

Uber and Beyond: Policy Implications for the UK

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Abstract

The recent UK Supreme Court judgement on Uber's employment model has reignited questions about work in the broader 'gig economy'. The Court's recent judgment that Uber drivers are 'workers', and therefore within the scope of employment law, applies far beyond the drivers who had brought the specific case.

The accumulation of similar precedents in courts around the world means that legal and regulatory pressures on the broader platform business model will continue. This has been underlined by the high-profile reluctance of some major institutional investors to take part in the Deliveroo stock-market listing, citing concern about the viability of the model.

This insight paper explores the implications of these developments for work and productivity in the UK economy.

Uber and Beyond: Policy Implications for the UK

Abi Adams-Prassl¹, Jeremias Adams-Prassl², Diane Coyle³

1. Introduction

The recent UK Supreme Court judgement on Uber’s employment model has reignited questions about work in the broader ‘gig economy’. The Court’s recent judgment that Uber drivers are ‘workers’, and therefore within the scope of employment law, applies far beyond the drivers who had brought the specific case. The accumulation of similar precedents in courts around the world means that legal and regulatory pressures on the broader platform business model will continue. This has been underlined by the high-profile reluctance of some major institutional investors to take part in the Deliveroo stock-market listing, citing concern about the viability of the model.

This policy brief explores the implications of these developments for work and productivity in the UK economy. While some of the issues raised by the judgment are specific to digital platforms, the broad policy questions raised by the recent cases speak to the whole contingent segment of the labour force in the UK and elsewhere. The digital platforms grab the headlines, but, as we set out here, a significant proportion of the working population is affected by the same issues – not just couriers and drivers, but others ranging from hairdressers and gym instructors to people working in hospitality or construction.

We begin by describing the specifics of the digital platform business model, before turning to the immediate implications of the Uber judgement and other recent legal precedents. We then set out the evidence on the large extent of contingent modes of work in the UK, bringing together a range of data sources. The labour market statistics do not make it easy to understand the scale of contingent work, but the evidence we gather here suggests it amounts to about a quarter of the adult working population.

We then turn to a discussion of the policy implications. The existence of a large contingent workforce shouldering much of the risk of the business model has adverse implications for skills and productivity, for the tax base, the adequacy of pensions, and for the framework of social provision and infrastructure. The contingent model provides employers with the flexibility to adjust their labour input but at the cost of an erosion of the tax base and inadequate incentives for the development of skills. It has locked the UK into a low-productivity mode of work.

The policy agenda is not simply about the extension of existing rights: *existing* legislation needs stronger enforcement. Individual groups of workers should not be required to go through costly court proceedings for issues that have now been affirmed by a series of judgments. Furthermore, we suggest

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that rethinking the framework of social provision for this segment of the workforce could better combine labour market flexibility with higher productivity and worker well-being.

2. The Digital Platform Business Model

The digital platform business model has expanded greatly since the late 2000s, thanks to the rapid advent of mobile technology and the development of market design algorithms. The amount of time people spend online has increased substantially; in the UK it was 25 hours out of the 168 in a week in 2019, and 28 hours in 2020 (up from 12 hours a week in 2009) (Ofcom 2020). The fact that people can be online anywhere, anytime, has been an important enabler of digital platforms that involve matching users (generally consumers) on one ‘side’ of the platform with suppliers on the other side.

Like other digital platforms, matching platforms have some distinctive economic characteristics. The most important are indirect network effects and the so-called chicken and egg problem. The former refers to the fact that each individual benefits the more other people there are on the opposite side of the platform: drivers need riders and riders need drivers, and the more the better. Hence the chicken and egg problem, meaning platforms have to work to attract both suppliers and customers. They are generally loss making until they reach a critical mass. Many platforms fail (Cusumano, Gawer & Yoffie 2019). Those that succeed have generally been able to finance a sustained period of losses. The success stories also tend to become very large. Digital platform markets generally have ‘winner takes all’ dynamics (Furman et al 2019). Once established, large platforms often engage in a tactic known as ‘envelopment’, which means they start to acquire or expand into other activities to make use of the user base they have built. These can either involve complementary products or services (such as Airbnb expanding into other tourism services) or make use of their infrastructure or software (such as Uber expanding into deliveries and logistics).

Matching platforms have two other features of interest for policymakers. One is how they retain all of the scale advantages that their software platform creates. In principle, these matching marketplaces create economic benefits by enabling transactions that would otherwise not occur because the buyer and seller would never have found each other. There are very few economies of scale in driving a taxi or renting a spare room, but there are large economies of scale and scope in operating a platform that controls drivers or accommodation providers. In principle, all parties - suppliers, platform providers and consumers - should be able to benefit. In practice, the platforms have gatekeeper power. They acquire all of the customer and supplier data from transactions, and when large enough they are almost indispensable. Customers can sometimes switch (known as ‘multihoming’ in the economic jargon) but this is often harder for workers or service providers, particularly if they have to invest in getting onto the platform (for example by having insurance or certification, or if they have built up ratings that are not transferable).

This is leading to growing concern about the market power of platforms. A number of recent policy reports (Furman et al 2019, Crémer et al 2019, Stigler Center 2019) have pointed to issues of monopoly power in digital markets; but even since then concern has grown about their *monopsony* power - their role as dominant buyers of labour in particular. The second feature of policy interest is related to this, for the digital matching platforms have generally entered highly regulated markets. This means they have proven extremely attractive to consumers. For example, taxi markets in many cities have previously

long been closed to new competition, and while this has helped ensure safety regulation it has also led to higher prices or shortages of supply and long passenger waits (where prices are capped).

