real Challenges](https://www.fair.work).
contractors when they were in fact limb (b) workers. However, there remain serious problems with leaving workers to litigate employment status on a case-by-case basis.

a. It is prohibitively expensive to workers and imposes unnecessary costs on taxpayers.

b. Progress in this vein has been mainly restricted to the more socially visible (and male dominated) sectors of the gig economy - ride hailing and delivery. Care, domestic, beauty services and others have been vastly underrepresented in employment status litigation. Hence, shifting the burden of compliance to the courts results in exacerbated inequalities within the platform economy.

c. The cost of litigation relies on worker collective organisation which is fundamentally undermined by contractual misclassification itself. Misclassification helps platforms to atomise workers, and enables them to retaliate against and discipline workers who organise, including through termination without due process.

d. Platforms undermine and often flat out ignore Court decisions. For instance, Uber is still not complying with the Supreme Court’s ruling that their drivers are working for the platform (and entitled to concomitant wages and benefits) during the time they spend waiting between rides. The ADCU Union estimates that this deprives workers of 40% of their wages and entitlements (as they spend 40% of their time waiting for a fare).[^7] ^[8]^ [^9]^  
e. Platforms unilaterally set terms and conditions, which workers are forced to accept (usually by ticking a box on the platform interface) before they can start work. The platform usually reserves the right to change terms and conditions at any time, without notice or consultation. This power imbalance enables platforms to include clauses which limit workers’ right to reasonable legal recourse against the platform. These include mandatory arbitration clauses, by which workers waive their right to participate in a jury trial or class action lawsuit, thus limiting their ability to challenge instances of contractual misclassification.

[^7]: Supreme Court, [Judgement UKSC 5 2021](https://www.scotcourts.gov.uk/cases/uksc/2021/uksc-0005/). Uber BV and others v Aslam and others.  
Another common platform tactic sees the party contracting with the worker incorporated in a different legal jurisdiction to the place in which the worker works, and the governing law of contracts specified as a distant jurisdiction. For instance, the contracts of most Uber drivers around the world are with Dutch company, Uber BV, and governed by the law of the Netherlands. This has led to Uber drivers’ claims against Uber being thrown out in their local jurisdictions.\textsuperscript{10}

Beyond their treatment of individual workers, the regulation of platforms has been shown to be in the broader public interest, with regard to the provision of essential services, the development of efficient and sustainable transport and logistics infrastructure, oversight of environmental externalities, and fair taxation.

a. This has been made especially clear by the COVID-19 pandemic, and the key role played by platforms and platform workers in the public health response. Delivery workers and couriers were essential to facilitating isolation and social distancing, taking on grave personal risk to do so. These workers had no statutory protections to fall back on, including annual leave or sick leave, and no choice but to risk their health to keep working, potentially also transmitting the virus. The contractual misclassification of these workers made it very difficult for the government’s COVID relief measures to reach them. The exclusion of essential workers from labour protections was therefore a danger to public health during a time of acute crisis.

b. A large part of platforms’ impetus for employment misclassification has been the avoidance of the cost of social protection such as national insurance. This, coupled with the higher likelihood of insecure workers to claim in-work benefits, has been estimated to cost taxpayers £4b a year.\textsuperscript{11}

c. Beyond the sphere of employment policy, it is worth noting that a joined-up approach to platform regulation is needed. Platforms’ privatisation of services and infrastructure in transport, logistics and care sectors occurs without planning. There is little oversight of, for instance, the urban environmental impact of increased ride hail traffic, or platforms’ impact on the social provisioning of care.

Algorithmic management systems are a key source of harm and injustice in the platform economy. Although not entirely unique to digital labour platforms, algorithmic management is a defining feature of the platform economy and new methods have been pioneered by prominent gig platforms. Algorithmic management is a particularly underregulated aspect of the platform economy. Regulation has not adequately grappled with algorithmic and data transparency as a fundamental component of labour protection in the platform economy.


