Employment status anxiety: one step forward and one step back, a mixed picture for precarious platform workers under English law.

Declan Owens, Thompsons Solicitors

Introduction

The recent Uber decision at the English Court of Appeal in December 2018 offers some hope for precarious platform workers in securing enhanced employment rights.[1] A majority of judges dismissed Uber's appeal against a landmark employment tribunal ruling that its drivers should be classed as workers with access to the minimum wage and paid holidays. The judges found there was a "high degree of fiction" in the wording of the standard agreement between Uber and its drivers, which it argues are self-employed independent contractors with few employment rights.

However, a less well-publicised High Court judgment in December 2018 found in favour of another platform provider, Deliveroo, in a judicial review of the Central Arbitration Committee's decision not to recognise the Independent Workers of Great Britain ('IWGB') as the trade union for collective bargaining purposes regarding Deliveroo food delivery 'Riders' in a central London zone.[2] The reason was that these Riders were not actually classified as workers for the purposes of recognition under section 296(1) and Schedule A1 of the Trade Union and Labour Relations (Consolidation) Act 1992 but rather as self-employed independent contractors.[3]

How can these seemingly contradictory decisions on employment status be reconciled? Unfortunately, the separate legislation in issue in relation to the employment status of workers in these cases (itself the outcome of normative political judgements on the appropriate boundary of the balance between autonomy and social protection) still relies for its interpretation on archaic employment status tests derived from case law precedents of common law judges who also placed an undue (ideological and legal) reliance on the commercial terms of contracts (originating from a master/servant premise regarding the employment relationship) rather than on the rights of workers.[4] Both judgments are under appeal and a consistent legal strategy and rationale is needed to protect the employment status of workers at an individual and collective level.

Accordingly, this paper will firstly outline current policy developments in the UK relating to the uncertain future of labour law in respect of the UK Government's recent proposals to deal with

[1] Uber B.V., Uber London Limited, Uber Britannia Limited v Yaseen Aslam, James Farrar, Robert Dawson & Others [2018] EWCA Civ 2748.

[2] The Queen on the Application of The Independent Workers Union of Great Britain v. Central Arbitration Committee And Roofoods Limited T/A Deliveroo [2018] EWHC 3342 (Admin)

[3] The definition of the 'worker' in section 296 of the Trade Union and Labour Relations (Consolidation) Act ('TULRCA') is as follows:

(1) In this Act worker means an individual who works, or normally works or seeks to work--

(a) under a contract of employment, or

(b) under any other contract whereby he undertakes to do or perform personally any work or services for another party to the contract who is not a professional client of his, or

(c) in employment under or for the purposes of a government department [...]

[4] Typically, the 'ownership of the assets' is a key factor that will frustrate the successful deployment of a number of key employment status tests and indicators, for instance the 'business integration' test often in conjunction with the 'economic reality' test, creating or encouraging an assumption that e.g. an Uber driver-owner is subject to little or no control on the part of the putative employer. Other employment status tests include 'control', 'mutuality of obligation' and 'personal service'.

problematic modern working practices. Secondly, it will consider the implications of the Uber judgment, which focuses on the employment status of workers within the sphere of individual employment law. Thirdly, it will consider the implications of the Deliveroo judgment, which focuses on the employment status of workers for collective bargaining purposes. Finally, it will outline a legal strategy based on the proper incorporation of international labour law standards into UK law to address the problems that arise from the employment status tests in the Uber and Deliveroo judgments and consider how this legal strategy interacts with an alternative political strategy proposed by the UK's Labour Party based on the academic input of labour lawyers.

The uncertain future of UK labour law

In December 2018, the UK Government published the 'Good Work Plan',[5] setting out details of its proposals for implementing various recommendations made by the Taylor Review of Modern Working Practices.[6] It was promoted by the Government as the biggest package of workplace reforms for over 20 years and sets out a strategy with three broad aims:

1. ensuring that workers can access fair and decent work;
2. that both employers and workers have the clarity they need to understand their employment relationships; and
3. that the enforcement system is fairer.

The main commitments include:

- making it easier for casual staff to establish continuity of employment;
- improved written statement of terms for all workers, from day one;
- abolition of the Swedish Derogation in the Agency Workers Regulations 2010 SI 2010/93, which excludes agency workers from the right to the same pay as directly recruited workers if they have a contract of employment with the agency;[7]
- a ban on deductions from staff tips;
- lower thresholds for requesting information and consultation arrangements; and
- increased penalties for breaches of employment law.