New entry can also be good for suppliers. For example, in some taxi markets, it has previously been hard for new drivers to break in, and when they do they have often been at the bottom of the hierarchy, getting the worst jobs. There is some (limited) evidence about the benefits of the flexibility of digital platform models for drivers from ethnic minorities or from disadvantaged areas for example. Berger et al (2020) combine data from Uber with a survey of a representative sample of its drivers in London, finding that the great majority are male immigrants from the bottom half of the income distribution, and most had switched from permanent jobs (full- or part-time). On average they report higher subjective well-being than other workers, although there exists a minority reporting lower well-being and a preference for standard employment. It also suits some people to work flexibly. Chen et al (2020) use a natural field experiment in Chicago to uncover great variety among Uber drivers, suggesting that some types of driver greatly value flexibility. Hall and Krueger (2017) reported similar findings from a nationwide survey of Uber drivers: that a majority had switched from permanent employment and valued the flexibility of the ride-share model. Blundell (2019) applies machine learning to UK Labour Force Survey data and to an additional survey of alternative work arrangements to identify six clusters of types of self-employed worker; a majority of workers are happy with self-employment and value flexibility, but a group of young men with low educational qualifications are dissatisfied and self-employed because of a lack of alternative options.

However, it is challenging to evaluate the broad economic impacts for drivers/suppliers or for customers because of a lack of data, with available studies either using data made available by the platforms themselves or commissioning one-off surveys. Nor do the UK's (or other countries') labour market or business statistics make it easy to know how many people undertake 'contingent' work for digital platforms, or in non-digital businesses, as the next section discusses.

Although there are studies identifying positive impacts for either marginalised workers or those valuing flexibility, it is also worth noting that the digital platforms have generally entered highly regulated markets, engaging in regulatory arbitrage. Whilst in principle pro-competitive, to the advantage of consumers, to the extent that regulations act as an entry barrier, the reality of monopsony power often leads to the opposite result. When disruptive innovation becomes a fig-leaf for rule-breaking, it can lead to weaker standards in aspects such as safety, and implies that people working for incumbents will experience an income shock - as has clearly occurred in many taxi markets entered by Uber.

3. The Uber Litigation

UK employment law divides the labour market into three categories: employees, workers, and independent contractors. Employees enjoy access to the full scope of rights, from anti-discrimination law to unfair dismissal protection, whilst the self-employed are left to fend for themselves. Worker status emerged as a middle category, providing a basic floor of rights including the national minimum wage and paid annual leave.¹

Gig economy platforms have always insisted that drivers and couriers are independent contractors, thus falling outside employment law protection. The precise details vary, but the basic model is consistent: extensive contractual documentation purports to set up a commercial arrangement in which the platform's role is limited to providing digital intermediation. Viewed thus, each individual driver directly

provides services to passengers through their own businesses, which in turn are designated as a customer of Uber's platform services.

Given the tight control exercised by platforms and other employers relying on similar setups, however, these assertions have increasingly come under judicial scrutiny. Cases ranging from cycle couriers to plumbers have alleged that individuals should be recognised as workers, irrespective of contractual labels. The recently concluded claim brought by Yaseen Aslam and James Farrar on behalf of a test group of Uber drivers is the highest profile action, but it is by no means unique.

Starting over five years ago, the drivers argued that Uber's sophisticated algorithms controlled all elements of their work, thus negating any opportunity for genuine entrepreneurship. The Employment Tribunal agreed, in unusually stark terms: 'The notion that Uber in London is a mosaic of 30,000 small businesses linked by a common "platform" is to our minds faintly ridiculous'.

'[W]e have been struck by the remarkable lengths to which Uber has gone in order to compel agreement with its (perhaps we should say its lawyers') description of [the business model] ... Any organisation ... resorting in its documentation to fictions, twisted language and even brand new terminology, merits, we think, a degree of scepticism. Reflecting on [Uber's] general case, and on the grimly loyal evidence of [Uber's senior manager] in particular, we cannot help being reminded of Queen Gertrude's most celebrated line: The lady doth protest too much, methinks.' (Aslam v. Uber B.V. 2016, par. 87)

Uber appealed, without success: the Employment Appeal Tribunal as well as the Court of Appeal upheld the Tribunal's original finding.² In March 2021, the UK Supreme Court unanimously agreed: the platform's drivers were not genuinely self-employed, and thus are entitled to the full set of rights and protections associated with their status as workers. The platform's tight control over drivers meant 'that they have little or no ability to improve their economic position through professional or entrepreneurial skill' (par. 101).

In the powerful Supreme Court judgment, Lord Leggatt found that the law would not 'accord Uber power to determine for itself whether or not the legislation designed to protect workers will apply to its drivers.' (par. 77) The fact that workers enjoyed a degree of flexibility in choosing when to work, furthermore, 'does not preclude a finding that the individual is a worker, or indeed an employee, at the times when he or she is working' (par. 91). In so doing, the UK Supreme Court joined a quickly growing list of senior courts and tribunals across Europe, including France and Spain, who have allowed gig economy workers' claims against self-employment.

Uber's initial response was to deny the ruling's significance. Pointing to 'significant changes' to its app, the company argued that many aspects of the judgment were therefore not applicable beyond the small group of drivers involved in the case. It came as no small surprise, then, when on March 17 Uber CEO Dara Khosrowshahi announced that 'Uber drivers in the UK will be treated as workers,' and would receive holiday pay and will be guaranteed at least the National Living Wage (as a floor, not a ceiling, meaning they will be able to earn more, as they do today). And eligible drivers who want a pension will receive one.⁴

This is an important step in the right direction, though many open questions remain. While the Supreme Court clearly found that drivers were working whenever the app was switched on, for example, Uber's

⁴ <https://www.standard.co.uk/comment/comment/uber-chief-executive-dara-khosrowshahi-drivers-rights-turning-page-b924529.html>

living wage guarantee seems to be limited to times when passengers are in the vehicle --- at odds with the judgment. And another benefit associated with worker status, the right to form a trade union and engage in collective bargaining, has not been mentioned by Uber at all.

