

## **Independent Review of Employment Practices in the Modern Economy**

This submission focuses on the following theme of the Review: the appropriate balance of rights and responsibilities for new business models. It is written evidence submitted by **Professor Chris Warhurst**, Director of the Institute for Employment Research, University of Warwick:

### **Introduction and summary**

1. The Institute for Employment Research (IER) was established by the University of Warwick over 30 years ago. It is one of Europe's leading centres for labour market research. It is a multi-disciplinary institute with over 30 staff and a network of around 30 associates in the UK and overseas. Using a socioeconomic approach, IER's fields of research include, broadly: labour market assessment and forecasting; education, training and skills; labour market classification and measurement; gender and work; work, welfare and public policy; careers; job quality; and employment policy. Major sources of funding are national governments, the EU, research councils and charitable bodies.
2. As part of its programme of research on job quality, IER is undertaking two research projects: 1) pan-European research on the links between job quality, innovation and the creation of more and better jobs, funded by the EU's Horizon 2020 programme; 2) as part of the UK Observatory on employment for Eurofound, the EU agency tasked with improving living and working conditions, IER has undertaken a review digitalisation and working life in the EU. This written evidence draws on this body of work, with two key publications listed at the end of this evidence.
3. The UK is at a policy crossroads in terms of the future of work in the gig economy. Digital disruption is undermining the employment relationship and creates serious challenges for government in terms of response.
4. It is still difficult to measure the extent of gig working. Estimates for the UK suggest around four percent of the UK workforce receive some sort of paid work through the gig economy (e.g. CIPD 2017) but this figure is likely to be much lower with respect to those workers who receive all or even most of their income from this sort of work. However, notwithstanding the options laid out below, it is predicted that the volume of work in the UK gig economy is likely to grow.
5. Much has been written about how this gig economy 'digitally disrupts' existing companies' business models; in the case of Uber, that of taxi companies. However its operational model also affects the quality of work and possibly the quality of employment. This evidence:
  - Maps out the challenges
  - Signals potential policy responses
  - Outlines future scenarios for work within the gig economy.

## **Work in the Gig Economy**

6. The 'gig' or 'platform' economy builds on the sharing economy albeit with transactions migrating to websites and apps, performed by strangers and in which goods and services are monetised. Examples are numerous but the most high-profile globally are TaskRabbit (for 'odd jobs'), Airbnb (for accommodation) and Uber (for transport). In these cases people do tasks for others, hosts share an unused room in their home with guests and those with a car offer rides to those who need a lift somewhere respectively.
7. The business model for these companies is straightforward. Workers are no longer employed by the company but are paid by individual buyers to perform a single task; assemble flat-pack furniture, lend a bed or offer a lift in the case of TaskRabbit, Airbnb and Uber respectively. These workers are sometimes known as 'crowdworkers' and their labour sourced through 'crowdsourcing' on the internet. The platform company merely connects the buyer and seller of the service.
8. In this respect the key innovation of this business model may be the death of employment as workers become freelancers and micro-entrepreneurs; no longer employees paid a wage by employers in exchange for labour, governed by a contract that typically allows the employer a managerial prerogative to direct, monitor, evaluate, discipline and reward 'their' workers.
9. Although framed in popular parlance as 'freelancers' and 'entrepreneurs', the operationalisation of this new business model is making it increasingly difficult to determine whether the legal status of a worker is that of an employee, an independent contractor or self-employed.
10. This evidence focuses on Uber as the company is held up as the 'leading case' and 'poster child' (Smith 2016) for the platform economy. This company is also topical because it has also featured in what might be a benchmark employment tribunal case in the UK and appeal by Uber against the decision of this tribunal is pending.
11. California-based Uber was founded in 2009 and by 2015 had expanded to more than 400 cities worldwide. A smartphone app connects drivers, on demand, with service users. Uber claims not to be a taxi service. Rather it styles itself as a digital platform that matches task-doers with task-seekers; in other words simply a 'connecting service'. More specifically, Uber insists that it is a technology provider – an app – with drivers paying to access the app to connect them to users. These users pay Uber, which then gives part of the service fee to drivers. Uber sets the fares, with price not based on ownership of the means of production but usage in a spot market and for the type of service offered. Drivers are not employed by Uber; they are 'partners' who use their own vehicles. Uber provides its drivers with a personal identification number, its app and a smartphone if the driver does not have one. In addition to no employment being offered to these drivers, no work is guaranteed. Uber does not set maximum or minimum hours that a driver might work; instead drivers determine their own working time and intensity. The premise is that drivers have the flexibility and freedom to work whenever they please.