The Government has not committed to a timetable for most of these reforms, but it is expected to introduce some legislation in 2019, though the Brexit negotiations are likely to have an influence.[8]

The Taylor Review was commissioned because of a concern that the balance of power in many working arrangements had tipped too far in favour of business: the growing use of zero-hours contracts, increasing numbers of people becoming self-employed, and workplace practices, such as employers keeping back tips from staff, have, over the years, contributed to a general perception that swathes

[5] *Good Work Plan*, UK Government Department for Business, Energy & Industrial Strategy, 17 December 2018. Available at https://www.gov.uk/government/publications/good-work-plan/good-work-plan.

[6] *Matthew Taylor, 'Good Work; The Taylor Review of Modern Working Practices' (Gov.uk, 2017). Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf (The Taylor Review).*

[7] In 2013, the Trades Union Congress lodged a formal complaint with the European Commission, claiming that that the Government had failed properly to implement its obligations under the EU Temporary Agency Work Directive (No.2008/104).

[8] The complexities of how workers' rights will be affected by Brexit are very much outside the scope of this paper and were outside the scope of the Taylor Review despite the impending or potential loss of EU social rights.

of people are being exploited and with practices such as the creeping influence of zero-hours contracts becoming common.

The Prime Minister has stated that better workplace rights are necessary for "a stronger, fairer Britain" and that the standards of the best employers should become the benchmark. It is not yet possible to assess whether the Good Work Plan measures up against this purported ambition because only a few of the commitments have made it to draft legislation and the detail of others has not been published. However, the Good Work Plan has received a lukewarm response from trade unions and plenty of academic criticism.[9]

Indeed, the crucial issue of how to define employment status has yet to be decided as part of the Good Work Plan, although the Government has indicated support for Taylor's recommendation to align the employment status frameworks for the purposes of employment rights and tax to ensure that the differences between the two systems are reduced to an absolute minimum. The Government also says it will "legislate to improve the clarity of the employment status tests, reflecting the reality of modern working relationships", but has not provided any detail as to how this will be achieved. This leaves UK workers reliant on judicial determination of employment status (and the consequent differing rights available to employees, workers and independent contractors / the genuinely self-employed), with the two recent judgments in December 2018 being the current state of the law and best indicators of future developments.

The Uber judgment

The Court of Appeal, by a majority, upheld an employment tribunal's decision that Uber drivers are 'workers' within the meaning of S.230(3)(b) of the Employment Rights Act 1996[10] and the equivalent definitions in the National Minimum Wage Act 1998 and the Working Time Regulations 1998 SI 1998/1833. The 'worker' test focuses on what has been contractually agreed between the parties. Many similar recent employment status cases have involved individuals working in the gig economy, in which the individuals are described in the contractual documents as self-employed, independent

[9] An astute and devastating critique of the Taylor Review, especially of so-called 'British Way' of regulating the labour market and the focus on individual employment law at the expense of collective labour law, is provided in K Beales, A Bogg & T Novitz, 'Voice' and 'Choice' in Modern Working Practices: Problems With the Taylor Review - Ind Law J (2018) 47 (1): 46

[10] Section 230 of the ERA 1996 provides:-

"Employees, workers etc.

(1) In this Act "employee" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.

(2) In this Act "contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

(3) In this Act "worker" (except in the phrases "shop worker" and "betting worker") means an individual who has entered into or works under (or, where the employment has ceased, worked under)—

(a) a contract of employment, or

(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual; and any reference to a worker's contract shall be construed accordingly.

(4) In this Act "employer", in relation to an employee or a worker, means the person by whom the employee or worker is (or, where the employment has ceased, was) employed.

contractors rather than workers, and the question arises whether the tribunal is bound to respect that characterisation.

The Court of Appeal held that the tribunal was entitled to disregard terms of the contractual documents portraying the drivers as self-employed service-providers who contracted directly with passengers, with Uber acting as intermediary, on the basis that they did not reflect the reality of the working arrangements. The majority also upheld the tribunal's decision that the drivers are working for the purposes of the 1998 Act and the Regulations at any time when they are logged into the Uber app, within the territory in which they are authorised to work, and ready and willing to accept assignments.

