

**FABIAN** POLICY REPORT

# EMPLOYMENT STATUS

OPTIONS FOR REFORM

*Luke Raikes*



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Report author: Luke Raikes  
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# Summary

**T**HIS PAPER INVESTIGATES how well our current employment status framework is working and discusses options for its reform. We focus on the debate around single worker status, which would merge our middle ground ‘limb (b)’ workers with those with employee status. But we look at this in the context of the need for general improvements to employment rights and enforcement.

## Employment status is important

Our ‘employment status’ is incredibly important. The UK has three employment statuses, unlike most other countries. Whether we are an employee, self-employed, or in the middle ground status determines important rights and entitlements, from statutory maternity pay and annual leave, to protections from unfair dismissal and collective bargaining. Employees have a lot of rights while self-employed people have (almost) none and so-called limb (b) workers in the middle ground have some, but not all.

Employees have rights for good reason. By entering an employment contract, we make a trade-off, allowing ourselves to be managed and exposing ourselves to risks. In exchange for pay, employers are able to control how we work in a way we do not tolerate in other walks of life. Our rights and entitlements in employment have been hard won, and our history shows that employment needs the protection of employment law.

There are a number of ‘tests’ which the courts have used to determine people’s status in contentious or ‘grey area’ cases. These tests have been in the spotlight recently, as high-profile court cases have determined the status of gig economy workers.

## Our new research finds specific challenges in various forms of atypical work

We interviewed and surveyed people in atypical work and found diverse experi-



ences, and trade-offs between rights and autonomy. We found that:

- **A small but significant group of people were interested in a ‘middle ground’:** 20 per cent of all those in work (including the self-employed) said they would most like to work in a ‘middle ground’, which we described as having some core employment rights but flexibility (they were also presented with the options of being self-employed or an employee).
- **People’s autonomy and satisfaction with different aspects of work varies with employment status:** 85 per cent of self-employed people were satisfied with their independence (compared to 72 per cent of all in work); but 34 per cent were satisfied with their workplace rights (compared to 61 per cent of all in work).
- **‘Atypical employees’ (zero-hours and agency workers) seem have the worst of both worlds:** only 60 per cent were satisfied with their independence (lower than average); and only 35 per cent were satisfied with their workplace rights (also lower than average).

## There are three major problems: poor rights, weak enforcement, and bogus self-employment

There are three major problems with employment rights:

1. **Poor rights.** We have one of the weakest sets of employee rights and entitlements of all high-income countries. Meanwhile, people working in the middle ground status (known as limb (b)) could have more rights while retaining their relative autonomy. And self-employed people have no employment rights or entitlements to things like statutory paternity pay, for example.
2. **Weak enforcement.** Employment rights often cannot be enforced because there is a lack of awareness, representation and internal processes as well as insufficient resources for enforcement and tribunals. This particularly affects people working in legal ‘grey areas’, where some ‘gig economy’ businesses operate. Some argue that poor enforcement has been exacerbated by a lack of clarity around employment status, but others say that recent judgments have clarified the law.
3. **Bogus and low-autonomy self-employment.** There is a group of people who need the protection of employment law yet do not have it. They are treated as if they are self-employed for employment rights but their relationship is less like a truly independent ‘contractor’ than it should be. Employment rights and entitlements should protect them too – as they protect others who work in this way, for good reason. This group works both inside and outside of the gig economy.

Some businesses appear to be using these problems to their advantage, under-

cutting their competitors with lower costs and liabilities. This is not isolated to the 'gig economy' but it is especially prevalent there.

The result is as old as employment itself: worker exploitation. A cyclist delivering a takeaway, weaving in and out of traffic, is a common sight in our major cities. They are risking injury, or worse, to make a delivery on time. And, what if they get injured? They are unlikely to get any sick pay.

## Employment rights, enforcement and employment status all need improving

Employment status needs reform. The question is: how can employment status reform improve employment rights and autonomy for people who need this most?

This paper discusses options in order to inform policy. We do not make recommendations, but instead set out how proposals currently in play could interact.

### 1. Improve rights for all people in work

First, we describe existing Labour party proposals to improve rights for people across all employment statuses. These include, for example:

- Day one rights to unfair dismissal.
- More generous statutory sick pay for all people in work.
- More generous maternity and parental leave schemes.
- Repealing recent trade union laws.

We also discuss additional entitlements for self-employed people previously recommended by the Fabian Society, Bectu, Prospect and Community. And we discuss breaking the remaining link between national insurance class and statutory payments – enabling some self-employed people and limb (b) workers to qualify for statutory maternity and paternity pay and statutory sick pay, for example.

### 2. Resource enforcement and clarify status

Second, we set out a number of options that would help improve enforcement and clarify status. These could include,

for example:

- A well-resourced single enforcement body.
- Codification of the employment status tests in legislation.
- A 'rebuttable presumption' in favour of employee or worker status, so that businesses must prove that someone is not an employee or worker.
- A statutory code of practice.
- Non-statutory guidance.
- A model limb (b) contract (if limb (b) is retained).
- An online test (similar to the tax status tool, CEST).
- Clearer terminology for limb (b) workers.

### 3. Reform employment status

Finally, we set out two models to reform employment status itself. Each option is assessed primarily on how it improves employment rights, entitlements and autonomy for people who need this most.

#### MODEL 1: RETAIN AND REFORM LIMB (B)

The main advantage of model 1 is 'breadth': it brings a broader group of people under employment law. Its disadvantage is that it does not upgrade limb (b) workers into full employees.

In addition to the above reforms, this model could also include:

- A lower, clearer 'pass mark' for the intermediate 'limb (b) worker' status, prioritising 'control' and deprioritising 'personal service', to encompass more people who are self-employed (bogus or otherwise).
- Improved rights for limb (b) workers – eg the right to claim unfair dismissal (in a way which recognises the autonomy of the status), and the right to statutory maternity pay.

#### Advantages

- Advantage 1: More people would be

protected by core employment rights.

- Advantage 2: It could provide a 'middle ground' option some people want.
- Advantage 3: It could create a 'level playing field' for the whole gig economy.
- Advantage 4: It could be implemented more quickly, and it leaves the option of single worker status open, or could be a stepping stone toward it.

#### Challenges

- Challenge 1: Limb (b) workers would not have as many rights as employees.
- Challenge 2: Limb (b) workers may have few realistic employment options and might be unclear about the downsides.
- Challenge 3: It could lack the apparent simplicity of two statuses.

#### MODEL 2: IMPLEMENT SINGLE WORKER STATUS

The main advantage of model 2 is 'depth' in that it enhances the status and rights for limb (b) workers. Its disadvantage is that it could leave out some in self-employment who would become limb (b) workers under model 1.

#### Advantages

- Advantage 1: Rights and entitlements could improve for current limb (b) workers.
- Advantage 2: Rights and entitlements could improve significantly for bogus self-employed people due to improved enforcement.
- Advantage 3: Two statuses could be simpler for all to understand.

#### Challenges

- Challenge 1: People would lose a 'compromise' option.
- Challenge 2: There could be adverse employment consequences.
- Challenge 3: Single worker status is a big change that could take time. ■



# Introduction



ON ANY GIVEN night, in any given city, our streets now teem with takeaway delivery riders, waiting on well-placed corners, or weaving precariously through traffic and dodging pedestrians. They represent a new and visible form of something old and usually hidden: they work in a grey area of employment status. And they are just the tip of the iceberg.

Almost all of those riders are treated as if they are self-employed – as are many of the private hire taxi drivers we access through apps on our phones. Self-employment is at the heart of the ‘gig economy’ business model.

But this ‘visible’ gig economy of drivers, riders and couriers, is actually only a half of the gig economy. The other half is ‘invisible’ and desk-based – from high-end work such as web design, to lower paid work, such as social media moderation,

outsourced to countries like Kenya.<sup>1</sup> Moreover, outside the gig economy, many others have long worked in this grey area too, including hairdressers, construction workers and camera operatives. They might seem like employees but are technically self-employed.

What unites this incredibly diverse group of people is that they do not neatly fit into a box called ‘employment’ or ‘self-employment’. Some are treated as self-employed, some as employees, and some are in a little-known ‘middle ground’ employment status called ‘limb (b)’ worker, where they have a legal status that is supposed to offer a compromise between flexibility and employment rights. They are part of a broader category of workers that can be referred to as atypical or non-traditional and which includes employees who have zero-hours contracts or who work for

an employment agency.