4. How Many Workers Are Affected?

The judgment has wider implications beyond the tens of thousands of drivers working for Uber in England; its focus on control and “genuine entrepreneurship” over contractual detail, means that a much wider group of the self-employed are potentially bought into the scope of labour law. It is, however, challenging to estimate the precise number of people that might be affected by the reclassification of Uber drivers as “workers”; for we do not even know how many are currently working in the gig economy. While the Office for National Statistics is planning on introducing questions on platform work into the Labour Force Survey, it has not done so yet. Smaller surveys estimate that approximately 10% of the adult population worked for online platforms at least once a week, up from 5% in 2016, but these numbers are sensitive to the precise wording of the questions asked and sampling methodology.⁵

High quality data is available for the broader group of self-employed, and “solo self-employed”, workers including those in the gig economy. Figure 1a shows the rise in self-employment since the financial crisis. Self-employment, and solo self-employment in particular, rose dramatically between the financial crisis and the onset of the Covid-19 pandemic. Figure 1b shows that 47% of total employment growth between 2008 and the eve of the crisis was attributable to increases in self-employment.⁶ However, the self-employed have been particularly hard hit by the Covid recession; the majority of the fall in employment since March 2020 is accounted for by rising inactivity amongst the self-employed.

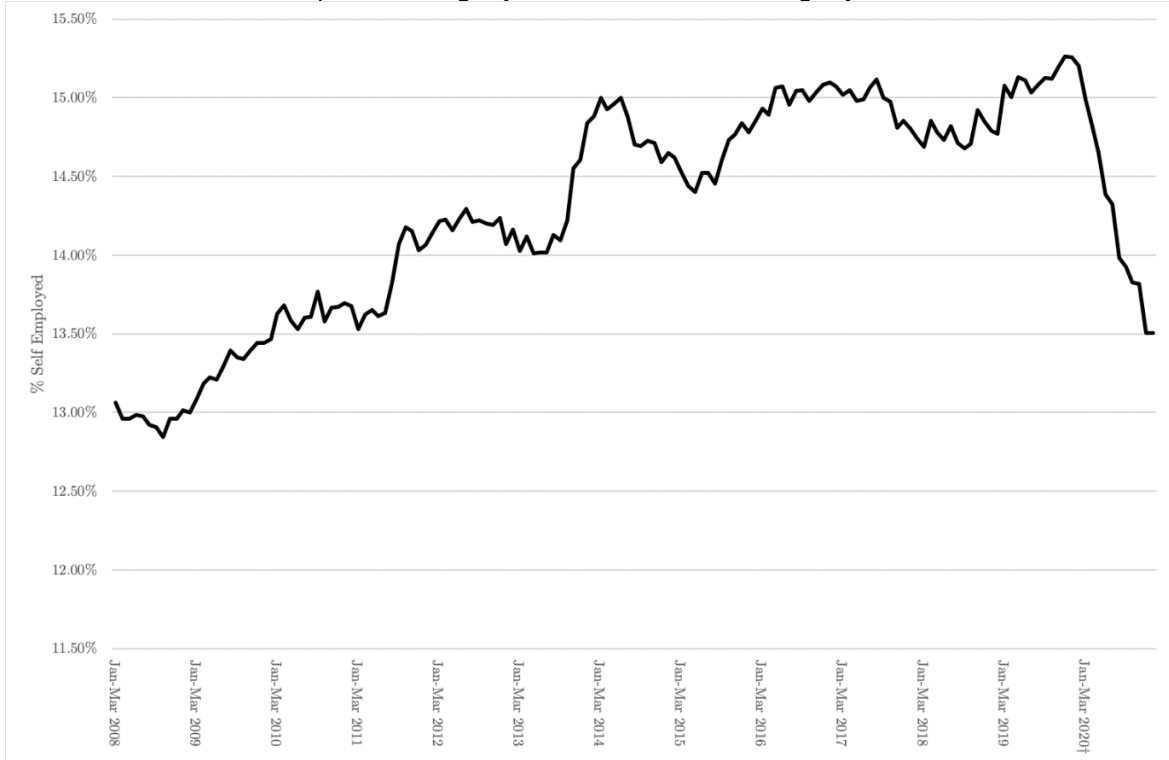
The Uber judgment focuses attention on those at the margin of self-employment who lack control over the basic terms of their product offering and customer base. It has long been recognised that the self-employed are an exceptionally diverse group and that particular care should be taken to distinguish between “opportunity” and “necessity” entrepreneurship: those actively choosing self-employment to take advantage of a business opportunity or to take advantage of the flexibility it affords, have higher life satisfaction and more stable economic outcomes than those who are forced into self-employment because of a lack of better options (Binder and Coad 2013). There is evidence that many of those in the gig economy and solo self-employment are closer to the “necessity” model of self-employment. For example, Boeri et al (2020) find that 80% of gig workers use this activity to top-up their income from other sources or in response to temporary economic shocks. As noted, Blundell (2019) uses machine learning methods to identify distinct “types” within the self-employed, identifying a group of predominantly low-educated, young men who are dissatisfied with their work arrangement and are only self-employed due to a lack of better options in traditional employment.