\textsuperscript{11} Institute of Employment Rights. 2021. \textit{Briefing: The Status of Workers}.
a. The collection of vast swathes of data is a fundamental feature of platforms’ business models, and their (speculative) shareholder value. This data which is produced by workers can be put to many uses, including the development of labour-saving artificial intelligence (e.g. delivery bots replacing couriers), but also the increasingly granular control of labour, through systems of discipline and surveillance.

b. Algorithmic systems are used to rank, reward, penalise and exclude workers on platforms—many decisions affecting workers’ livelihoods are made by artificial intelligence systems. A recent example in the UK has been Uber’s rider identification software which has relied on facial recognition to allow workers to access rides. Uber’s Real Time ID Check has been shown to have an especially high error rate when used to identify people of colour. The IWGB and ADCU unions are taking legal action in the UK after the system unfairly dismissed workers due to racial bias.

c. Platforms closely guard information about how their algorithms make decisions. This leaves workers completely in the dark about how their work is governed minute-to-minute, including on questions of how jobs are allocated, and why accounts are suspended or terminated. These are fundamental questions of justice and equity. The information asymmetries between platforms and workers are a key feature of platform power and control. However, because a human boss is not readily identifiable under systems of algorithmic management, the control exercised by platforms over workers has remained relatively concealed.

5. The current tiered system of employment rights in the UK recognises three different categories of worker: employees, self-employed and limb (b) workers. Despite not being designed with the platform economy in mind, limb (b) status is fast becoming a point of legal contention between platforms and workers, including in the 2021 Uber v Aslam case. The rationale for the various distinctions in rights between these categories are not clear, and the confusion caused by the various categories has a significant negative impact on workers and employees for no significant gain.

a. Crucially, Limb (b) workers have no protection from unfair dismissal, and no right to parental leave or redundancy pay. Courts have also failed to uphold their right to collective bargaining.

6. Platforms frequently argue that the advantage of self-employment classification is that it offers their workers flexibility in a way that would be impossible in formal

12 ADCU. 2021. Uber under pressure over facial recognition checks for drivers.
14 Webber. 2021. Deliveroo collective bargaining case reaches Court of Appeal, Personnel Today
employment, and that workers value this. This claim is misleading. Many workers do not experience meaningful flexibility or autonomy whilst working for platforms, and there are many ways in which workers in formal employment can enjoy flexible working without sacrificing basic employment protections.\textsuperscript{15}

\begin{itemize}
  \item[a.] Empirical research now demonstrates that the bulk of the work done on platforms is done by workers who are reliant on the platform as their major source of income and that workers who are dependent on platforms express more dissatisfaction and experience higher levels of precarity. \textsuperscript{16}
  \item[b.] The piece rate payment structures of many location-based platforms are designed in such a way as to incentivise working during certain hours - meaning that workers who want to secure a real living wage have to work during these incentivised periods. As a result, they experience very little flexibility, often having to work as many hours as possible in the evenings and at weekends.
\end{itemize}

**Policy recommendations**

7. Specific reporting on platform labour. Platforms are extremely reluctant to share information about the size and profile of their workforces. To develop adequate policy responses, we need much better data on the number of people in the UK wholly or partially dependent on platforms.

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  \item[a.] Major labour force surveys are still structured around full-time employment types. Statistical reporting needs to be updated to account for emerging types of work including platform work.
  \item[b.] Government should require platforms to share information about the profile of their workforce.
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8. Legislate to close loopholes in employment status by providing universal workers’ rights.

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  \item[a.] Lord John Hendy QC’s Status of Workers Bill before the House of Lords presents a pathway to clarify and streamline employment classifications, to create a single status of worker, with universal rights, and to replace the tiered system of employment rights and benefits.\textsuperscript{17} All workers would automatically have full employment rights, with the exception of genuinely self-employed workers with their own businesses and clients. We fully endorse this approach as the only way to address the accelerating race to

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the bottom in working conditions enabled by the tiered system of
employment status.

b. This should be accompanied by provision to switch the presumption—so
that where there is a dispute over employment status, it should be for the
party contracting labour to prove the labour is self-employed, rather than for
the labour to prove they are a worker.

c. The 2021 House of Lords COVID-19 Committee Report *Beyond Digital: Planning for a Hybrid World* also recommended “the Government introduce new legislation to provide platform workers with defined and enhanced employment rights.” In giving this recommendation the Committee said: “We do not believe we can rely on existing legislation, even if more forcibly implemented, or on individual legal initiatives such as the Uber court case.”

9. Existing and future employment protections must be adequately enforced by a dedicated agency.

a. Greater coordination and oversight is needed to protect workers from bad employers. We recommend the establishment of a body such as a Workers’ Protection Agency, with extensive powers to inspect workplaces and bring prosecutions and civil proceedings on workers’ behalf. This should be accompanied by greater penalties for employers who engage in illegal practices and for non compliance with court orders.

b. In addition, unions and workers’ organisations should be given more power to carry out enforcement-related activities, including the right of access to inspect workplaces including a digital right of access.