Many are happy to be working this way. There is a genuine upside to having a high level of flexibility and autonomy over how you work and many people make a conscious, well-informed choice to do so. This is partly a reflection of how dismal their alternatives are. They may only be able to do other forms of atypical employment, such as agency or zero-hours work, which often involves less autonomy, albeit with similar flexibility and full employment rights. Or they may have a choice of employee status, with employment rights – however, it may be low-paid, inflexible and under the supervision of a ‘boss’.

But employment status is high-stakes and employers have a lot of power. A significant amount of bad practice has emerged in this grey area. It is cheaper, lower risk and easier for some businesses

to contract self-employed people. But businesses also want to offer a consistent service, which leads them to seek a great deal of control over their contractors, now often enabled at scale via technology.

This is concerning and sometimes against the law. Employment law is there for a reason. It has been built up over many years, to protect people who enter into a vulnerable, asymmetrical relationship with their employer. So, if people have that relationship in practice, but not the legal protections of employment law, then we have a problem – what is known as ‘bogus self-employment’. Across the world, this has led to intense legal battles over the employment status of gig economy workers in recent years.

### An easy ride

But there are two further problems which bogus self-employment exposes for the UK specifically: first, *nobody* in work has the rights they really should have – other countries do far more to protect all of those in work, including the self-employed; and second, enforcement of the law is often not a real threat, because of low penalties, under-resourced enforcement, lack of awareness, no workplace representation and a huge backlog in the employment tribunal service.<sup>1</sup> Many gig economy businesses are able to operate profitably in countries which have more comprehensive and better enforced employment rights. In the UK they have an easy ride.

For the few who have the time, money and energy to take their case to tribunal, it can be decisive: one hairdresser received a major redundancy payment because they were laid off as if they were self-employed, ie with no statutory redundancy pay, and this was overturned.<sup>2</sup> Uber private hire drivers are now entitled to the minimum wage and paid annual leave because they successfully challenged their self-employed status, and were moved into the intermediate ‘limb (b)’ category.<sup>3</sup>

The TUC, many trade unions and employment lawyers have proposed that a ‘single worker status’ will help to resolve this problem.<sup>4</sup> They argue it would improve rights for those in the ‘middle ground’ limb (b) category, clarify status and make enforcement easier. Other trade unions and employment lawyers argue that there are better ways to improve employment

rights, that reclassifying could have unintended consequences, and that this intermediate category should be retained and made to work – potentially to extend core employment protections to those who are now bogusly self-employed.<sup>5</sup> Most who look at the issue agree that the status quo is not an option.

But the government has rowed back from any reforms. The Taylor Review of modern working practices was commissioned by Theresa May’s government and the government subsequently consulted on 51 of its recommendations, which it said it agreed with.<sup>6</sup> But it never made any positive proposals on employment status and the employment bill it promised has not been brought forward.

Before the 2024 general election, the

Labour Party said: “We will move towards a single status of worker and transition towards a simpler two-part framework for employment status”. It has said it will consult widely before doing so. This would be in addition to a number of other improvements to employment rights under the banner of the ‘new deal for working people’. The Labour party is now in government, and their first King’s Speech includes reference to a number of employment rights reforms, but not single worker status.

This paper addresses these problems directly. We ask: how can employment status reform improve employment rights and autonomy for people who need this most? By this we mean employees, limb (b) workers and people who are ‘bogus’ self-employed, and we are mostly focused on high-risk groups and sectors, such as the gig economy.

We started this project by listening to the views of people in atypical work, and that is where this report starts too. In part 1, we summarise the findings from our survey, focus groups and interviews of atypical workers. In part 2, we set out how employment status currently works before discussing its problems and setting out options for reform. ■

## How can employment status reform improve employment rights and autonomy for people who need this most?

<sup>1</sup> Throughout this report, we refer to the UK, not Great Britain. Employment law is devolved to Northern Ireland, and there are some differences. But Northern Ireland have an intermediate worker status to which this discussion applies.



# Part 1: Experiences of atypical work

## Background

**A**'TYPICAL' DESCRIBES WORK that is 'outside full-time, open-ended employment with regular hours'. It is a broad and diverse category, which includes people with very different working arrangements. There is little that unites them, other than what they are not – ie none are full-time employees with a permanent contract and regular hours, unlike the majority of people in work.

To understand how employment status affects this group, we first listened to their views. We facilitated two focus groups, conducted six in-depth interviews, and commissioned YouGov to undertake a survey. Annex 1 summarises

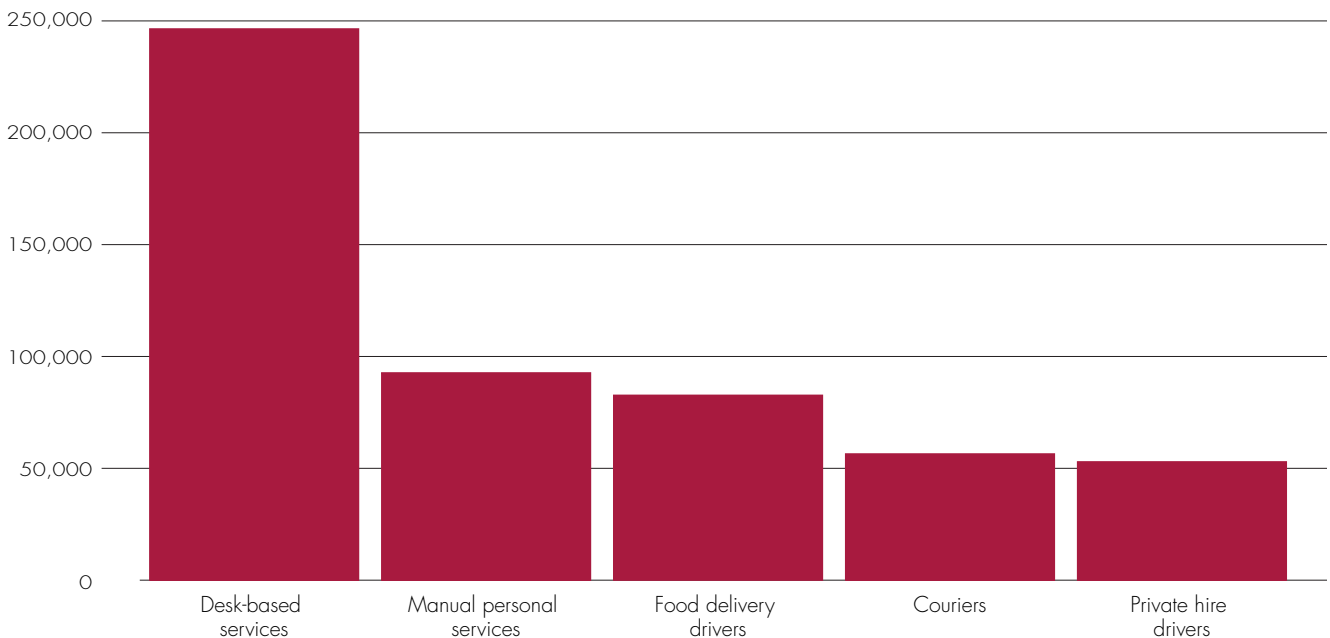
### Box 1: Definition of the gig economy

Gig economy work is atypical work, most of which spans self-employment or limb (b) worker statuses, with only a handful of employees (discussed in part 2 below). We primarily use the ONS definition of gig economy work, but exclude renting out property or selling items via an app. This group is presented in figure 1 below.

The gig economy is small but significant. There have been many estimates of the size of the gig economy in recent years. However, using a large sample of ONS data, the Chartered Institute of Personnel and Development defines a sector of 500,000 – which equates to 1.4 per cent of the 30 million people in employment.

Perhaps the most surprising feature of this group is that over half work in desk-based services, such as web development, translation and legal services, through apps and websites. And the most visible 'gig economy', of private hire taxis and takeaway riders, is small in proportion to the wider sector.