⁵ <https://www.feps-europe.eu/attachments/publications/platform%20work%20in%20the%20uk%202016-2019%20v3-converted.pdf>

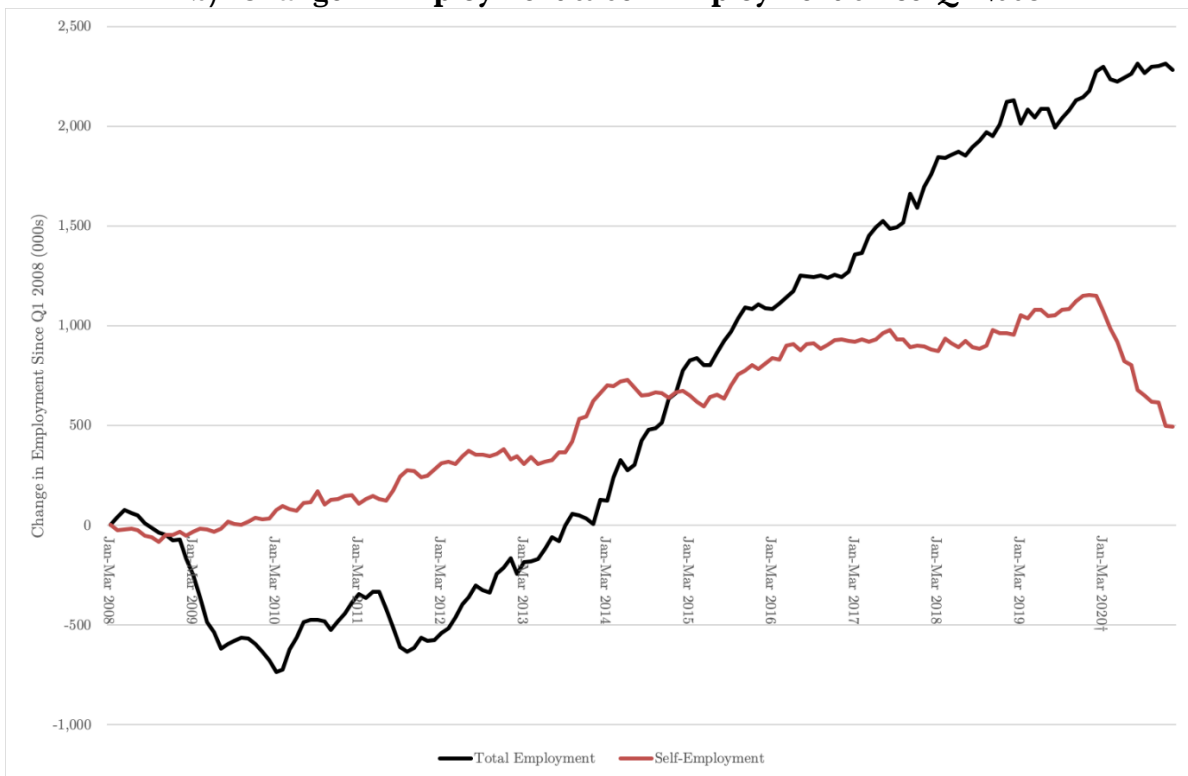
⁶ Authors’ calculation from ONS EMP01: <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/fulltimeparttimeandtemporaryworkersseasonallyadjustedemp01sa>

Figure 1. Self Employment in the UK

a) Self-Employment as % Total Employment



b) Change in Employment & Self-Employment Since Q1 2008



The Court's finding on employment status brings a subset of the self-employed within the scope of labour law, essentially making them zero-hours contract [ZHC] workers. ZHCs are arrangements under which an individual is not guaranteed work and is paid only for the actual hours of work offered by an employer and then carried out. In theory at least, there is therefore no guarantee of work on either side of a ZHC employment relationship: an employer only offers work when and if it is needed; a worker accepts this offer only when and if it suits them. It is an important reminder that many features of work in the gig economy, such as variability in working hours and schedules, are already present in the organisation of labour within firms.

Estimating the size of the number of zero-hours workforce following the Uber judgement is, again, exceptionally challenging given on-going issues with measurement. There is no consistent time series of the prevalence of ZHCs and, in 2014, the Chair of the Office for National Statistics had to apologise to Parliament over the under-recording of ZHCs in the Labour Force Survey. Partly these difficulties arise from the proliferation of terms used to describe what is in fact and law, the same work arrangement, undermining individuals' efforts to correctly self-identify their contractual form in surveys.

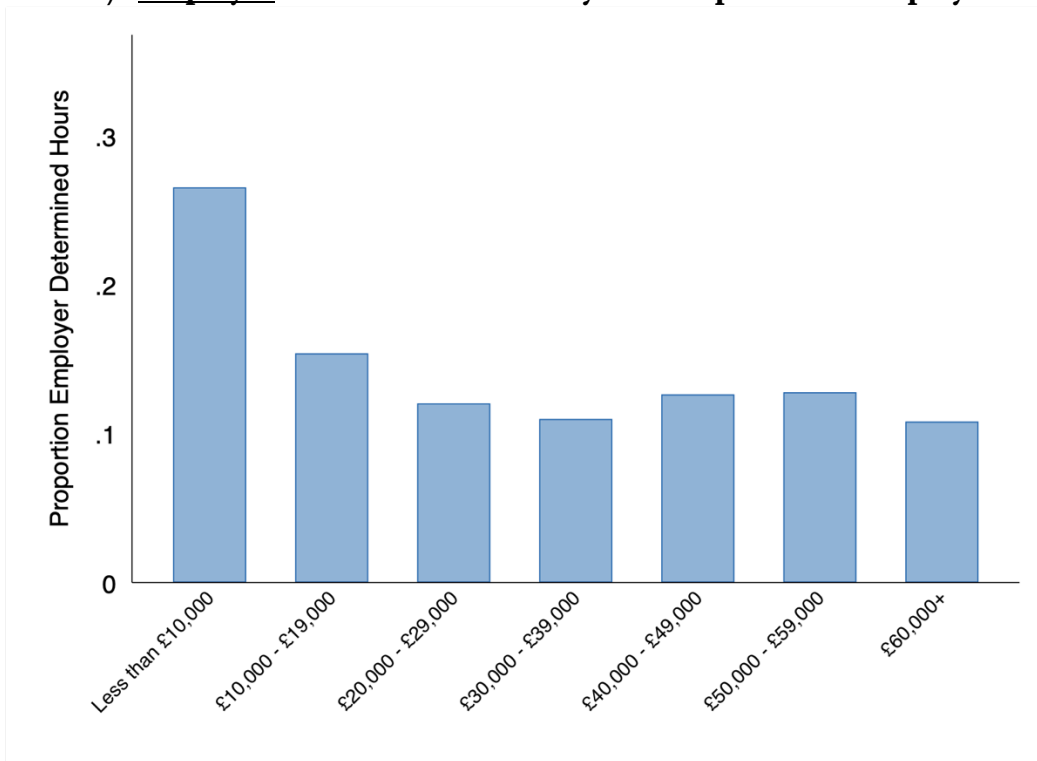
Some have argued that contingent work would be better measured in survey evidence if researchers focused on operationalising the categories used by lawyers rather than focus on asking about the various labels used to describe a particular working arrangement. This was the approach followed in Adams-Prassl et al (2020a); rather than ask whether respondents were employed on a zero-hours contract, they asked a series of questions on who controlled working hours and schedules: were hours contractually fixed? In cases where hours varied, was variation determined by the employer (in whole or in part) or controlled by the worker herself? This question is now asked in the nationally representative Understanding Society survey. In April 2020, 23% of employed workers had variable schedules; for more than half of these workers, their employer controlled their hours and schedules.⁷ Thus, a substantial proportion of UK workers are on flexible hours arrangements.

