Introduction

1. This report focuses on the rise of the so-called “gig economy”, particularly focusing on food delivery and courier work. Deliveroo, which could be considered as the Uber for food delivery, has grown rapidly in the past four years with an estimated 14,000 drivers in the UK. The so-called “gig economy” is often little more than a euphemism for low-paid insecure work using a bogus employment status. It has been founded on a business model that classifies staff as “independent contractors” to replace the roles of “workers” or “employees”.

2. This report is an intervention by the IWGB, a trade union that represents workers at Deliveroo and other courier companies and has been at the forefront of the struggle for higher pay and proper employment status in the so-called “gig economy” (for more on which see iwgb.org.uk). Trade unions are needed precisely because of the inequality of bargaining power between employers such as Deliveroo and CitySprint, and their large, insecure and precarious workforce. In a recent consultation we solicited testimony from workers in the “gig economy”, with workers noting how:

   a. “[the company] regularly reduce rates without any consultation and a ‘take it or leave it attitude’. They’re also trying to force us to work Bank Holidays and in some cases Sundays by using threats of work withdrawal. Delivery rounds can be chopped and changed as they please.”

   b. “It has become increasingly obvious to me during my time working with Deliveroo that they are using loopholes in employment law in order to avoid corporate responsibility for their workers, as is evident through recent developments with cases such as Uber and various other small cases involving individuals versus their company.”

3. In January 2017, the IWGB conducted a short survey of its members and non-members (total 158 responses) working in the “gig-economy”. The main findings were:

   a. **88.5%** of respondents felt that their current employment status did not accurately reflect the nature of their work
   b. **92.9%** believe that their classification as independent contractors resulted in them being treated unfairly compared to an employee
   c. **92.3%** believe that employers deliberately misuse the category to take advantage of their workers
   d. **98.1%** are in favour of greater employment rights.

4. The IWGB recommends three key policy proposals; to mandate government to enforce labour law with regard to the use of bogus employment status, to increase employment rights associated with worker status and to make it easier for workers to bring tribunal claims.

Legal overview

5. In the UK, there are three main types of employment status: independent contractor (someone who is genuinely running a business on their own account), a “limb b” worker- henceforth referred to simply as “worker”- (a self-employed person integrated into another business) and an employee. As recent employment tribunal judgments have confirmed, many of those working in the so-called “gig economy” are actually workers in law yet have been

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1 The term “gig economy” is a misnomer at best and purposely deceitful at worst. It implies that the people who work in this sector are merely performing a few one-off jobs and conjures an image of someone who is financially independent/secure who occasionally will hop on their bike and do a delivery for Deliveroo just to get a bit of pocket money. The IWGB has a very different experience. Most of our members who work in the so-called “gig economy” depend on these jobs - whether on a part time or full time basis - as their primary source of income.
bogusly classed as independent contractors by their employers in order to get around providing them with basic employment rights.

6. Workers do enjoy a degree of autonomy and flexibility not afforded employees by nature of their self-employed status (they also do their own taxes), but by professionally serving the business interests of another rather than their own, are accordingly owed basic working rights and protections by the other. These fall short of the full provisions due to employees, but notably include the right to the National Minimum Wage, protection for whistleblowing, protection against unlawful deductions of wages, discrimination and less favourable treatment for part-time workers, and statutory allowances for paid leave and rest breaks. They are not afforded the full set of rights owed to employees, such as statutory sick pay, parental leave, redundancy, notice periods for dismissal and the right to challenge unfair dismissal.

Answers to the Committee’s Questions

7. Is the term ‘worker’ defined sufficiently clearly in law at present? If not, how should it be defined? What should be the status and rights of agency workers, casual workers, and the self-employed (including those working in the ‘gig economy’), for the purposes of tax, benefits and employment law?

8. Yes. Worker status is well established in law. It was the finding of two separate Tribunal Judges in two recent “gig-economy” Tribunals, that the two companies, Uber and CitySprint, were acting unlawfully by denying their workforce basic employment rights. The two Judges found that the companies should have classified the claimants as workers, and that it was clear that they had intentionally denied them rights because the contracts were so construed, lawyered and “contorted”. In essence, there is no reason why worker status cannot be expanded to afford workers more employment rights - indeed it should be.

9. For those casual and agency workers working in the ‘gig economy’, is the balance of benefits between worker and employer appropriate?

10. No. Both the Uber Tribunal Judgment and the CitySprint Tribunal Judgment found “inequality of bargaining power” to be present at both companies, and that it was the asymmetry of the relationship between Uber and the Uber driver, and between CitySprint and the CitySprint courier, that demonstrated the claimants to be in a subordinate position. This results in an extraordinary set of circumstances that lead one party to exploit the other. It is primarily for this reason that “gig-economy” workers are seeking to unionise, in order to fight for better pay and conditions.

11. What specific provision should there be for the protection and support of agency workers and those who are not employees? Who should be responsible for such provision – the Government, the beneficiary of the work, a mutual, the individual themselves?

12. There are three improvements that should be made here with regard to “workers”:
   a. Expand worker status rights;
   b. Mandate and fund a government agency to enforce the law around bogus employment status;
   c. Make it easier for Claimants to bring claims against their employers.

13. There is no reason why workers should not receive many of the same protections afforded to employees. Workers are self-employed people integrated into the business operation of someone else, and for this reason they should be afforded many of the same basic rights and protections by that company. There is no reason that the Government needs to step in and offer additional provisions on behalf of employers - companies such as Uber and CitySprint have been exploiting their cost neutral workforces for many years.

14. What differences should there be between levels of Government support for the self-employed and for employees, for example
over statutory sick pay, holiday pay, employee pensions, maternity pay?