**FIGURE 1: THE 'GIG ECONOMY' CONTAINS AROUND 500,000 PEOPLE, HALF OF WHICH ARE DESK-BASED GIG ECONOMY EMPLOYMENT IN THE UK**



Source: CIPD analysis of ONS, 2022. Question asked: 'Thinking about the past three months, what have you done to earn money using third-party websites, apps or online platforms'. \*Manual personal services include cleaning, decorating, plumbing, electrical work, dog walking or other manual tasks



risers our methodologies. This section summarises the findings, including the six case studies and quotes from the focus groups.

We focused on several sub-groups of atypical work. All of these are presented in annex 1, but we focus on the four below for our survey and for the qualitative work. Small sample sizes prevented us from analysing our survey by ethnicity, but our qualitative work included Black and minority ethnic people.

- **All in work** – this includes the self-employed, gig economy workers, employees and all those who are not unemployed or inactive. 52 per cent were female, and 48 per cent were male.
- **Atypical employees** – who said they were an employee and answered “I have a zero, or variable, hours contract” or “my work is impermanent, I do temporary jobs or work via an employment agency”. 65 per cent were female, with 35 per cent male.
- **Self-employed** – we included all people who are self-employed, which goes far beyond the gig economy, but includes some of these people too. It includes anyone who on the survey ticked the box “I am self-employed, a gig economy worker or freelancer with no employees.”; or “I am self-employed in a trade (such as construction, plumbing, gardening, and so on) or as a consultant or advisory capacity (such as in administration, finance, and so on).” 53 per cent were female and 47 per cent male.
- **Gig economy** – we used the ONS definition discussed in Box 1 above. 49 per cent were male and 51 per cent female.<sup>ii</sup> Results should be treated as indicative only, as there were only 88 people in this group and respondents

**She wants more stability in future and thinks the security of a contract and employee rights are important.**

may have other jobs. These are challenges inherent in surveying the gig economy, which others have also encountered. It should also be noted that the ‘visible’ gig economy of riders and private hire drivers is not very well represented in this sample, in line with ONS findings. ■

### Case study 1: Rebecca

Rebecca is 56 years old and works in hospitality and events. She has two roles: she is an employee on a zero-hours contract with an agency and separately works as a self-employed contractor. She needs the flexibility to care for her older parents.

She wants more stability in future and thinks the security of a contract and employee rights are important. She is doing flexible work now to get into a position to have more of a balance between flexibility and security in future. She is gaining a qualification related to her work in her own time through virtual learning.

Her finances are stretched. She has struggled to cover her rent recently, because she was not able to find work for a period of time. She claimed universal credit (UC) when unemployed and still receives a small amount of in-work UC and is on a payment plan for her rent. She still has to inform her jobcentre that she is working.

She was mainly an employee in the past and had been working for 12 years in residential and commercial property management. Since Covid she shifted to doing more contracted work. She had an experience at her old job which changed her perspective and made her think ‘life is too short’.

*“I got fed up of the whole lot of it.”*

She likes the flexibility and variety and she likes working with a diverse team and dealing with customers. Nobody pressures her to work and that’s what she likes.

*“No one [is] breathing down your neck.” “If I don’t feel well,*

*I can stay and rest.”*

Although she is employed by an agency, the relationship is different from typical employment. She can choose which days to work, which organisations to work for, and can go away for long periods of time. If she has committed to a job, then she does have to give 48 hours notice or have a good reason to not work that shift.

*“I’m not one of their direct employees so to speak.”*

She gets more jobs because people know she is reliable.

*“If they don’t know you, they won’t give you as much favour.”*

She says she has some of the rights an employee would have, but she does not think she has statutory sick pay, maternity leave or statutory redundancy pay.

After being presented with arguments for and against moving to single worker status, she said that she thought there should be a different way of improving rights:

*“You’re trying to push people into full time work, or to the other side.”*

When a number of policy options for improving self-employment were put to her, she thought it would be important to clarify rights, have a contract, be covered by health and safety laws, and have trade union representation.

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# Autonomy



**W**E WANTED TO understand how much autonomy different groups of people have in practice over how they work. This is particularly relevant to discussions of employment status, as ‘control’ is a key aspect of determining employment status (see part 2). Furthermore, our qualitative research found that autonomy was a major positive of some forms of atypical work, particularly self-employment, and that the lack of autonomy in employee jobs is a ‘push’ factor, which leads to many people choosing self-employment or the gig economy.

Our survey asked the question: “In your current job, how much influence do you personally have over...” followed by a number of dimensions of work (derived from a previous Understanding Society

**The lack of autonomy in employee jobs is a ‘push’ factor, which leads to many people choosing self-employment or the gig economy.**

question) These dimensions, and the results, are presented in table 1 below.

*‘I have fibromyalgia so... working for myself basically means that I can manage it in a way that I wouldn’t be able to if I was employed in a more kind of normal, steady job on a like Monday to Friday, nine to five, kind of thing.’*  
– George, 47, self-employed audio engineer

*‘I’ve got two kids and those things, so I have responsibilities of kids to drop them or sometimes pick up.’* – Advik, 32, private hire and food delivery driver

*‘Flexibility means that I can travel. So, I spend about three months of the year out of the country.’* – Lauren, 42, various freelance jobs

## Our survey found that:

### ALL IN WORK

Looking at everyone in work, people are more likely to experience autonomy in some aspects of how they work than others.

#### People are less likely to have autonomy over:

- ‘The **time** you start or finish your working day’ (51 per cent had little/no influence; 48 per cent had a fair amount/great deal of influence)
- ‘**Where** you actually carry out your work’ (52 per cent had little/no influence; 47 per cent had a fair amount/great deal of influence)
- ‘**What** tasks you do in your job’ (47 per cent had little/no influence; 52 per cent had a fair amount/great deal of influence)

#### They are more likely to have autonomy over:

- ‘**How** you do your work’ (71 per cent had a fair amount/great deal of influence; 28 per cent had little/no influence)
- ‘The **order** in which you carry out tasks’ (71 per cent had a fair amount/great deal of influence; 28 per cent had little/no influence)

- ‘The **pace** at which you work’ (64 per cent had a fair amount/great deal of influence; 35 per cent had little/no influence)

### ATYPICAL EMPLOYEES

Atypical employees (employees on zero-hours or agency contracts) tend to have the least autonomy – on all measures they were less autonomous than other groups.

#### They were less likely to have autonomy over:

- ‘**Where** you actually carry out your work’ (67 per cent had little/no influence; 31 per cent had a fair amount/great deal of influence)
- ‘**What** tasks you do in your job’ (68 per cent had little/no influence; 32 per cent had a fair amount/great deal of influence)
- ‘The **time** you start or finish your working day’ (61 per cent had little/no influence; 38 per cent had a fair amount/great deal of influence)

#### They were more likely to have autonomy over the following areas, but still had far less autonomy than other groups:

- ‘The **order** in which you carry out tasks’ (46 per cent had a fair amount/great deal of influence; 51

per cent had little/no influence)

- ‘The **pace** at which you work’ (48 per cent had a fair amount/great deal of influence; 51 per cent had little/no influence)

- ‘**How** you do your work’ (56 per cent had a fair amount/great deal of influence; 44 per cent had little/no influence)

### SELF-EMPLOYED

Generally, self-employed people tend to have a higher degree of autonomy at work than other groups in the workplace.

#### They were more autonomous than other groups against all measures:

- ‘**How** you do your work’ (90 per cent had a fair amount/great deal of influence; 8 per cent had little/no influence)
- ‘The **order** in which you carry out tasks’ (84 per cent had a fair amount/great deal of influence; 15 per cent had little/no influence)
- ‘The **pace** at which you work’ (84 per cent had a fair amount/great deal of influence; 16 per cent had little/no influence)
- ‘The **time** you start or finish your working day’ (20 per cent had little/

**TABLE 1: SURVEY RESPONDENTS’ AUTONOMY AND INFLUENCE (NET)**

Colours: Blue = ‘good’; red = ‘bad’

In your current job, how much influence do you personally have over...	TIME	TASKS	PACE	HOW	ORDER	WHERE
	The time you start or finish your working day	What tasks you do in your job	The pace at which you work	How you do your work	The order in which you carry out tasks	Where you actually carry out your work
All in work (inc SE)	-3	5	29	43	43	-5
Atypical employees	-23	-36	-3	12	-5	-36
Self-employed	58	49	68	82	69	52
Gig economy	22	12	35	49	32	25

Source: Fabian Society and YouGov employment survey, N=1,918

no influence; 78 per cent had a fair amount/great deal of influence)

- **‘Where** you actually carry out your work’ (23 per cent had little/no influence; 75 per cent had a fair amount/great deal of influence)
- **‘What** tasks you do in your job’ (25 per cent had little/no influence; 74 per cent had a fair amount/great deal of influence)

## GIG ECONOMY

Gig economy workers (see box 1 for definition) had levels of autonomy that were greater than the employed overall and more similar to the self-employed. But on two measures they had similar levels of autonomy as people in work overall - ie what tasks they do and where they work.