Furthermore, as Figure 2 shows, there is huge heterogeneity across the income distribution in whether employers or employees have control over hours: in low income jobs, flexibility in hours is much more likely to be controlled by employers, while in high income jobs, employees are more likely to have say over how much and when they work. Combined with Adams-Prassl et al (2020b) finding that flexible jobs at low wages are less likely to be salaried, thereby exposing workers to income risk, these findings suggest that focusing on "flexibility" in hours is not particularly helpful for understanding variation in worker welfare on different work arrangements. Rather, understanding the relationship between control of hours and variation in income is key.

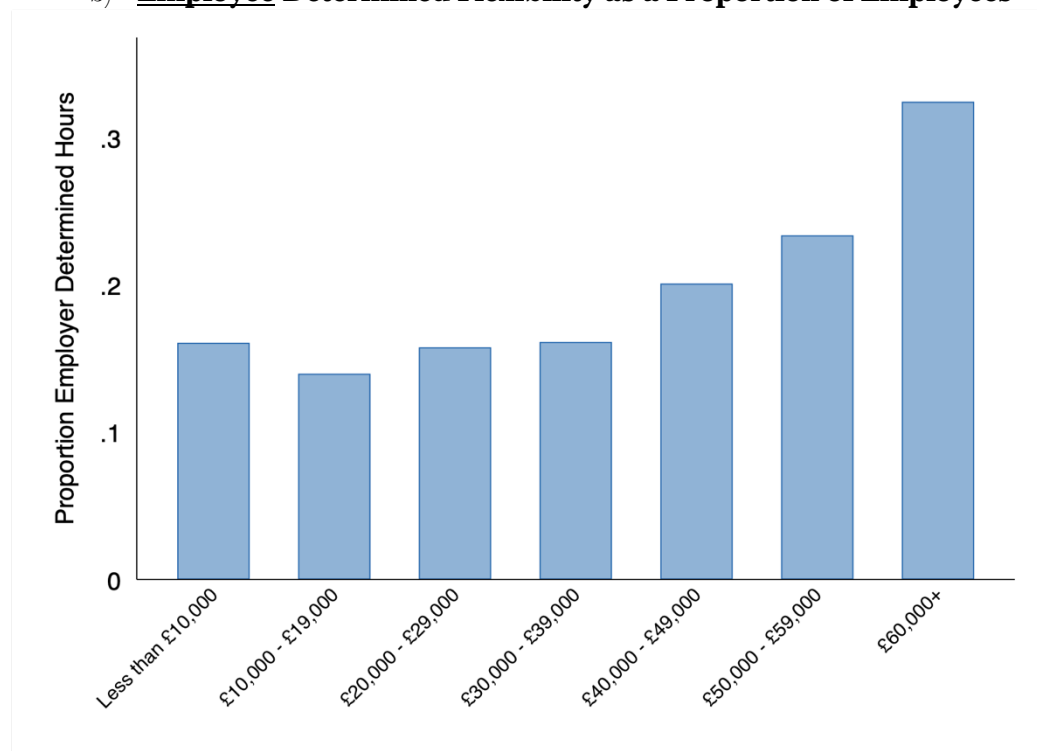
⁷ <http://doi.org/10.5255/UKDA-SN-8644-7>

Figure 2. Flexible Hours Arrangement by Income Group

a) Employer Determined Flexibility as a Proportion of Employees



b) Employee Determined Flexibility as a Proportion of Employees



5. What does the judgment mean for workers' legal rights?

Worker classification in and of itself does not change the underlying challenges of precarious, contingent work: following the Supreme Court's judgment, Uber drivers are left in the same legal position as other zero-hours contract workers. This affords basic protections including holiday pay and anti-discrimination law, but excludes other important rights such as unfair dismissal protection.

Worker status, then, is not a quick fix to issues raised by such extensive precarious work. The experience of zero-hours contract workers is a good illustration of this. Despite being within the scope of employment law, the low pay and poor employment conditions faced by some ZHC workers has been consistently highlighted (Adams et al 2015; Datta et al 2019). Zero-hours contract workers were more likely to experience hours, earnings, and job losses over the pandemic (Adams-Prassl et al 2020a; Crossley et al 2021), and approximately 20% did not qualify for Statutory Sick Pay.⁸ The TUC has called for an outright ban on ZHCs, while the Women and Equalities Commission argued that the impact of the pandemic has “sharpened the focus on the systemic issues [of low job quality] with the zero-hours contracts policy”, which are disproportionately experienced by BAME and women workers.⁹

It has long been recognised that (elements of) employment law should be updated to reflect recent changes in the world of work. What has been much less clear is *how* we should go about doing so. In response to an earlier wave of concern about the scale and quality of contingent and gig economy work in the UK, the Theresa May commissioned an extensive review of modern working practices, published in 2017.¹⁰ Despite the government's subsequent acknowledgment of some of the proposed reforms,¹¹ the ensuing Employment Bill has not been enacted.