In this case, the written documentation indicated that Uber acted only as an intermediary, providing booking and payment services, and the drivers drove the passengers as independent contractors. The majority agreed with the tribunal that it was not realistic to regard Uber as working 'for' the drivers. The reality was the other way around, namely that Uber runs a transportation business and the drivers provide the skilled labour through which that business delivers its services and earns its profits.

It is likely that this case will ultimately be decided by the Supreme Court because the Court of Appeal has given Uber permission to appeal and it will have extensive consequences for the gig economy in general. Underhill LJ's dissenting opinion goes against the trend of recent employment status cases, especially those involving couriers and drivers, who were found to be workers in the cases involving Addison Lee (concerning both cycle couriers and minicab drivers), CitySprint and Excel. The only notable exception to this trend was in *R (on the application of the Independent Workers' Union of Great Britain) v Central Arbitration Committee and anor*, where the High Court held that Deliveroo riders are not 'workers' for the purpose of the collective bargaining provisions of the Trade Union and Labour Relations (Consolidation) Act 1992 (which relies on a substantially identical definition of 'worker' as that found in S.230(3)(b) ERA). However, in that case, which is discussed further below, it was decided that the riders were not contractually obliged to perform services personally because they could, if they wished, send a substitute, whereas in the Uber case there was an obligation of personal service.[11]

The difference between the majority's approach and that of Underhill LJ in the Uber judgment can be characterised as a difference between an expansive and a strict application of the principle set down by the Supreme Court in *Autoclenz*.[12] The Supreme Court there was faced with the situation where, on the tribunal's findings, both the putative employer and the putative employees objectively intended the working relationship to have all the facets of an employer/employee relationship but the employer had concealed the true nature of that relationship in the contractual documents. The tribunal had found that, in practice, the car valets were required to provide personal service and were under an obligation to do some work. Accordingly, there was an inconsistency between the

[11] The Taylor Review's proposal to remove the requirement of personal service from the worker status test and replace the category of 'worker' with that of 'dependent contractor' places a greater emphasis on control and therefore would raise other problems. See note 9 above.

[12] Autoclenz Ltd v Belcher and ors. Supreme Court, 2011 ICR 1157. The Supreme Court held that in litigation about an individual's employment status, a tribunal will look at the reality of the working relationship and it is open to the tribunal to disregard the label that the parties have adopted in contractual documentation between them. Furthermore, it held that the contracts signed by car valets stating that they were 'sub-contractors' did not reflect the true agreement between the parties and could be disregarded.

contractual paperwork and the parties' mutual understanding as to how the relationship worked in practice. It was therefore false for the contractual documents to state that no such requirements or obligations existed and, given the unequal bargaining power between the parties, it was permissible to disregard those terms in answering the question of employment status.

The majority in the Uber case took a slightly different approach. Relying on what it considered to be the extended meaning of 'sham' endorsed in *Autoclenz*, the majority effectively put the written agreement to one side, considered the 'reality' of the working relationship as it was operated in practice, and decided that that 'reality' corresponded to 'worker' status. However, as Underhill LJ points out, *Autoclenz* can be interpreted as not authorising a tribunal to rewrite the contractual terms simply because one party's superior bargaining power has resulted in disadvantageous terms for the other. In that case, it was held that the documents can only be ignored if they present a false characterisation and that was arguably not the case here. The legal relationship that the documents purported to create was, according to Underhill LJ, unexceptional, being the kind of agency relationship commonly adopted by taxi and private hire firms, and the control that Uber exerted over the drivers was not inconsistent with that.

Underhill LJ's dissent could be persuasive in its interpretation of existing employment status tests. As he points out, the problem in the Uber case may be interpreted as not being that the written terms mischaracterised the true relationship but that the relationship they created was one unprotected by the law. The majority sought to extend the common law to fill that gap but Underhill LJ considered that it was inappropriate to do so, stating that "protecting against abuses of inequality of bargaining power is the role of legislation". He derived support for his view from a legal journal article by Sir Patrick Elias, former President of the Employment Appeal Tribunal ('EAT') and Lord Justice of Appeal, who gave judgment in a number of leading employment status cases.[13] The fact that two former Presidents of the EAT are in agreement on this topic suggests that Uber's prospects of success on appeal to the Supreme Court have some authoritative judicial support. On the other hand, the Supreme Court may well decide that, even if the Court of Appeal majority did extend the reasoning of *Autoclenz*, it was desirable and proper to do so, despite Underhill's LJ caution about the courts stepping on Parliament's toes.