## **Uberisation as benign or malign form of business**

12. There are two dominant accounts of Uberisation: one seeing such companies as benign, the other malign.

- I. The benign account rests on the platform economy being a version of neighbours helping neighbours in a sharing economy. One form of this help is non-profit car-pooling and Uber explicitly draws on this imagery, stating that it offers 'ride sharing'. This sharing, it is argued, helps reduce the non- or under-use of resources. It is a 'new age' in which 'underutilised assets become peer-to-peer services for hire, enabled by the Internet and smartphones'. Even better, it offers a purer market for consumers, providing an on-demand service overcoming spatial clustering of service providers; that is taxis that stay close to where more pick-ups might occur, for example around airports or city centres. This potential to be beneficial for consumers is lauded. Providers are 'everyday entrepreneurs ... seeking to shake up the market by solving other people's problems' according to the UK Government (2015).
  - II. The malign account criticises the 'permissionless innovation' of the platform economy and companies such as Uber for operating outwith regulatory frameworks. In the context of governments having to make spending cuts, the primary concern is tax evasion and Uberisation stimulating and folding into the informal economy. In this respect, that Uber drivers do not offer receipts to passengers and may not be paying tax on their earnings is a problem. In addition, Uber itself is not making meaningful tax payments in the UK. Furthermore there are concerns about the creation of unfair competition for existing businesses. Jurisdictions grant licences to registered taxi drivers providing them limited entry to operate in the industry in exchange for regulation adherence. By contrast, Uber drivers are exempt the regulation usual for taxis and do not have taxi licences.
13. These accounts need to be taken seriously but their narrowness also needs to be acknowledged: the focus is the benefits for consumers, and problems for governments and existing businesses. For example, the UK's HM Government review of the sharing economy is framed exclusively in terms of the benefits for consumers arising from technological innovation. If there are concerns, it is to ensure consumer protection and that calculating tax liability is made easier for providers.

#### **The impact of Uberisation on work**

14. What is missing is any consideration of its impact – beneficial or otherwise, on producers – that is, those who work within this business model. It is right that this myopia is being addressed by the Taylor review. Uber partners work outside of traditional employment relationships and without the rights and protections that with employment contracts. The business model shifts the risk from the platform provider (Uber) to task-providers (Uber drivers) for example. At the same time these task providers (the drivers) become dependent upon the task enablers (the platform company).
15. The general relationship between Uber and its drivers is a core issue in this analysis. Uber makes it quite clear that it facilitates a client flow via the app to drivers but that the company owes no obligation to drivers. The relationship is based on mutual interest. It is a rudimentary pecuniary win-win offered by Uber – the company makes money from its app, the drivers make money through the app. Nevertheless despite the use of the term 'independent contractor', the drivers are both dependent upon a technology (the app) and the technology company that controls access to the app. The driver is wholly reliant on having access to Uber's app, which is granted by the technology company and without which this particular work cannot be carried out. Thus, the technology can never be autonomously controlled by the driver – its use is conditionally permitted and a relation of dependence on it remains central.