In moving forward, the Supreme Court decision in *Uber* provides a number of important pointers for successful reform. Despite platforms' extensive efforts to suggest that traditional employment rights are incompatible with anything other than the 9-5 factory or office, first, there is nothing at all to suggest that flexibility and employment rights are mutually inconsistent as a matter of labour market regulation. Second, we need to be careful to distinguish what we mean by flexibility as Figure 2 above makes clear. The traditional gig economy model does not, in fact, allow all workers to choose when and how to work – it merely offers the opportunity to make oneself *available* to work if there is sufficient customer demand. That is a long way from two-sided flexibility.

Most importantly, however, the judgment and its aftermath highlight the divergence between the law on the books, and its enforcement on a day-to-day basis. A right without a remedy is meaningless, leaving social rights ‘like paper tigers, fierce in appearance but missing in tooth and claw’, as the late Professor Sir Bob Hepple so memorably put it.¹²

⁸ <https://committees.parliament.uk/work/318/unequal-impact-coronavirus-and-bame-people/>

⁹ <https://committees.parliament.uk/work/318/unequal-impact-coronavirus-and-bame-people/>

¹⁰

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf

¹¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/853886/Queen_s_Speech_December_2019_-_background_briefing_notes.pdf

¹² B Hepple, *Social and Labour Rights in a Global Context* (Cambridge: CUP, 2007) 238.

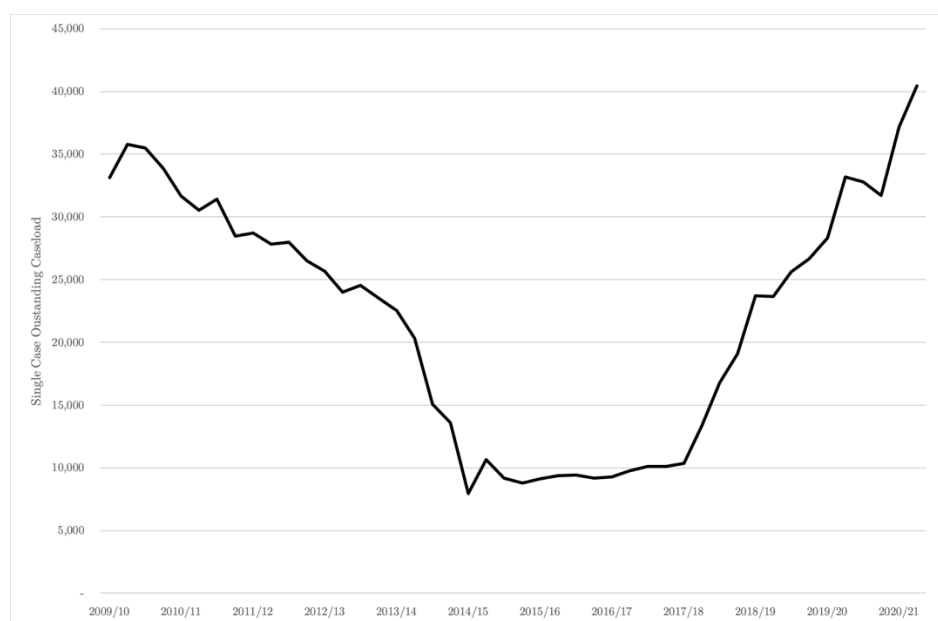
Enforcement

At first glance, Supreme Court decisions solves the employment status problem: when do gig-economy workers qualify for employment rights? However, the real elephant in the room is that even when there are clear entitlements, they are impossible to enforce in practice. After more than five years' and hundreds of thousands of pounds' worth of litigation, the extent to which Uber will comply with the law remains unclear.¹³

There are three, potentially interdependent, traditional avenues of enforcing labour market regulation: individual litigation, trade unions, and state enforcement. With the demise of collective representation,¹⁴ and in the absence of consistent state enforcement,¹⁵ the Employment Tribunal system in recent decades had become the only credible mechanism for vindicating most individual employment rights.¹⁶ The *Uber* litigation, however, clearly shows the flaws in this approach: it is rarely in an individual's self-interest to enforce their rights in the tribunal given the significant cost and delay involved (Adams and Prassl 2017).

The prospects for individual litigants could be improved through a number of procedural devices, such as shifted burdens of proof, or a presumption of employment status. Ultimately, however, individual litigation in the years ahead is likely to suffer from significant delays as a result of the Covid-19 pandemic and broader strains on a chronically underfunded justice system, as well as leaving workers vulnerable to non-compliance. As Figure 3 shows, the backlog in the employment tribunal is now at record highs after the recovery of case volumes following the abolishment of employment tribunal fees in 2017.

Figure 3. Single Claimant Outstanding Caseload in the Employment Tribunal



Source: Quarterly Tribunal Statistics.

¹³ See Section 3 for a discussion.

¹⁴ Department for Business, Innovation and Skills, *Trade Union Membership 2014: Statistical Bulletin* (London, June 2015): 6.4million members or 25% density

¹⁵ The United Kingdom appointed labour inspectors as early as 1833; today there remains but a limited patchwork of area-specific agencies: Lab/Admin, 'Labour Inspection: What it is and What it does' (ILO 2010) 8.