### They are less likely to have autonomy over:

- **‘What** tasks you do in your job’ (43 per cent had little/no influence; 55 per cent had a fair amount/great deal of influence)
- **‘Where** you actually carry out

your work’ (38 per cent had little/no influence; 62 per cent had a fair amount/great deal of influence)

### But they are more likely to have autonomy over:

- **‘How** you do your work’ (74 per cent had a fair amount/great deal of influence; 25 per cent had little/no influence)
- **‘The order** in which you carry out tasks’ (66 per cent had a fair amount/great deal of influence; 34 per cent had little/no influence)
- **‘The pace** at which you work’ (67 per cent had a fair amount/great deal of influence; 32 per cent had little/no influence)
- **‘The time** you start or finish your working day’ (61 per cent had a fair amount/great deal of influence; 39 per cent had little/no influence)

These results indicate stark differences in how people work, not just between different employment statuses, but within them. Across all people in work, the lack of autonomy is generally in areas we would expect it to be (what they do,

and when and where they work). It also appears there is a middle ground between employed and self-employed in which a lot of gig economy work is taking place.

The most striking finding is that atypical employees report very little autonomy. This is a diverse group including, on the one hand, people working on zero-hours contracts, and on the other, agency workers – who have regulations and enforcement agencies to protect them. Their lack of autonomy could reflect the intensity of working conditions that some agency and zero-hours contract workers must endure as they have little alternative. But it may also be because this work is often in circumstances where all employees (typical and atypical) have low autonomy – ONS data indicates that temporary agency workers are more likely to work in occupations such as caring personal service occupations; elementary trades and related occupations and elementary administration and service occupations.<sup>9</sup>

Atypical work therefore encompasses a vast range of different levels of autonomy, relative to the average person in work. Atypical employees have very little autonomy; whereas self-employed people have a great deal on all measures; gig economy workers have autonomy in some areas, but not others. ■

### Case study 2: Krish

Krish is a 30-year-old takeaway delivery rider who lives in a shared house just outside London. He studies part-time with the Open University. He previously worked stacking shelves, in customer service and with a charity, but Covid meant he had to change jobs. Long-term he would like to become a paramedic.

He says he works in the ‘gig economy’ and considers himself self-employed. He works most evenings, starting between 5 and 6pm and working until between 8 and 9pm, sometimes later on Thursdays, Fridays and weekends but it depends on how many orders there are. He gets paid every Tuesday, and there is sometimes a premium attached to working certain times. He has worked this way for three years.

Krish is happy working this way. He likes the fact that his work is flexible but does not like the lack of guaranteed work and the lack of predictability and there is a lot of waiting around for orders.

*“I’m my own boss.”*

*“I could probably work in a shop or something, but I don’t like the fact I have to work against a rota. The hours are very fixed.”*

He is aware of some provisions that he currently has that are similar to employee rights, such as a supplement to account for holiday pay and a sick pay scheme.

Trade unions are important to Krish. He raises his union (the GMB) frequently and unprompted.

*“I’d go to the union.”*

After being presented with arguments for and against moving to single worker status, Krish indicated he would like to work in the ‘middle ground’ implied by limb (b) status and is aware of other ‘gig economy’ workers who have that status.

*“I like the idea of becoming in the middle ground. Of having more rights.”*

Krish attached a high importance to certain policies that would improve self-employment: clarifying current rights, enforcing rights, trade union representation, written contract, whistleblowing, sick pay, health and safety and being paid on time.

*‘I’d happily pay more tax and get those rights, if I got paid more’*



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# Options



**WE** WERE PARTICULARLY interested in the extent to which people have chosen to work the way they currently do, whether they are happy and whether they currently plan to leave their job. There is a great deal of discussion about this issue: some maintain that self-employment is a positive choice and that people are happy to work in this way. Others suggest it is more of a constrained choice, one decided by a lack of alternatives.

Our survey asked a number of questions to understand people's attitude toward their work. These questions are

**Some maintain that self-employment is a positive choice and that people are happy to work this way.**

summarised in table 2 below, alongside the results.

*"Labouring when I was 18 on a building site, it weren't really for me. Started going*

*to the gym and then I did personal training courses."* – Harry, 32, personal trainer

*"I'm terrified of re-entering like an employment workforce. I don't think I'd get along in that at all. Well I mean because of the disabilities I have but also temperamentally like the kind of, I'm so used it being just me."*  
– George, 47, audio engineer

*"I left a very, very stressful corporate job of 15 years, working through COVID, and had a mini breakdown, being so isolated."*  
– Lauren, 42, various freelance jobs

**TABLE 2: SURVEY RESPONDENTS' 'CHOICES' REGARDING WORK**

Colours: Blue = 'good'; red = 'bad'

	ALL IN WORK (INC SE)	ATYPICAL EMPLOYEES	SELF- EMPLOYED	GIG ECONOMY
<b>Which, if any, of the following best describes how you feel about your current job?</b>				
I don't like my job and I am actively looking for a change	9	11	5	11
I don't like my job but I am not actively looking for a change	14	12	10	14
I like my job and am planning on staying with my current organisation	54	41	53	37
I like my job but am planning on moving to a different organisation in the near future (e.g. within the next year)	12	22	11	21
Something else	8	9	18	13
Don't know	3	4	3	4
<b>Which of the following two statements best describes how you feel about your current employment situation?</b>				
I do the work I currently do because I think it is the best option currently available to me	61	48	55	54
I do the work I currently do because it is the only realistic option I have available to me	25	37	30	31
Neither	12	12	14	14
Don't know	3	2	1	2
<b>How much longer do you currently plan to continue working in the same role as you do now?</b>				
Less than a year	14	30	13	20
1 - 2 years	23	25	18	25
3-4 years	14	11	10	16
Over 5 years	28	12	39	22
Don't know	21	21	20	17

Source: Fabian Society and YouGov employment survey, N=1,918

**Our survey found that:**

**ALL IN WORK**

Most people like their job and plan to stay where they are:

- 54 per cent of all people in work responded "I like my job and am planning on staying with my current organisation" and a further 12 per

cent responded "I like my job but am planning on moving to a different organisation in the near future (eg within the next year)".

- 61 per cent also responded that "I do the work I currently do because I think it is the **best** option currently available to me", compared to 25 per cent who said "it is the **only realistic** option I have available to me".

- 42 per cent were planning to stay in the same role for three or more years.

**ATYPICAL EMPLOYEES**

Atypical employees were less likely to plan to stay with their current organisation and more likely to say that it is the only realistic option available.

### Case study 3: Emily

Emily is a freelance photographer based in London. She has no dependents and her housing and financial situation is usually stable but she is sometimes stretched.

She has done a number of employee jobs in the past, working in a care home, in retail, hospitality, as a teaching assistant or in IT. She progressed up to manager level in retail. She studied photography at university and has level 2 mental health and level 3 retail qualifications. She's thinking about moving into baking and cooking business.

She was doing well in retail but was not enjoying it.

*"Sometimes people can be horrible." (in retail/employee job)*

She works with two friends, taking photos for weddings and parties or for restaurants and portfolios. She gets business via platforms like Fiver, Craigslist and Gumtree as well as by word of mouth and social media. Her relationship is with the client, not the platform.

Her working pattern varies a great deal week to week – sometimes she even flies to different countries for weddings. Her work is driven by availability – and even the weather. She can not always clock on and off when she pleases, as it depends on the nature of the jobs.

For Emily, the pros outweigh the cons. She enjoys work and satisfying customers. Freedom and security is balanced. But there

are downsides and she sees the advantages of some employee jobs:

*"I'd rather be self-employed because you don't have to answer to anyone." "You can't rely on it." "You're losing track of time."*

*"We had two days off this month."*

She earns more than the national minimum wage, feels able to go away for long periods and take a break when she needs to. She may want to have children and this is a consideration for her when it comes to her job: she is aware that she would have to go back to work after six months.