16. Another form of dependence is the requirement that drivers acquire, maintain and absorb all costs associated with the other means of production – the vehicle used to provide passenger transportation. This demand is both a requisite burden but also allows a degree of autonomy and discretion over the immediate work environment of the driver. However this autonomy and discretion can again be curtailed by Uber. Uber keeps comprehensive data on its drivers' trips, fares and time and uses this data to measure their waiting location and time, time-to-task and working time as well as monitor, manage and reward driver performance with productivity-based incentive schemes. Furthermore it can, and does, deactivate drivers for poor productivity.
17. Probably the most important factor that differentiates Uber drivers from independent contractors is that they are subject to standardized price-setting – that is to say, they cannot set their own rates for their services or negotiate them collectively. Not only does Uber set the price of rides, it unilaterally alters and varies the price of rides. Likewise, drivers largely cannot choose their customers. In other words, Uber drivers, unlike independent contractors, do not build their own client base; instead, the client base comes through the app. Significantly, Uber has the power to unilaterally change (i.e. increase) the fee it charges the drivers. In London Uber raised the fee it takes from new drivers from 20 to 25 per cent in December 2015.
18. Moreover the driver can choose when to activate the app, and thereby choose their own working hours, as well as what geographic locations to work in. However, when a driver is logged onto the app, there is an explicit obligation to accept trips. Once one turns on the app as a driver one is expected to accept at least 80 per cent of the ride requests given through the app. This obligation is phrased as 'acceptance rates' and if Uber finds a driver is not consistently accepting trip requests, they may be temporarily logged out of the app (see Uber's Driver Deactivation Policy).
19. The intensity of work pace is largely beyond the control of the driver, as once the app is on, the driver is expected to take the customers who are directed to the driver, and the driver, again because of acceptance rate quotas, cannot realistically engage in other productive activities that as mentioned above cannot be dropped in a matter of minutes, such as driving for a competitor such as Lyft in order to minimize economically unproductive waiting time. In other words, pace and intensification is variable, beyond the control of the driver and can be a matter of too much or too little. In London, for example, drivers have 15 seconds to decide whether or not to accept a job. If they refuse three jobs in a row, they are logged out of the system for 10 minutes.
20. Uber says that its drivers are well-paid, claiming, for example, that New York drivers receive a median of \$90,000 per annum. However, it has been calculated that, to make this amount at \$25 per hour, a driver would need to be working a 70 hour week, 52 weeks per year. In the UK, the GMB union released the income details of one driver who, working 234 hours in one month, had received £5.04 per hour and so considerably less than the UK's National Minimum wage at the time of £6.50 per hour. Drivers, moreover, are not provided with entitlements such as sick pay and holiday pay. The upshot for drivers is a fixed cost envelop, over which they have little control and variable, often low, income, over which they only have partial control.
21. There are critical comments about the terms and conditions under which Uber partners work. Research of online forums of Uber drivers in the US has studied their experience of surges, nudges from the platform, and threats of deactivation for their ratings or refusals of incoming

jobs. This research points out that Uber controls its drivers through a set of mostly automated commands as 'algorithmic management' which narrows the choices that drivers have to accept. It suggests that the claim by Uber that its drivers are independent contractors is not supported by the evidence: any possibility of self-management is usurped by this algorithmic management. The key point is that, beyond turning on and turning off the app, drivers have little tasks autonomy: Uber controls what is done, when it is done and how it is done. The independence of these workers is therefore questionable.

22. The worry is twofold: first, that a form of work is being miscast as independent; second, that that the stock of work quality will decline if the extent of this form of work expands in the UK.
23. Uber is not alone in this business model; it is merely the exemplar company of the gig economy. The business model is and will continue to be adopted so that it has the capacity to expand well beyond one company – see for example the points made in 2016 about Hermes couriers in the UK.
24. The implications are manifold. At the very least there is a need to stop using the euphemism of the 'sharing economy' in relation to Uberisation. Companies in the gig economy, such as Uber, need to make profits through the monetisation of exchange. As with any work process converting materials into goods and services through the application of technology and human labour and intended to generate surplus value, which is then appropriated by a non-producer (typically an employer), that non-producer will seek to exercise a managerial prerogative to direct, evaluate, discipline and reward that labour. Even without the issue of employment contracts, Uber is no exception.