¹⁶ We discuss the role of alternative dispute mechanisms, including notably ACAS, below

However, the Supreme Court’s decision also opens the door to collective enforcement. Both traditional and new trade unions have become increasingly active in fighting for gig workers’ rights,¹⁷ including through landmark test cases. Collective bargaining in particular is a flexible mechanism which allows for the on-time resolution of conflicts and adaptation as business models evolve. But there are also drawbacks: the right to request trade union recognition is linked to worker status, and thus many of the same fact-specific litigation questions arise as in individual cases.¹⁸ The alternative approach of recognising collective bargaining rights for self-employed individuals in certain economic sectors is an attractive avenue around this problem – but might in turn run into problems of competition law.¹⁹

This leaves a third option: a renewed emphasis and significant strengthening of state enforcement. Recent years have seen both a lack of political will and public resources when it comes to ensuring public enforcement of labour market regulation, despite the creation a dedicated director of labour market enforcement in 2017.²⁰ The statistics are sobering: in 2017/18, the latest year for which statistics are available, the upper bound of probability that a case of underpayment would be detected in was just 13%²¹ - a number which is likely to have fallen significantly lower as a result of enforcement difficulties during the pandemic.

6. Further Policy Issues

Employment regulation should not be seen in isolation from other policy areas. Changes in the organisation of work have significant implications for the design of tax and social security systems, in addition to the provision and financing of training to improve workforce productivity. Furthermore, given the externalities of the gig economy business model, and precarious work more generally, a lack of consistent enforcement of employment law is not just a problem for workers: when operators can pick and choose which rights apply to them, the harm extends to competitors, consumers, and taxpayers alike. Only a level regulatory playing field can ensure the fair competition required for genuine innovation and productivity gains.

i) Tax

Changes in organisation of work and the rise of digital platforms are placing a significant dent in tax revenues. Beyond the fact that platforms ‘have displayed the propensity (and distinct capacity)’ to engage in ‘tax opportunism’ (Oei and Ring 2016), the employment status of workers has significant implications for the amount of tax levied. Labour income earned as an employee is typically taxed much more heavily than self-employment income, profits, and dividends (Adam et al 2017). Under certain assumptions, employees, together with their employers, pay almost 70% more tax on that amount than a (well-advised) company owner-manager, and 35% more than an equivalent self-employed individual (Adams et al 2018). These tax differentials create significant incentives to organise activity other than through employment contracts and, as self-employment rises, is having a negative impact on overall tax revenues. The OBR estimates that the increasing trend towards incorporation means that total tax receipts are currently £3.5bn lower than they would be if incorporations increased in line with

¹⁷ See notably the IWGB

¹⁸ See, for example, the ongoing litigation surrounding Deliveroo drivers’ attempts to unionise.

¹⁹ <https://journals.sagepub.com/doi/full/10.1177/2031952519872322>

²⁰ <https://www.gov.uk/government/news/sir-david-metcalf-named-as-the-first-director-of-labour-market-enforcement>

²¹ (<https://www.resolutionfoundation.org/publications/under-the-wage-floor/>)

employment (OBR 2016). It is not only labour taxes that are at stake. In many countries, value added taxes are only payable by businesses whose turnover exceeds some threshold. Therefore, whether Uber drivers (whose individual turnover is relatively low) versus Uber the platform (whose combined turnover is large) are deemed to be the supplier can have significant implications for the collection of VAT.

The Supreme Court's finding that Uber drivers are workers in the context of employment law does not determine the question of whether they are employed for tax purposes. In contrast to employment law, in tax law there is no general classification of "worker" as an intermediate between employees and the self-employed.²² Rather, the tax system currently distinguishes between employees, the self-employed, and incorporated businesses owned by one or two directors/shareholders and with no employees. Thus, there needs to be a separate determination on the facts to decide whether Uber drivers should be taxed as employees under the PAYE system, placing a responsibility of Uber as an employer to collect tax, or as self-employed, with tax collection done under the self-assessment scheme.

ii) Social Security and Benefit Conditionality

This discussion raises broader questions about the form of the social contract in the world of digitally-enabled and other flexible business models. The UK tax and welfare system continues to rest on the assumption that it is largely administered by the employer, which is administratively easier but reduces flexibility. This means there are major coverage gaps for contingent workers, who are more likely for example to have breaks in their National Insurance Contribution record; and far less likely to have a pension (eg Crawford and Karjalainen 2020), whereas employees are now auto-enrolled in a scheme. The pandemic has also exposed the lack of statutory sick pay eligibility for the self-employed but also zero-hours, and contingent workers. The question of what model would provide contingent workers with a fiscally sustainable safety-net, and incentives to upskill, while enabling flexible arrangements to the benefit of both employer and worker, still stands (Coyle 2017).

Within the current welfare model, there is a question of how strongly to incentivise benefit recipients to engage in gig-economy work to top-up or replace transfers from the state. Social security systems in OECD countries have increasingly placed obligations on benefit recipients to look for, and accept, work, even zero-hours work. For example, when transitioning to the Universal Credit regime in 2014, Esther McVey MP, then Minister for Employment, stated that benefits could be cut for failing to accept zero-hours work:

"We believe that jobseekers on any benefit should do all they reasonable can to get into paid employment....We do not consider zero hours contracts to be – by default – unsuitable jobs. ...So in Universal Credit our coaches can mandate zero hours contracts."²³

(Minister for Employment 2014)

²² The term 'worker' is used in tax legislation but not in the same way as in employment legislation. For example it is found in relation to special provisions for agency workers (as defined within the legislation) and in the personal services intermediaries legislation known as 'IR 35'. However, the meaning with regards IR 35 is not the same as in employment law.)

²³ Letter from Esther McVey MP to Sheila Gilmore MP, 1st March 2014.

<http://web.archive.org/web/20140506090500/http://www.sheilagilmore.co.uk/wp-content/uploads/2014/03/GILM0200202140092020020092.pdf>

Yet it is not clear that these strong incentives to accept gig economy or ZHC work in the face of a negative earnings shock is beneficial for long-run worker outcomes. In the short run, the evidence suggests that access to gig economy jobs has positive benefits for workers by enabling them to better smooth out the impact of negative earnings shocks. Koustas (2018) finds that access to gig economy platforms enables workers to reduce the impact of income losses in traditional jobs on their spending and living standards.