She feels she has freely chosen this work. She could go back to retail but would not want to do it. She is put off by the people – customers, colleagues and managers – and workplace politics. She thinks it is important to work with people who are mindful of one another's health and mental health.

*"I'm happy within my work."*

After being presented with arguments for and against moving to single worker status, she was unsure if single worker status was a good idea or not. She was interested in working in the intermediate status for herself, so long as she could change.

- 41 per cent responded "I like my job and am planning on staying with my current organisation".
- 37 per cent responded "I do the work I currently do because it is the **only realistic** option I have available to me", and 48 per cent because "I think it is the **best** option currently available to me".
- 55 per cent of atypical employees "plan to continue working in the same role as [they] do now" for less than two years.
- 30 per cent responded "I do the work I currently do because it is the **only realistic** option I have available to me". 55 per cent said "I do the work I currently do because I think it is the **best** option currently available to me".
- 31 per cent of self-employed people responded that they "plan to continue working in the same role as [they] do now" for less than two years.
- 54 per cent responded "I do the work I currently do because I think it is the **best** option currently available to me" and a third (31 per cent) responded "I do the work I currently do because it is the **only realistic** option I have available to me".
- When asked: "How much longer do you currently plan to continue working in the same role as you do now?", 45 per cent of gig economy workers said less than two years.

## GIG ECONOMY

**Gig economy workers were less likely to expect to stay in their current job, but were not less satisfied:**

- Self-employed people were just as likely as all in employment to like their job and plan to stay, but more likely to say it was the **only realistic** option:
- 53 per cent of self-employed people responded "I like my job and am planning on staying with my current organisation".
- Gig economy workers were less likely than average to respond "I like my job and am planning on staying with my current organisation" (37 per cent).
- They were more likely to respond with "I like my job but am planning on moving to a different organisation

These results indicate that people generally feel like they chose to do their current job, they like it and want to keep doing it. But there is a significant minority of people for whom this is not the case. This appears to be more common among atypical employees, followed by gig economy workers – which could be more a sign that they see it as temporary, than that they don't like it. ■

## SELF-EMPLOYED

**Self-employed people were just as likely as all in employment to like their job and plan to stay, but more likely to say it was the only realistic option:**

- 53 per cent of self-employed people responded "I like my job and am planning on staying with my current organisation".

# Satisfaction

**W**E WERE ALSO interested in comparing in some detail how happy people are with various forms of work. This is an important consideration for employment status, particularly satisfaction with respect to rights versus flexibilities.

Our survey asked people how satisfied they were with various aspects of their work. We asked whether they were very satisfied; somewhat satisfied; neither satisfied nor unsatisfied; somewhat unsatisfied; or very unsatisfied. Table 3 below shows ‘net’ satisfaction (ie the difference between the percentage of people who were very/somewhat satisfied and very/somewhat unsatisfied).

*“It’s just so different. It’s a different feeling altogether.”*

*“It’s something I enjoy, and it works around my kids. I wish I did have more work.” – Daania, 43, freelance make-up artist*

*“It’s a bit stressful. I can’t do any social engagements because all the work’s coming at once, in big, like, clumps, so I can’t even enjoy myself.” – George, 44, courier*

*“It’s tough, but it’s not enough currently to pull back to being under somebody’s thumb, so to speak.” – Lauren, various freelance jobs*



<sup>ii</sup> Throughout we use ‘satisfied’ to refer to the total of very satisfied and satisfied; and we use unsatisfied to refer to the total of very unsatisfied and unsatisfied

**TABLE 3: SURVEY RESPONDENTS’ SATISFACTION WITH VARIOUS ASPECTS OF WORK (NET)**

Colours: Blue = ‘good’; red = ‘bad’

Thinking about your current employment, generally speaking, how satisfied or unsatisfied are you with each of the following...	PAY	FLEXIBILITY	HOURS	RIGHTS	INDEPENDENCE
	The amount you are paid	The amount of flexibility your job affords you	The number of hours you currently work	Work related rights and benefits...	The amount of independence I have in my work
All in work (inc SE)	18	50	51	42	62
Atypical employees	11	53	41	2	42
Self-employed	27	77	57	0	81
Gig economy	2	59	34	-8	56

Source: Fabian Society and YouGov employment survey, N=1,918



## Our survey found that:

### ALL IN WORK

On all aspects of work, more people in work were satisfied than not satisfied – ie all the ‘net’ scores are positive.

- Fewest were satisfied with **pay**, with 33 per cent unsatisfied and 51 per cent satisfied, (net +18).
- The most were satisfied with **independence** – only 10 per cent were unsatisfied, while 72 per cent were satisfied (net +62).
- 61 per cent were satisfied with their **rights**, while 19 per cent were unsatisfied (net +42).

### ATYPICAL EMPLOYEES

Atypical employees tended to be less satisfied than others in work:

- Most atypical employees were satisfied with the **flexibility**, with 68 per cent satisfied, and 15 per cent unsatisfied (net +53).
- Fewer were satisfied with their **independence** than average, with 60 per cent satisfied and 18 per cent unsatisfied (net +42).
- They were also less satisfied with **pay** than other groups, with 47 per cent satisfied, and 36 per cent unsatisfied (net +11).
- But they were least satisfied with work related **rights** and benefits, with 35 per cent satisfied and 33 per cent unsatisfied (net +2).

### SELF-EMPLOYED

Self-employed people were generally more satisfied than others, except with their rights:

- Self-employed people were more satisfied than other groups with

### Box 2: Sick pay focus

Sick pay is particularly important. In the UK, the entitlement is particularly low (see part 2) and excludes anyone without an employer contributing national insurance. For some people in atypical work, this can mean an unexpected and immediate loss of all income. Our qualitative work found these to be crucial issues, so we asked survey questions to find out more.

*‘If you’re off sick, you’re not actually earning any money so it’s ‘try not to be sick’ – Stanley, 63, courier*

*‘I’d have to be really, really sick to not work, literally hospital level sick. I worked when I had COVID, so I’d have to be very, very, very sick’ – Lauren, 42, various freelance jobs*

Our survey asked: ‘Thinking about your current savings, assets, and work-based rights and benefits, to what extent do you think you would or would not be able to maintain a good standard of living if...’ if you became too sick to work, for 28 weeks, or a year. Table 4 below shows the results.

We find that, for 28 weeks sickness, only the employed had a larger proportion who could ‘maintain a good standard of living’ than who could not. Gig economy workers and atypical employees were particularly unlikely to be able to do so. All groups were similarly unlikely to be able to do so for a year.

TABLE 4: SURVEY RESPONDENTS ON SICKNESS (NET)

Colours: Blue = ‘good’; red = ‘bad’

Thinking about your current savings, assets, and work-based rights and benefits, to what extent do you think you would or would not be able to maintain a good standard of living if...	You became too sick to work for 28 weeks	You became too sick to work for a year
All in employment	1	-33
Atypical employees	-10	-32
Self-employed	-3	-27
Gig economy	-18	-39

Source: Fabian Society and YouGov employment survey, N=1,918

their **pay**, with 54 per cent satisfied and 27 per cent unsatisfied (net +27).

- A very high number were satisfied with their **independence**, with 85 per cent satisfied, and only 4 per cent unsatisfied (net +81).
- And a very high number were satisfied with **flexibility**, with 83 per cent satisfied and 6 per cent unsatisfied (net +77).

- But far fewer self-employed people were satisfied with their **rights**, with 34 per cent satisfied and 34 per cent also unsatisfied (net 0).

### GIG ECONOMY

Gig economy workers were more unsatisfied with their rights and pay but satisfied with their flexibility and independence:

- A large proportion were unsatisfied with work related **rights** and benefits – 39 per cent were unsatisfied, and 31 per cent satisfied (net -8).
- A large proportion were also unsatisfied with **pay** – 43 per cent satisfied, and 41 per cent unsatisfied (net +2).
- More were unsatisfied with **hours** than other groups – 58 per cent satisfied, and 24 per cent unsatisfied (net +34)
- The largest number of gig economy workers were satisfied with **flexibility**, with 72 per cent satisfied and only 14 per cent unsatisfied (net +59).
- Many were also satisfied with **independence**, with 72 per cent satisfied and 16 per cent unsatisfied (net +56).