15. **None.** The rights associated with worker status need to be expanded.

16. **How should those rights be changed, to ensure fair protection for workers at work?**

17. Firstly, expand the number of rights associated with worker status. This would require a small change in UK employment law.

18. **What help should be offered in preparing those people who become self-employed (with, for example, financial, educational and legal advice), and who should be offering such help?**

19. The Government needs to take steps to ensure employers treat their workforces fairly. More onus should be put on the employers to be clear with their workforce about self-employment status and the rights they are owed. The use of bogus employment status contracts (such as used by Uber, CitySprint and Deliveroo) should be ended. In addition, there needs to be an attempt to raise awareness amongst the general public about these practices, including integrating this into education in schools and colleges, informing and preparing the next generation about the employment rights they should expect at work and how to enforce them.

20. **Is there evidence that businesses are treating agency workers unfairly, compared with employees?**

21. The IWGB does not have experience with the use of “agency workers” in the so-called “gig economy”.

22. **Should there be steps taken to constrain the use by businesses of agency workers?**

23. The IWGB does not have experience with the use of “agency workers” in the so-called “gig economy”.

24. **What are the issues surrounding terms and conditions of employees, including the use of zero-hour contracts, definitions of flexible contracts, the role of the Low Pay Commission, and minimum wage enforcement?**

25. The main issue here is that due to the massive inequality in bargaining power between worker and employer, workers are often constrained to sign contracts which do not reflect the legal reality of their employment status and as such result in depriving them of the basic employment rights to which they should be entitled. With regard to the “definition of flexible contracts”, at least when a trade union is absent, the employer appears to be doing all of the defining.

26. Minimum wage enforcement is statistically non-existent. The IWGB, despite representing lots of low paid workers who have been deprived of the minimum wage, has not come across one single case of government enforcement of the minimum wage.

27. **What is the role of trade unions in representing the self-employed and those not working in traditional employee roles?**

28. Self-employed workforces have been under-represented by trade unions in recent years, but the role of trade unions is as crucial as ever, especially given the drastic imbalance of bargaining power present in the “gig-economy”. The track record of the IWGB in winning major pay rises of between 17% and 28% at three of London’s leading courier companies, as well as the IWGB’s pro-active role in litigating employment status test cases, is evidence of this fact. It is important to emphasise that whilst genuine independent contractors may be better off in trade associations, cooperatives, or other bodies, “workers” in the so-called “gig economy” clearly benefit from being part of an active trade union.
IWGB policy proposals

29. **Mandate government to enforce labour law on the use of bogus employment status**

   It is important to note that the judgments in the *Uber* and *CitySprint* cases stated that both of these companies had behaved unlawfully by depriving their workers of employment rights to which they were legally entitled. It is also important to note that a) these cases only occurred because the claimants were able and willing to come forward and instigate the litigation; and b) the financial consequences for the companies of behaving unlawfully were negligible. Indeed it is nothing short of astounding that *CitySprint* has been unlawfully depriving its workers of employment rights to which they are entitled for years yet the only financial penalty for this was to have to pay Maggie Dewhurst 2 days’ holiday, which is the same as the cost of the tribunal fee itself. An appropriate government department or agency should therefore be mandated to pursue litigation against employers which are bogusly mis-classifying the employment status of the people who work for them. Convictions should be accompanied by a stiff fine to serve as a major financial incentive to obey the law. The fines could also help fund the relevant government department/agency. As part of this there should be an easy and confidential mechanism through which workers can report allegations of bogus employment status to the relevant government department/agency. Allegations should be investigated promptly and thoroughly.

30. **Increase employment rights associated with worker status**

   In recognition of the fact that a growing proportion of the labour force appears to be “workers” rather than “employees”, employment law should adapt by providing more employment rights to those in worker status. In principle they should enjoy as many of the employment rights as employees as makes sense given how they work. For example, workers should receive statutory sick pay entitlement (or a substantially similar entitlement to cover them when they are sick) as well as parental leave pay and the right to claim unfair dismissal among others.

31. **Make it easier for workers to bring tribunal claims**

   In order to improve access to justice and equalise the balance of power between employers and workers, employment tribunal fees should be removed. This is one way in which the existing laws can be more easily enforced. The Government wants to increase the use of out of court settlements and reduce the number of cases that go through the employment tribunal system. This is a laudable goal and one which could be achieved by implementing a stiff government fine on employers (for example something akin to the £20,000 fine for using undocumented workers) who are found to have been unlawfully depriving their workers of their employment rights. The fact that a company can deprive an entire workforce of basic employment rights for years and end up only having to pay a bit of backdated holiday as a consequence does not create a financial incentive for said company to behave lawfully. Large government fines would create this badly needed incentive and would also help fund the enforcement mechanism advocated in Recommendation 1 above. It would also encourage out of court settlements as employers would have an incentive to avoid litigation.

Conclusion

35. Unless we take urgent action, more and more of the UK workforce will be engaged as bogus “independent contractors”, with zero employment rights or protections. The future of labour and employment is rather bleak. Employers in the so-called “gig economy” are currently hiding behind a façade of exciting technological innovation in order to increase their profits by depriving their workers of the employment rights to which they are legally entitled. Too many of these companies are getting away with behaving unlawfully and in these circumstances it is the role of Government to take action and enforce fairness, transparency, rights, equality, and above all, the law.

36. The Select Committee on *The Future World of Work* is an important step forward in developing a thorough understanding and appropriate set of interventions. The IWGB is prepared to give oral evidence as a trade union, organise workers to give evidence themselves, share the testimonies from our survey with the Committee in full, and fully take part in your investigation into this topic.

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