



PROTECTING WORKER RIGHTS IN THE GIG ECONOMY: A FOCUS ON DELIVEROO

Brij Shah
Justin Yu
Korhan Gorgulu

Executive Summary

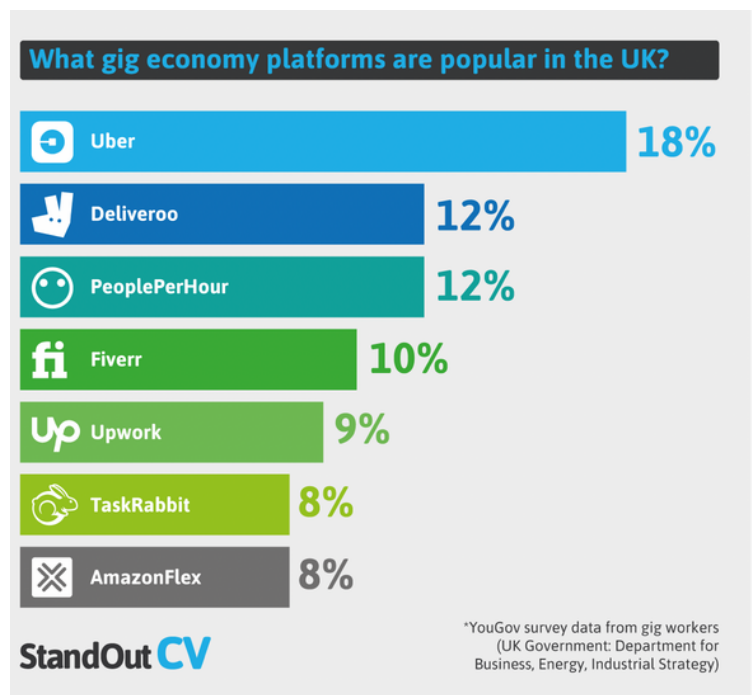
The Gig Economy refers to small jobs or tasks known as 'gigs' assigned by companies to their contracted workers. Platforms instruct workers on what tasks to carry out, typically through the use of online algorithms. Deliveroo is an example of a platform with significant legal issues surrounding how workers in the gig economy are defined.

This policy brief focuses on the precarious situation of the lack of legal protection for Deliveroo food couriers in the UK due to their status as self-employed, focusing on wages, dismissals and trade union membership. Finally, the brief will conclude by making recommendations.

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Deliveroo as a Case Study

In *Uber BV v Aslam* (2021), the Supreme Court classified Uber drivers as workers for the purpose of s.230(3)(b) Employment Rights Act 1996, the National Minimum Wage Act 1998, and the Working Time Regulations 1998. The court said that they are workers, as they are in a position of subordination and dependency to Uber. However, in *Independent Workers of Great Britain (IWGB) Union v Central Arbitration Committee* (2021) the court said that Deliveroo riders are self-employed and do not have the right to form and join a trade union. Additionally, looking at *Pimlico Plumbers v Smith* (2018), the court held that he was a worker because there was an element of control such as using their logo, equipment, and transport. Despite this, it is arguable that Deliveroo couriers are in a position of dependency and subordination too, as they have to use Deliveroo's logo and are penalised for late deliveries. On this basis, it is tenable that Deliveroo couriers should also be recognised as workers. There is therefore a discrepancy in the law as gig economy workers' rights are not harmonized. We will highlight this issue using Deliveroo.



The difference between workers and the self-employed

	Worker	Self-Employed
Protection from unfair dismissal and redundancy payment	No	No
National Minimum Wage	Yes	No
Working Time Regulations (Including paid holidays)	Yes	No
Equal pay and protection from discrimination	Yes	No
Personal Service	Limited right to send a substitute	Can use substitutes

Issues:

Wage

As mentioned, Deliveroo does not guarantee its workers minimum wage. Investigations have found that as many as a third of couriers are paid less than the legal minimum wage. Instead of a minimum hourly wage, drivers are only paid for each delivery they complete. A dynamic pricing model is used where the wage received is based on real-time changes in market conditions. This is problematic in that it is risky, and riders have no guaranteed income. Additionally, riders are only paid during deliveries and not for waiting at restaurants, meaning they are not paid fully for the work done. Holiday and sick pay are not provided either. Having this will protect riders from lost work and ensure they don't lose their statistics. It is clear riders are exploited by Deliveroo and since their situation is similar to that of Uber drivers, we can see that Deliveroo couriers should be paid minimum wage too.