<u>The Deliveroo judgment</u>

The High Court rejected a judicial review challenge brought by the IWGB trade union against the Central Arbitration Committee's ('CAC') decision that food delivery riders are not 'workers' and so cannot rely on Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992 to establish the right to collective bargaining arrangements. The dispute before the CAC focused on whether the riders' contracts contained an obligation of personal service, which is a crucial element of 'worker' status.

In this respect, Delivery riders for Deliveroo, an app-based food delivery service, work under non-negotiable 'supplier agreements' which describe them as suppliers in business on their own account who wish to provide delivery services to Deliveroo. The agreements state that there is no obligation on Deliveroo to provide work and no obligation on the rider to be available at any time or to accept work – riders can reject jobs without penalty and it is entirely up to them when and where they decide

[13] P Elias, *Changes and Challenges to the Contract of Employment,* Oxford Journal of Legal Studies, Volume 38, Issue 3, 1 September 2018, 411–429.

to work (within the company's areas and opening times). Riders can work for other organisations, including competitors. The Court dismissed IWGB's argument that the restriction of statutory recognition to conduct collective bargaining to 'workers' breached Article 11 of the European Convention on Human Rights, holding that Article 11 was not engaged.[14]

Over the last couple of years, several gig economy workers have successfully established that they fall within the definition of 'worker' and so benefit from various employment rights and protections. This case goes against the trend, confirming that Deliveroo riders who were said to be genuinely contractually entitled to provide a substitute – and so were not required to provide personal service – were not 'workers' for the purposes of collective bargaining, even in the light of the Article 11 right to freedom of association.[15] IWGB has stated that it intends to appeal.

The High Court's reasoning was unclear, which might help IWGB in its intended appeal. However, even if IWGB had succeeded in establishing that the riders' Article 11 rights were engaged, the Court's conclusion that the exclusion of non-workers from the right to trigger the statutory recognition procedure would have been justified under Article 11(2) could be accepted by Court of Appeal and, ultimately, Supreme Court, judges, given that the restriction to workers who provide personal service meets the test that it was "rationally connected" to the objective of preserving freedom of business and contract by limiting the cases in which collective bargaining should apply.[16]

[14] It was common ground before the CAC that the riders did not fall within S.296(1)(a), and the CAC had decided that they did not fall within limb (b) either. IWGB was permitted to argue before the High Court that the requirement of 'personal service' in S.296(1) should be interpreted in a way that does not exclude these workers from exercising their Article 11 right to bargain collectively. It argued that the concept of workers' status, as defined within S.296(1), is an entirely domestic concept, whereas, in EU law, the term 'worker' simply refers to a relationship whereby someone 'performs services for and under the direction of another person, in return for which he receives remuneration' – Betriebsrat der Ruhrlandklinik gGmbH v Ruhrlandklinik gGmbH. It also argued that nothing in the jurisprudence of the European Court of Human Rights suggests that the right to collective bargaining is dependent on workers' status, other than the last sentence of Article 11(2).

[15] Clause 8 of the supplier agreement allows riders to provide a substitute, who may be employed or engaged directly by the rider, to perform the delivery. There is no need for the rider to obtain Deliveroo's approval or even inform it of the substitution, unless the substitute is using a different vehicle type. The substitute may be anyone except former Deliveroo riders who have had their contract terminated for material breach, or anyone else who has engaged in conduct which would have resulted in termination if he or she had been a Deliveroo rider. It is the rider's responsibility to ensure that the substitute has the necessary skills and training. The rider remains responsible for performance and for ensuring that substitutes give the same warranties as are applicable to riders. The rider is paid for the work and any arrangements for paying the substitute are left to the rider and the substitute. There was evidence that a few riders used the right of substitution – one frequently – though most did not. The CAC concluded that the 'almost unfettered' substitution provisions were genuine, and that this was fatal to the argument that the contract was one of personal service.