#### **Responses to work in the gig economy**

25. There are a three responses to this business model centred on the classic 'market versus regulation versus organised labour' options, each of which might form the basis of a policy response:
  - I. Leave it to the market: the assumption is that any deficiencies in the model – for example that it offers poor quality of working life – will, with sufficient public awareness, be ironed out by self-correcting markets with consumers of the service – ride sharers – migrating away from Uber as it becomes a lightning rod for discontent due to its prominence.
  - II. Impose/enforce regulation: this option is the one now beginning to be debated. It has two variants:
    - a. The first, championed by platform companies, centres on the creation of new laws and regulations, needed, it is argued, because the gig economy is different, with workers neither employees nor self-employed.
    - b. The other, championed by the social partners, centres on Uber and other platform companies complying with existing laws and regulations, including complying with legislation on workers rights.
  - III. Let there be challenge from organised labour: this option is gaining traction. While Uber does not formally recognise the (US) Independent Drivers' Guild for collective bargaining

purposes union, drivers in the UK and elsewhere are organising and, in some cases, collectively withdrawing their labour over pricing.

26. Movement for change is occurring: in 2016 the GMB trade union brought a test case in a London employment tribunal on behalf of two drivers who claimed Uber had acted unlawfully by not offering holiday pay and sick pay. This was the first time that Uber faced legal action in the UK over whether their drivers are workers or self-employed. The employment tribunal ruled that Uber must pay drivers the national minimum wage and holiday pay, leaving Uber open to claims from all of its UK drivers. It is against this ruling that Uber lodged its appeal in 2017. If the tribunal's decision is upheld it will have widespread implications for Uber UK as well as other UK companies that use apps and the internet to match customers with workers in terms of moving toward formal classification of these workers.

#### **Future scenarios**

27. Going forward, it should be appreciated that there is a recurring tendency to over-estimate the long-term difference made by some innovations. In other words, what happens at the point of introduction of any new technology should not be confused with what eventuates from this technology. The gig economy is embryonic; as it matures there are at least two possible trajectories:
- I. Normalisation centres on platform companies such as Uber becoming like other companies, mainstreamed as they eventually comply with existing laws and regulations such as disability laws. As US Justice Department has affirmed, while Uber may contract out its service, it cannot contract away its responsibilities. In Denmark, trade unions and employers organisations have called for platform companies to comply with existing Danish law, including labour law, and for the company to join a Danish employers' organisation and, with that membership, cover drivers with a collective agreement.
  - II. Eradicate (human) work: in this scenario Uber dispenses with drivers altogether and starts to use driverless cars. It is a possibility for platform companies required to facilitate work. Driving, for example, is an example of such work. While not necessarily a routine task, it can be automated and robotised. Uber is already experimenting with driverless cars. Whether Uber drivers are employees would thereby become irrelevant, if not meaningless, as technology substitutes for labour.
28. The gig economy is new and likely to remain in some form for the foreseeable future. However there is confusion and ambiguity about its business model, particularly in relation to work, and which needs not just analysis but also clarification. The Taylor Review is an opportunity for both, from which, at the very least, a normative, if not legalistic, judgement can be made of the terms and conditions for crowdworkers generally, not just those of Uber.
29. Importantly, the Taylor Review needs to appreciate that any new technology is not determinant: how it is used and for what purpose by and within organisations is shaped by human agency; by government, social partners, users and providers, and the public. Scope exists therefore for governments to make choices about the nature of work within the gig economy. The task of the Commission should be to shape those choices.

### **Linked publications**

Adam, D., Bremerman, M., Durna, J., Fontanarosa, F., Kraemer, B., Westphal, H., Kunert, A. & Lönnerroos, T. (2016). *Digitalisation and working life: lessons from the Uber cases around Europe*. Dublin: Eurofound.

Warhurst, C, Mathieu, C. and Wright, S. (2017) 'Workplace Innovation and the Quality of Working Life in an Age of Uberisation' in P. Oeij, F. Pot and D. Rus (eds) *Workplace Innovation: Theory, Research and Practice*, Berlin: Springer.