Trade Unions

Deliveroo has been challenged on multiple different occasions regarding the status of individuals who use their platform for work and pay by the IWGB. The lower courts held that the riders do not fit within the statutory definition of worker and this is crucial because 'self-employed' individuals cannot form or join trade unions. Consequently, leaving drivers in a vulnerable position of being unable to effectively bargain with Deliveroo over key issues such as minimum wage, sick pay or holiday leave. The Court of Appeal's reasoning behind this decision was that since the riders had a near unlimited right of substitution, no requirement to work at certain times and right to join competitors, they therefore cannot be ensured a right to collective bargaining. To avoid this vulnerability, the IWGB which has the largest membership of app couriers is challenging this position and Deliveroo in the Supreme Court to set a legal precedent for collective bargaining rights across the gig economy.

Deliveroo drivers do not enjoy protection from unfair dismissal. Deliveroo riders will receive threats of dismissal if they fail to complete orders. They must work under such threats even due to circumstances out of their control (e.g., unable to contact the customer). Applying the critical incident technique to Frank demonstrated how experiences of unfairness were often produced by riders' interactions with other stakeholders outside of the algorithm. Importantly, once dismissed, riders lose their livelihoods in an instant. Even though Deliveroo has a partnership with the GMB union for dismissal review, it is only a voluntary partnership agreement. Also, the loss of income will not be compensated.



Recommendations:

1

Legislation Harmonisation

Parliament should harmonise the law of gig economy workers by enacting legislation governing their rights. This should bring the legal definition of 'worker' in line with the Uber case to those who share 'employee-like' characteristics and those in a position of subordination and dependency. A guaranteed minimum wage, working time including waiting time, and the right to join trade unions should be secured. Inspiration can be taken from the EU Directive proposal on improving working conditions in the gig economy. Despite the anticipated court ruling in *IWGB*, legislation should be enacted.

2

Data Transparency

The Government should encourage gig economy platforms to cooperate and voluntarily share their data with regulators. It will enable co-developed regulations tailored to solve problems individual platforms face and alleviate fears of over-regulation. Also, metrics-based regulation could also be used to shape platform policies and make them fairer to such workers. For instance, it could help compensate riders for waiting time beyond a minimum threshold period.

3

Ensure workers are aware of their rights

Due to the power disparity between employers and workers, we should ensure that before platform workers are onboarded, they are fully aware of their rights and have access to a fair dispute resolution mechanism at no cost or at an affordable cost.



SOURCES

Primary Sources

Case Law:

- Independent Workers of Great Britain Union v Central Arbitration Committee [2021] EWCA Civ 952
- Pimlico Plumbers Ltd v Smith [2018] UKSC 29
- Uber BV v Aslam [2021] UKSC 5

UK Legislation:

- Employment Rights Act 1996
 - National Minimum Wage Act 1998
 - The Working Time Regulations 1998
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SOURCES

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Journal Articles:

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- SKELTON S, 'Deliveroo Riders do Not Have Right to Unionise, UK Court Rules' (ComputerWeekly.com, 25 June 2021) <<https://www.computerweekly.com/news/252503071/Deliveroo-riders-do-not-have-right-to-unionise-UK-court-rules>> accessed 5 December 2022

APPENDIX

We started off by first brainstorming various ideas, topics and issues for the policy brief and we eventually settled on the protection of workers within the gig economy with a particular focus on Deliveroo. We decided to focus our policy brief on this topic after reading a BBC article called "National Living Wage: The truth about food courier pay". Once we settled on a topic we began doing further research and reading about it and once we believed we had enough knowledge on the issue that's when we began actually writing the policy brief. We split up the work equally with each person having roughly the same amount of work to do, for example for the main issues section and for the recommendations each person focused on one main issue and provided a recommendation. Splitting up the workload and collating all our research made the whole process more efficient. Once we finished writing the brief the last thing left to do was formatting and designing the brief. once we finished that the policy was complete.

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