[16] Applying Lord Sumption's criterion in *Bank Mellat (No.2) v HM Treasury* [2013] UKSC 39 at para 20. The Court agreed with the CAC's submission that the 'rights and freedoms of others' included freedom of business and freedom to contract on terms the business chooses to offer, including freedom from the imposition of bargaining arrangements, and that the restriction in S.296(1) was 'rationally connected' to the objective of preserving this freedom by limiting the cases in which the "burden" of collective bargaining should apply. Further, the interference was proportionate and struck a fair balance between competing interests in that it was limited to preventing those who did not have to do work or perform work personally from invoking compulsory recognition procedures. It did not affect anyone who was contractually obliged personally to work. Nor did it prevent riders from belonging to a union if they choose to do so, or making voluntary arrangements. All it precluded was the compulsory mechanism provided by Schedule A1 to the TULR(C)A.

A legal strategy to protect [precarious platform] workers

The legal strategy that needs to be adopted under English law in light of the challenges outlined above in the Deliveroo case is to maintain the argument for the right to collective bargaining to be judicially accepted to apply to Deliveroo riders as one of the essential elements of the "right to form and to join trade unions for the protection of [one's] interests" set forth in Article 11 of the European Convention of Human Rights as held by the ECtHR in *Demir and Baykara v Turkey [2009] 48 EHRR 54*.[17] The opening words of Article 11(1) explicitly state that the rights contained therein apply to "everyone". The only exceptions are the categories of work specified in the last sentence of Article 11(2) which refer to "members of the armed forces, police and the administration of the State". Yet even in relation to these categories the ECtHR has held, in *Demir*, that the restrictions imposed on the three groups mentioned in Article 11(2) are to be construed strictly and should be confined to the 'exercise' of the rights in question and must not impair the very essence of the right to organise.

Schedule A1 is a mechanism which allows for the enjoyment of the right to collective bargaining in the UK. A statutory barrier within the 1992 Act to recognition under this scheme necessarily engages Article 11. Therefore, a restriction on the right to achieve statutory recognition under Schedule A1 to the 1992 Act in the Deliveroo judgment is a restriction on the right to collective bargaining under Article 11, which cannot be justified.

Several other international instruments equally guarantee the right to collective bargaining. Article 23(4) of the United Nations Declaration of Human Rights 1948 is in identical terms: "*Everyone has the right to form and join trade unions for the protection of his interests*". Article 8(2) of the International Covenant on Economic, Social and Cultural Rights 1966 and Article 22(1) of the International Covenant on Civil and Political Rights 1966 are similarly worded, both of which were cited in *Demir* at paragraphs 40-41. Article 4 of ILO Convention 98 on the Right to Organise and Collective Bargaining and the ILO Committee of Experts on the Application of Conventions and Recommendations in its General Survey on the Fundamental Conventions concerning Rights at Work in the light of the ILO Declaration on Social Justice for a Fair Globalisation, 2008, ILO, 2012 at para 209 which refers to the right to collective bargaining covering organisations representing, inter alia, the self-employed. Article 2 of ILO Convention No.87 on Freedom of Association and Protection of the Right to Organise (ratified by the UK in 1949) provides that:

> "*Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation*."

Furthermore, regarding collective labour law in the UK, the 'worker' definition contained in TULRCA section 296 sustains quite an inclusive concept of the worker which embraces a broad range of individuals, including self-employed workers, who contract to provide personal services, excepting only those who do so as a professional to a client. Unlike the 'worker' definition in the individual rights context of the National Minimum Wage Act 1998, it does not go on to exclude those who provide their services as a business to a customer. This slightly broader scope is sustained by a careful reading of the aforementioned international instruments. In particular, the ILO supervisory bodies seem to suggest that self-employed workers ought to be entitled to collective bargaining rights, without regard

[17] See K. D. Ewing and J. Hendy, 'The Dramatic Implications of *Demir and Baykara*' (2010) 39 ILJ 2-51.

to whether they are acting as professionals to clients or businesses to customers. As Freedland and Kountouris argue, this more expansive approach accords better with an inclusive normative framework but is clearly hard to reconcile with the more restrictive approaches in various areas of UK domestic law.[18] They suggest that the basis for such an argument is to be found in ILO Recommendation No 198 of 2006 concerning the employment relationship.