The different compromises of autonomy vs security are clear for most, but not all, groups. We broadly find that people in employment are satisfied with most aspects of how they work – and that includes notably flexibility and independence. But self-employed people are significantly more satisfied with flexibility and independence, and significantly less satisfied with work-related rights and benefits (which they are unlikely to have at all). Gig economy workers are, broadly speaking, in between these two groups.

Atypical employees appear to have the worst of both worlds. They have workplace rights satisfaction that is about as low as the self-employed but lack the independence that even the average person in work enjoys. They are also least satisfied with their pay. As discussed, this is a diverse group, who may be more concentrated in workplaces where general employee satisfaction is also low. ■

**Self-employed people are significantly more satisfied with flexibility and independence.**

#### Case study 4: Steve

Steve is 56 years old and works as an employee on zero-hours contracts for various theatres. He lives in a major city with his husband and their dogs. Their income is ‘unstable-ish’ but they have measures in place to ensure they are OK, and have equity in their home for retirement.

He had been a primary school teacher for 25 years when he decided that he did not want to do it any longer. He left a £49k a year job, to earn £7k per year.

*‘I had to get out. To make a change and do something’*

*‘Seat of your pants stuff’*

He went through a phase of doing four 12-hour days each week, but could not keep it up. Now he does four zero-hours contract roles as well as earning income from Airbnb and DJing.

*“You’ve got to put things in place really and trust in the universe.”*

*“I love my work. I get up in the morning and I enjoy what I’m doing.”*

He can choose which days he works and can go away for long periods of time with no questions asked, but if he has committed to a shift, he has to work it.

He has some of the rights of an employee. He thinks they are all of high or medium importance and has at times had to enforce his rights – once to ensure he was paid the national minimum wage, and once to report someone for a racist remark. He gets holiday pay and his employers pay into a pension. But there’s no written employment contract. Nor is there sick pay, which he says he would like.

*“If you’re off sick you just don’t get paid.”*

He is generally happy and feels confident and appreciated at work. He says it is a job he actively chose to do – he could do other work, and did look at a more permanent role but it did not work out.

*“Once you’ve been flexible in your outlook, it’s very hard to go back.”*

*“I think people get a little bit jealous.”*

Ideally, he would want a guaranteed number of hours per month, and then to work above that more flexibly.

After being presented with arguments for and against moving to single worker status, he said it would be good to be employed and with a contract and that stability is important, but also supports a ‘middle ground’ (ie Limb (b)) option.

He thinks being paid on time, being safe at work and having a trade union are the most important things.

*“If anything goes wrong it’s important to have someone behind you, to have your back.”*

He would support a number of reforms to improve flexible working, including clarity around current rights, enforcement, trade union representation, written contracts, whistleblowing, pensions, sick pay and ensuring timely payments.

# Employment status



*“It isn’t something that they have chosen... they’re being kind of surreptitiously employed... I think it’s extremely important that the rights that we’ve built up over like hundreds of years of employment law and trade unionism are not lost to this... if you’re going to employ someone, employ them properly.” – George, 47, audio engineer*

*“It sounds quite appealing... if I am going to carry on how I am [in the ‘middle ground’], I would want cover, but I’d just worry about the abuse it’s open to... it’s not like we have a human resources team”*

*“When you’re self-employed, it’s almost like you have to put up and shut up, because you don’t have a voice.” – Sadie, 44, courier*

Limb (b) is inherently challenging to define, so we developed a ‘shorthand’ description of the status, alongside equivalents for employee status, and self-employed status. These short descriptions were presented to respondents as the table below shows.

We first asked: “Which of the definitions...do you think best describes **how you currently work?**” A small but significant group of people responded that they were already in the ‘middle ground’ status we described, including:

- 13 per cent of all people in work
- 50 per cent of atypical employees
- 7 per cent of self-employed people
- 26 per cent of gig economy workers

**F**INALLY, WE ASKED respondents about the employment status they currently have, and what employment status they might like. This is clearly a crucial question which addresses this project’s subject head on. We wanted to understand if people thought they were currently working in

the ‘limb (b)’ ‘middle ground’ category. And we also wanted to see if people might like to work under that status.

*“If they want to be on both sides of the fence... well that’s fine. You know, work in the gig economy.” – Stanley, 63, courier*

	Rights	Flexibility
<b>Self-employed</b>	No employee rights	A lot of control and flexibility about how and when I work
<b>'Middle ground' workers</b>	Some rights, to national minimum wage and paid breaks for example	Some control and flexibility over how and when I work
<b>Employee</b>	A lot of employment rights, including the right to notice or redundancy if the job ends, and redundancy payments for example	Very little control over how and when I work

This indicates a large group of people who, according to our survey, think they may have the middle ground employment status. This can only be indicative and is certainly not definitive. Surveys have inherent limitations in determining such a complex status. And it is likely to reflect people's lack of clear understanding as much as their actual employment status. 13 per cent of total employment is approximately 4 million people (compared to only 4.9 million who are self-employed in total). People responding 'middle ground' were most concentrated in the atypical employees group, but there are also some in the 'gig economy'. This indicates that limb (b) worker arrangements may currently form a significant proportion of the agency and zero hours workforce, alongside employee contracts.

When we asked: "Which of the definitions...do you think best describes how you would **most like to work**", we found that a small but significant group of people would most like to work in the middle ground we outlined, including:

- 20 per cent of all people in work
- 35 per cent of atypical employees
- 16 per cent of self-employed people

- 23 per cent of gig economy workers

We also found that:

- There is a large group of people in work (including self-employed people) who would like to be either self-employed (18 per cent) or in the 'middle ground' we described (20 per cent) – a total of 38 per cent. 38 per cent is equivalent to 13 million people, while 20 per cent of employment is roughly 7 million people. This should again be interpreted with care because of the limitations of the survey methodology.
- Atypical employees had the highest proportion favouring middle ground status, compared to other groups. 35 per cent of atypical employees said they would like to work in the middle ground status – a higher proportion than for all in work (20 per cent). The proportion of atypical employees wanting this middle ground was similar to the proportion wanting employee status (37 per cent). However, fewer atypical employees wanted to be in the middle ground status (35 per cent) than were currently in that status (50 per cent). This is in line with our earlier findings

indicating lack of autonomy and low job satisfaction for this group.

- 29 per cent of self-employed people would like another employment status, with this split quite evenly between those who want 'middle ground' (16 per cent) and those who want employee status (13 per cent). Low autonomy self-employed people were similarly split, with some preferring the middle ground (19 per cent) and others preferring employee status (17 per cent).
- Gig economy workers indicate a preference for self-employment (47 per cent) over employee status (22 per cent). ■

**People responding 'middle ground' were most concentrated in the atypical employees group, but there are also some in the 'gig economy'.**

**TABLE 5: SURVEY RESPONDENTS ON EMPLOYMENT STATUS**

Colours: Blue = 'good'; red = 'bad'

Which of the definitions in the table do you think best describes how you currently work (left) would like to work (centre)	CURRENTLY WORK				WOULD LIKE TO WORK				DIFFERENCE (NET)			
	A) Self-employed	B) 'Middle ground' workers	C) Employee	Don't know	A) Self-employed	B) 'Middle ground' workers	C) Employee	Don't know	A) Self-employed	B) 'Middle ground' workers	C) Employee	Don't know
All in work (inc SE)	13	13	71	3	18	20	54	8	5	7	-17	5
Atypical employees	8	50	34	8	16	35	37	12	8	-15	3	4
Self-employed	83	7	7	2	65	16	13	7	-18	9	6	5
Gig economy	56	26	17	1	47	23	22	8.1	-9	-3	5	7

Source: Fabian Society and YouGov employment survey, N=1,918





### Case study 5: Amir

Amir is a 37-year-old private hire driver, who moved to the UK from Pakistan, originally to study. He has a wife in full-time education and a son who is in school. He has an MBA and worked as a recruitment consultant before coming to the UK. He couldn't continue his profession in the UK, so he has done a number of jobs that don't require qualifications. He is looking to move into IT in the future but needs flexibility.

*"I want to do a lot of things but when I look at my family circumstances I need a lot more flexibility."*

He says he works in the gig economy and says there is no organisation that treats him in a similar way to how an employer would, but he can't operate as a freelancer and needs a platform in the middle in order to work. There is a general pattern to when he works, but it does vary and his working hours respond to demand.