10. Introduce the right to sectoral collective bargaining. Given the labour fluidity in the platform economy, the fact that platforms compete fiercely on the basis of undermining labour standards, the monopsonistic practices common under the platform model, and the prevalence of ‘multi-appearing’ wherein workers look for work on multiple platforms simultaneously, collective bargaining must take place on at a sector-wide scale in order to protect workers from the erosion of wages and labour standards.

a. As casualisation grows and digital labour platforms establish themselves in new sectors including those that require higher levels of specialist training (such as health, trades, and professional services), sectoral collective bargaining is needed beyond the current sectors represented in the platform economy, and should be extended to all workers.

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19 Ordinance No. 2021-484 of April 21, 2021 relating to the methods of representation of self-employed workers using platforms for their activity and the conditions for exercising this representation.
b. France’s Executive Order on the collective representation of workers in platforms/apps on 21 April 2021 established the right to industry-wide collective negotiation and agreements for platform workers.

11. Incentivise shared ownership models and require worker representation on boards. Platform cooperatives in particular have the potential to boost inclusive economic growth at the community level while improving service delivery. However, locally-owned platforms and cooperatives struggle to gain a foothold due to large platforms’ unsustainable business models propped up by venture capital and anti-competitive behaviour.
   a. Concrete targets for worker representation include that workers should have 50% of the seats on company boards; that the voting power of even the largest shareholders should be capped at 10%.
   b. Introduce measures to prevent large platforms from monopolising markets by unsustainably cross-subsidising supply and demand and evading local taxation.

12. Regulation is needed to require provision of toilet and rest facilities for delivery and ride hail workers who lack a formal workplace.
   a. This is a key occupational health and safety issue for all workers in this sector but also disproportionately affects women and people who menstruate.
   b. New York City has recently passed legislation requiring restaurants to provide bathroom access for food delivery workers.\textsuperscript{20}

13. Ensure payment transparency. Although customers may offer a tip upfront, often platforms will not disclose the tip to workers. Moreover, platforms may not disclose to customers or workers how much of the tip the platform retains.
   a. The recent NYC regulations require that platforms must disclose total compensation and overheads to workers including gratuities, and disclose to worker and customer how much gratuity is taken by the app. This must be done daily.

14. Ensure distance and location transparency. Many platforms conceal for instance delivery or drop off destinations from workers, in order to get them to accept tasks that may not be economical (very short distances), or safe (in dangerous areas). Especially where workers are paid per task as opposed to time, regulation of the platform delivery and ride hail sectors should require job location and distance transparency to enable workers to make informed decisions when accepting a task.

15. Ensure algorithmic transparency. Action is needed to reduce information asymmetries and ensure workers can bargain with platforms on the basis of shared information. Regulation should require platform companies to disclose metrics of technology use.
   a. An example of this can be found in Spain’s recent ‘Rider’s Law’, which requires platforms to inform workers’ legal representatives about the mathematical or algorithmic formulae determining their working conditions.\(^{21}\)

16. Address common unfair practices in the setting of contractual clauses in the platform economy.
   a. There should be regulations prohibiting contractual clauses which (i) unreasonably exempt the platform from liability for working conditions, negligence or the like; (ii) prevent workers from effectively seeking redress for grievances which arise from the working relationship.
   b. Platforms should be required to notify workers of proposed changes in a reasonable timeframe before they can take effect and prohibited from reversing accrued benefits or reasonable expectations on which workers have relied.
   c. Where work is location-specific (e.g. ride hailing and delivery, as opposed to online freelancing), it should further be required that the party contracting with the worker should be identified in the contract and subject to the law of the country in which the worker works.

17. Require platforms to ensure due process for disciplinary actions including suspension and dismissal. Over and above protection from unfair dismissal being extended to workers through legislation such as the Status of Workers Bill accompanied by a Workers’ Protection Agency, platforms should be required to institute internal standards of disciplinary due process, including:
   a. Provision of a channel for workers to communicate with a human representative of the platform. Communications must be responded to within a reasonable timeframe.
   b. A documented process for workers to meaningfully appeal low ratings, payment issues, deactivations, and other disciplinary actions. In the case of deactivations, the appeals process must be available to workers who no longer have access to the platform.

18. For platforms who source labour through subcontracting arrangements, and for clients who source platform labour in a different jurisdiction (for instance online freelancers on in another country), introduce supply chain due diligence

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requirements, whereby UK based companies are required to monitor and report on social and environmental standards in their supply chains.

a. Germany’s recent Supply Chain Due Diligence Act provides a template for this.  

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