Accordingly, the optimal legal and trade union strategies converge in the UK in pushing for greater legal protection for the recognition of collective bargaining rights via international labour law instruments.[19] Precarious platform workers need the collective strength that trade union recognition brings to negotiations with employers so that they can be in a better position to negotiate to secure and enforce their rights collectively rather than individually. Whilst the Uber judgment emphasises individual employment rights, this is based on uncertain employment status tests and there is still the opportunity for the employer to contract out with individual workers or rely on the 'reality' of standard contracts incapable of individual negotiation. Therefore, the rights of workers are still highly contingent and, it is contended, a judicial reversal of the Deliveroo judgment using the *Demir* rationale is necessary and would have more substantial, longer-lasting effects in securing a greater degree of equality of bargaining power under English law. The UK Supreme Court should also take the opportunity to strengthen the reasoning of the Uber judgment on this human rights-based rationale and adopt wider international labour law norms in assessing the proper interpretation of the employment status tests.[20]

An aligned political strategy

The Institute of Employment Rights in 2016 produced a 'Manifesto for Labour Law' which would provide the transformative changes necessary to UK labour law that would respect international labour law standards.[21] This Manifesto was drafted by a dream team of 15 labour academic lawyers and labour specialists and was in part adopted by the UK Labour Party in its 2017 General Election manifesto. The 25 principal recommendations are based on the need to ensure that workers' voice is heard and respected through a Ministry of Labour, a National Economic Forum and Sectoral Employment Commissions. These recommendations are supported by the 'four pillars of collective bargaining' with transformative implications across four spheres of social life: (i) workplace democracy; (ii) social justice; (iii) economic policy; and (iv) the rule of law (requiring the UK to comply with international labour standards). The dejuridification of the employment relationship achieved

[18] Freedland, M and Kountouris N, Some Reflections on the 'Personal Scope' of Collective Labour Law - Ind Law J (2017) 46 (1): 52

[19] K D Ewing and J Hendy, 'New Perspectives on Collective Labour Law: Trade Union Recognition and Collective Bargaining' (2017) 46 *ILJ* 23. Union recognition operates as an inducement to union recruitment but depends on a supportive legal and public policy environment.

[20] Kountouris N, The Concept of 'Worker' in European Labour Law: Fragmentation, Autonomy and Scope - Ind Law J (2018) 47 (2): 192. See http://www.ilo.org/global/topics/future-of-work/lang--en/index.htm. See also Valerio De Stefano, *The Rise of the 'Just-in-Time Workforce': On-demand work, crowd work and labour protection in the 'Gig-Economy'* ILO Working Paper http://www.ilo.org/travail/whatwedo/publications/WCMS_443267/lang--en/index.htm

[21] KD Ewing, J Hendy and C Jones (eds), *A Manifesto for Labour Law: Towards a Comprehensive Revision of Workers' Rights* (Liverpool: IER, 2016)

through the shift from legislation to collective bargaining as a regulatory mechanism should reduce expensive and lengthy litigation for workers.[22]

The proposals also include the need to ensure universal rights at work for all workers (not just employees), freedom of association, and the right to strike (without which collective bargaining 'is little more than collective begging'), supported by a call to repeal the Trade Union Act 2016. In an era of blacklisting of trade unionists in the construction sector; zero hours and exploitative temporary agency work contracts across the sectors in firms such as Sports Direct, Deliveroo and Uber Eats; exploitation and betrayal of migrant labour by firms such as Byron; and sharp practice by employers such as BHS in business restructuring, the Manifesto is a comprehensive legal and industrial strategy to address injustice in the modern workplace. The recommendation for the creation of a specialist Labour Court and an effectively resourced Labour Inspectorate would help to further protect workers with proper enforcement.

Conclusion

Although it remains to be seen what Brexit and the UK Government's 'Good Work Plan' may bring in relation to addressing the challenges for labour law regarding modern working practices, it is clear from the Uber and Deliveroo judgments that there is still considerable legislative change needed to protect workers. Accordingly, a legal strategy that is overly reliant on placing its hopes in a favourable interpretation of European and international labour law at the UK Supreme Court is limited in its ability to protect workers without an institutional political strategy to underpin it. Whilst this is certainly a necessary legal strategy in current circumstances, it is not sufficient to achieve the required protections for workers without the sort of legislative changes envisaged in the Manifesto for Labour Law.

[22] Some of the costs have since been reduced following the Supreme Court's decision to declare employment tribunal fees unlawful in *R (UNISON) v Lord Chancellor* [2017] UKSC 51, Supreme Court (SC).