*"There is a reason why I chose to work like this."*

He has minimum wage and holiday pay. There is an offer of sick pay but he believes it is not easy to access in practice – a friend had tried to use it but found he couldn't. Theoretically, he can only work for 10 hours in a row before taking a six-hour break. But in practice the total time at work can be as long as 12 to 13 hours, including waiting for people.

He can choose whether to accept passengers, but he is rewarded for accepting more and effectively penalised for cancelling too often. Cancellation rates affect which tier he is on, which in turn affect the chance of picking up on the more lucrative routes – such as the airport run – or perks, such as his gym membership. He says drivers can be blocked for a period if a customer complains and there is little explanation given and apparently no way they can argue their case.

*"Unfortunately, the work wasn't there, so I just came home."*

He briefly went back into typical work but had got into a habit of nobody telling him what to do and fell out with his manager. He sees the downside of retail work especially.

*"In retail, if it's an eight-hour shift you're basically giving them 10 hours." "I couldn't do it...I think [retail workers] are very unfortunate."*

But he also sees the upside of typical work and attaches a high priority to almost all the rights an employee has. He is looking into more typical work in the future, but it will need to be flexible.

*"You call in sick and you get sick pay."*

Amir is aware of the debates around single worker status and the recent supreme court cases. After being presented with arguments for and against moving to single worker status, he said that he is happy with his current limb (b) worker status. He wants policymakers to understand that people do this work for a reason – flexibility. He wouldn't want to either be fully self-employed with no rights, nor to be an employee with no flexibility. Trade union representation is also important to him.

*"I want it to be like this, where I have flexibility and also some sort of rights."*

He attached high priority to all benefits from pensions to parental leave and sick pay and was in favour of a number of policies to improve self-employment, including policies which clarified and enforced rights, health and safety and payment on time. He was willing to pay more national insurance in exchange for these rights.

# Summary

**I**N SUMMARY, OUR survey indicates a number of important points for employment status reform:

- The majority of people in work report that they have the autonomy they want; they have chosen to work in the way they are working; they are reasonably satisfied and they don't want to change status – whether they are self-employed, employees or in the 'middle ground'.
- Some want a different status from the one they currently have, whether that is self-employed people wanting to be an employee or vice versa.
- A fifth appear to like the idea of the 'middle ground' option we described, with core employment rights.
- 'Gig economy' workers reported that they are as autonomous as the self-employed in some respects, but closer to the average on others – indicating their potential compatibility with limb (b) status.
- Most self-employed people are satisfied with their pay, independence and flexibility and have very high degrees of autonomy, but a relatively high proportion are unsatisfied with their (lack of) workplace rights.
- Atypical employees should be the focus of further investigation before employment status reform is taken forward. The survey indicates that many might have the worst of both

worlds – they report lower autonomy and poor satisfaction with rights. Half already consider themselves to be in our 'middle ground', but report lower levels of autonomy than average, and not the greater autonomy that should come with limb (b) status. Single worker status could increase the size of this group, which the next section discusses. ■

**Many might have the worst of both worlds - they report lower autonomy and poor satisfaction with rights.**

## Case study 6: Zack

Zack is self-employed as a courier. He lives in a village, he has no dependents and his housing and financial situation are stable. He has no formal or trade qualifications. He has been an employee for an IT firm and for Royal Mail in the past. He would like to go back to work in IT in the future.

As a courier, he usually just works weekdays. He has to let them know when he wants to work a week before but there is always work when he needs it. On a typical day, he goes to the yard to pick up parcels, gets a route, follows it, and then goes home. Once a month he also does some takeaway delivery – on payday, when there is enough demand for it in his village.

He says that work is not as strict as it would be working for an employer and he does not have deadlines to reach, he just has to deliver his parcels.

But Zack does not understand how the relationship with his engager works. He says it feels like if you're not consistent, don't work much or go on holiday then

you may be disadvantaged – though he says it is hard to tell if this is true. He says he does not understand how his contract works: once he was behind on his deliveries, so they sent another courier out to help him finish, without him asking. He said they then deducted from his pay and gave it to another person.

*"[it's] a bit more chilled than it would be working for an employer."*

*"They're always watching the stats so it can feel stressful."*

*"There's a hidden standard. If you're not meeting that they'll send someone else in."*

He likes being out and about, speaking to customers.

But he does not like the inconsistency. Ideally, he wants to be employed for part-time work and then do self-employed/delivering on the side. When he found this job, all the other jobs available

to him were similar – flexible, zero-hours, gig economy jobs:

*"I'd rather something more sustainable, consistent. Going back to normal 5 days."*

*"As the months go on, my thoughts change about going back to a role like that."*

He thought the most important rights to have were sick pay and holiday pay, but minimum wage, break periods, protection from dismissal and redundancy pay were also important.

*"Sick pay and holiday pay would be top of the list."*

After being presented with arguments for and against moving to single worker status, he said he was interested working in the 'middle ground' of employee and self-employment, if that would mean he had the 'main rights'.

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# Part 2: Policy

## Employment status and employment rights

**W**HY DO WE have employment rights and what does it mean to be ‘employed’? Thankfully, most people now have a range of legal protections and entitlements which apply to us while we are at work. This is no accident: more than 200 years of trade union campaigning and legislative change have made this the case. But it is important to understand why, in order to tackle current problems with employment status.

This section first summarises the three employment statuses we have in the UK and explains why they are so different, before setting out the ‘tests’ that help distinguish between them in some of the ‘grey area’ cases.

### Employment status and its implications for atypical work

There are three employment statuses in the UK, each with a different ‘package’ of rights, entitlements and autonomy. Both atypical work and gig economy work are technically possible under each status. Employment status reform is directly relevant for the self-employed and limb (b) workers, but could have an indirect effect on employees – particularly those on zero-hours contracts, for example.

To confuse matters further, there are only two tax statuses, which do not align with employment status, and national insurance contributions trigger certain employment rights (or ‘statutory payments’) such as statutory maternity pay. This complex picture is presented in figure 2 below.

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### 1. EMPLOYEES

#### Employees need the law’s protection

Fundamentally, employees commit to personally undertake work, under the

control of an employer, in exchange for money and other benefits. This is what makes employee status different, and it is a relationship all countries recognise in a similar way, though the emphasis can differ, and they sometimes consider other factors, such as bargaining power.<sup>10</sup> We discuss the ‘tests’ of employment status further below.

Being an employee can theoretically involve substantial encroachments on how we spend our working day: for example, many employees must be behind a desk, or a till, or on a building site; some employees have to wear a uniform; and most of us have to do what a manager tells us to, within reason. If we deviate from this, there can be consequences and ultimately, we can be dismissed, losing vital income. Being an employee can involve a substantial asymmetry of power and resources, which makes employees vulnerable to mistreatment and exploitation. Many higher-income employees have a great deal of autonomy in practice. But low-income employees often do not – and it is these who are the most concern.

This inequality of power has led to a broad plethora of protections and regulations. The extent of protections varies country to country, but there is a similar pattern across many jurisdictions. For example, the right to strike is recognised in the Universal Declaration of Human Rights, the International Covenants and the core ILO conventions.<sup>11</sup> Social security, including paid parental leave and sick pay, are also fundamental human rights.<sup>12</sup> The UK offers less protection than most equivalent countries apart from the United States (discussed in the next section). But the key point is that employee status tends to be associated with a broadly similar set of rights internationally.

Whether we are an employee or not, therefore has a major impact on our rights

and entitlements, and involves significant obligations on the part of our employer. Employees have employment rights to protect them, such as protection from unfair dismissal.

Employee status has several key features and interacts with atypical work and the gig economy as follows:

- **Employment rights and autonomy.** ‘Employees’ have a relatively large range of rights but tend to have less autonomy. These rights are listed further below. Agency workers also come under the Agency Workers Regulations.<sup>iii</sup>
- **Tax, statutory payments and pensions.** Employees and their employer pay class 1 NICs which give rise to entitlements to statutory payments, and they are auto-enrolled into workplace pension schemes.
- **Atypical work.** The vast majority of employees do not undertake atypical work, but employees undertaking atypical work can include zero-hours contracts, agency work, or work via umbrella companies, for example.
- **Gig economy.** Gig economy work is possible, but very rare under employee status – at the time of writing, grocery delivery business Getir is in the process of exiting the UK, having been the only major business we found using this model (and mainly in London<sup>13</sup>), while a very small bicycle courier company in London, Pedal Me, also uses this model.
- **Size.** There are 29 million employees

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<sup>iii</sup> Agency workers have additional rights under the Agency Workers Regulations, which apply to employees and limb (b) workers regardless of status. This includes the right to written terms, paid time off for antenatal appointments and access to the statutory enforcement body (EAS). After 12 weeks in the same role, they qualify for improved rights, including equal treatment on pay, holidays and working time and improved pregnancy rights.