However, the long run picture is more mixed. There is little evidence that gig economy/solo self-employment jobs reliably act as “stepping stones” into more secure employment. While these jobs provide workers with experience, it is not clear whether this experience is valued by employers, and moreover training and career advancement is limited (Mas and Pallais 2020). Worryingly, Jackson (2020) finds evidence that gig economy jobs might crowd out more stable employment such that workers get stuck on low pay for longer. She finds that while access to gig economy platforms reduces the pain of job loss in the short run, two to four years later, affected workers earn \$2000 less and are 5 percentage points less likely to be employed in a salaried job than their peers in areas with limited access to platform work.

An additional long-term consideration is the adequacy of pension provision for the contingent workforce. In the UK, there is a flat rate state pension, while employers are required to offer an auto-enrolment workplace scheme to employees. They are not obliged to do so for workers, although some (but not all) people in the worker category can ask to join the scheme. For those workers on low earnings, the implication is that a substantial proportion may find themselves with only the basic state pension on retirement.

iii) Training & Productivity

The contingent workforce model transfers much of the responsibility for business risk and operation to individuals, while the framework of social support rests on the assumption that employers are involved in the administration and delivery of everything from tax collection to pensions or parental leave. The result is that the workers concerned lack the basic provisions enjoyed by employees. If they do not take the personal initiative to undergo training, or upgrade the equipment they use, these investments will not occur. One would therefore expect that levels of human, physical and intangible capital in the economy will be lower than would otherwise be expected.

Furthermore, there is evidence linking well-being at work to firm-level productivity. Experimental evidence supports a causal link from individual subjective well-being to higher labour productivity. The channels through which these effects operate seem to be human and social capital; that is, both the individual’s accumulated skills and capabilities, and positive social relations within the working environment. The Taylor Report urged employers to recognise the benefits they would gain from more productive and committed employees who were treated well. The analysis is consistent with the ‘efficiency wage’ argument: paying workers more than their ‘reservation wage’ and building on evidence that individual well-being at work increases productivity, for example by increasing people’s effort when it is otherwise difficult for employers to monitor this (surveyed in Altman 2020). There is also a convincing body of evidence that treating workers well, in terms of job quality indicators such as security and job satisfaction as well as through higher wages, improves their well-being and their productivity (reviewed in Isham et al 2020).

Both the reduced investment (compared to the counterfactual) and the well-being channels of influence suggest the one-sided flexibility of the contingent model so widespread in the UK may adversely affect productivity. If average labour productivity is to increase through upskilling and investment across foundational sectors of the economy, the policies to enable this will need to include those we suggest here addressing the contingent work model.

iv) Market Power

Policy and academic debates have increasingly raised the issues of employer concentration, or “monopsony power” as a wider issue constraining worker wages and job quality. Where a small number of firms dominate local labour markets, concerns ranging from the use of no-poaching agreements and non-compete clauses to low worker bargaining power, and the need for minimum wages or collective bargaining, arise.

Policy debates in the US, for example, have also increasingly focused on the monopsony power of some digital platforms, tapping into a long political tradition of concern for small suppliers (Stoller 2019), and have therefore argued there is a need for anti-trust action. This is one aspect of a broader debate regarding digital platforms in US anti-trust circles, concerning the merits of a structuralist approach as opposed to the existing consumer welfare standard debate. The existing standard puts weight on the benefits of digital platforms for consumers, such as low prices and better availability. The structuralists argue that this standard means workers’ welfare is ignored. A survey of recent US literature (Stutz 2018) notes that the strongest grounds for concern at present are the broad use of non-compete clauses in low wage jobs in sectors such as the fast food industry (Krueger and Ashenfelter 2018) and of no-poaching clauses among high paid workers in Silicon Valley (Pitman 2020).

While there is clear evidence that labour markets diverge markedly from the perfect competition ideal (see Schubert et al (2021) for a review of the literature and new evidence on the wage-depressing effects of monopsony power), there is less evidence on whether monopsony power has increased over time. Despite the evident gatekeeper power of some digital platform, Hafiz (2020) suggests that the competition policy debate is a substitute for overt arguments in the US context for stricter labour market regulation.

There is little known in the UK about the extent to which employers have market power in labour markets, particularly in local labour markets. It is possible that in some areas of deprivation or ‘left behind’ towns, individuals have very few alternative options beyond contingent work, particularly as austerity measures have reduced the footprint of public services and therefore public sector alternatives in such places (Goodair and Kenny 2020). Putting places where average incomes and productivity are low on a trajectory of increasing skills and higher value work will require a more detailed investigation of local labour markets.

7. Conclusion

The data set out above indicates the wide extent of contingent working in the UK, including gig work through digital platforms such as Uber. Although the economic literature provides some evidence of benefits to workers, such as flexibility or pathways into more formal jobs for outsider groups such as recent immigrants, the broader regulatory environment seems likely to ultimately change in response to court decisions. Moreover, it *ought* to change to afford flexibility to individuals who value it while providing them with the conditions to work more productively. Contingent work arrangements at present place the costs and risks of acquiring training, of variations in demand, and often of investing in capital (such as cars or tools) largely on workers. As employers are in general better placed to bear such costs and risks, contingent models are likely to be characterised by lower productivity and skills - as well as greater inequality - than more traditional business models. The extent of contingent work outlined here indicates that the UK economy has fallen into a low-quality, low-productivity, dispensable-labour trap.

The Supreme Court's recent decision in *Uber* marks an important contribution to these debates. It highlights the importance of recognising flexible and precarious labour as work, rather than independent entrepreneurship, irrespective of complex contractual arrangement. At the same time, however, it also serves as a reminder that worker classification is only the beginning of the road: given the prevalence of flexible (and low-cost) labour in the United Kingdom, from Uber drivers to people working in adult social care and hospitality, only an integrated approach across different policy areas will ensure that flexible work can become a genuinely attractive proposition.

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