**TABLE 6: SUMMARY OF THE RIGHTS AND ENTITLEMENTS OF LIMB (B) WORKERS COMPARED TO EMPLOYEES**

WORKER/EMPLOYEE RIGHTS			
Statutory right / protection	Employee	Limb (b) worker	Qualifying period
Unlawful deductions from wages	Yes	Yes	Day 1
National Minimum Wage/National Living Wage	Yes	Yes	Day 1
Paid holidays	Yes	Yes	Day 1
Right to be accompanied at a grievance/disciplinary hearing	Yes	Yes	Day 1
Whistleblowing	Yes	Yes	Day 1
Discrimination, other prohibited conduct under the Equality Act 2010 and reasonable adjustments*	Yes	Yes	Day 1
Equal treatment for part-time workers	Yes	Yes	Day 1
Protection from detriment for trade union membership*	Yes	Yes	Day 1
Itemised pay slip	Yes	Yes	Day 1
Written particulars of employment	Yes	Yes	Day 1
Protection from detriment in certain health and safety cases	Yes	Yes	Day 1
Workplace pension scheme*	Yes	Yes	Day 1
Right to join a trade union and to participate in trade union activities*	Yes	Yes	Day 1

in the UK. The ONS estimates there are 723,000 people in temporary or permanent agency work, and the Resolution Foundation estimates there are 865,000 agency employees and the TUC has suggested that half of agency workers are now working for umbrella companies. There are an estimated 1 million people working on zero-hours contracts, or 3.1 per cent of people in employment.<sup>14</sup>

- **Examples of atypical and gig economy work:** Office temps, agency work, some couriers.

## 2. SELF-EMPLOYED

### Self-employed people don't have employment rights – because they are not employed (in theory)

Compared to an employee, a self-employed person has a completely different relationship with the organisation paying them. They are clearly obliged to provide goods or services as part of the commercial agreement they have with the purchaser. But they have

autonomy over one or several aspects of how they deliver – they may decide how they do it, or when they do it, or where they do it, for example. They can also arrange for somebody else to do their work, which indicates they aren't required personally to do the job – a key distinction, which has been used in some high-profile legal cases to determine whether someone is self-employed or a limb (b) worker.

Self-employed people do not have employment rights – because they aren't personally employed and have a level of autonomy that is, in a sense, its own protection. They do not come under employment law. They are not entitled to a minimum wage, because they are not paid a wage. And they can not sue for unfair dismissal – because they can not be 'dismissed' as an employee. Further, they don't have entitlements to statutory sick pay or paid maternity leave for example (in law this is linked to them paying less national insurance themselves and not having an employer paying in either). The distinction raises a number of issues, discussed later in this section.

Self-employed status has several key features and interacts with atypical work and the gig economy as follows:

- **Employment rights and autonomy.** The self-employed have a high degree of autonomy, but have fewer protections. They work outside of employment law – though they are protected from discrimination and have some health and safety rights.
- **Tax, statutory payments and pensions.** Self-employed people pay class 4 NICs if they have profits of £12,570 or more.<sup>v</sup> They will not usually have a workplace pension but are entitled to a state pension on the same basis as employees if they pay NICs. A small number of organisations that contract large numbers of self-employed contractors now voluntarily provide benefits packages which can include pension contributions, parental leave, sick pay and annual leave.<sup>v</sup>
- **Atypical work.** Atypical work includes many self-employed people, freelancers and others who work on a contract basis.
- **Gig economy.** A large share of gig economy work comes under self-



**TABLE 6: SUMMARY OF THE RIGHTS AND ENTITLEMENTS OF LIMB (B) WORKERS COMPARED TO EMPLOYEES (CONTINUED)**

<b>EMPLOYEE RIGHTS DAY 1</b>			
<b>Statutory right / protection</b>	<b>Employee</b>	<b>Limb (b) worker</b>	<b>Qualifying period</b>
Maternity leave and adoption leave	Yes	No	Day 1
Statutory bereavement leave	Yes	No	Day 1
Time off various activities and duties (paid and unpaid)	Yes	No	Day 1
Equal treatment for fixed-term contract staff	Yes	No	Day 1
Unfair dismissal (for certain automatically unfair reasons)	Yes	No	Day 1
Breach of contract	Yes	No	Day 1
Statutory Sick Pay*	Yes	may be entitled	Day 1

<b>EMPLOYEE RIGHTS WITH QUALIFYING PERIOD</b>			
<b>Statutory right / protection</b>	<b>Employee</b>	<b>Limb (b) worker</b>	<b>Qualifying period</b>
Minimum period of statutory notice	Yes	No	1 Month
Medical suspension pay	Yes	No	1 Month
Guaranteed pay	Yes	No	1 Month
Shared parental leave and Paternity leave	Yes	No	26 Weeks
Right to request flexible working	Yes	No	26 Weeks
Right to request time off for study or training	Yes	No	26 Weeks
Adoption pay, Shared Parental pay, Paternity pay, Maternity pay and Parental Bereavement pay*	Yes	may be entitled	26 Weeks
Unpaid parental leave	Yes	No	1 Year
Unfair dismissal (ordinary)	Yes	No	2 Years
Written reasons for dismissal (in most cases)	Yes	No	2 Years
Statutory redundancy pay	Yes	No	2 Years

Source: Department for Business and Trade, Employment status and employment rights: guidance for HR professionals, legal professionals and other groups <sup>21</sup>

employment, including almost all the major platforms, such as Deliveroo and Just Eat (but crucially, not Uber private hire passenger drivers).

- **Size.** The ONS reports that there are 4.3 million self-employed people.
- **Examples of atypical and gig**

**economy work:** taxi drivers, private hire taxi drivers, bicycle takeaway couriers, builders, barristers, sound engineers, hairdressers and copywriters.

### 3. LIMB (B) 'WORKERS'

Limb (b) workers have 'core'

**employment rights – in an attempt to protect them while enabling a more autonomous relationship**

Compared to employee status, limb (b) worker status provides a 'lower pass mark' to qualify for core employment rights. The Employment Rights Act 1996 set out this status, which is often referred to (confusingly) as 'worker' status, even

<sup>iv</sup> They also paid Class 2 NICs until these were abolished in April 2024, alongside a reduction in the Class 4 NICs rate to 8 per cent

<sup>v</sup> Some self-employed people work through companies

### Box 3: Tax status and employment status have an important but complex relationship

Tax status affects workplace rights because whether an employee and employer pays NICs is the trigger for key statutory payments, such as statutory maternity pay.

There is a complex relationship that may seem odd, but there is a logic underpinning it. The logic is that when people pay in, they get something out when they need it (hence ‘insurance’). They pay in national insurance contributions and take out statutory payments or contribution-based benefits, like the state pension. People pay in via payroll as employees (PAYE) or via self-assessment if they are self-employed for tax purposes (there is no middle-ground status for tax, see below); and businesses pay in for their employees – but not for anyone they contract with who does not meet the definition of an employee in tax law.

In theory, this money is all placed by HMRC into a separate national insurance fund that mainly pays for specified entitlements including contributory benefits and statutory maternity pay. Self-employed people and limb (b) workers do not have the same entitlements to statutory payments, such as statutory maternity pay, because they pay a lower rate of national insurance and there is no employer also contributing national insurance. In practice, national insurance is treated as general government revenue (ie the recent cuts to national insurance rates have not triggered a cut in entitlements). But people’s national insurance status still determines whether they are eligible for statutory payments (and also benefits such as job seeker’s allowance).

There are a number of tax-related challenges to employment status and employment rights:

**Key employment rights are theoretically determined by tax status, not employment status because of their origins in the contributory system.** For most people this is not a problem, because they are clearly employees or self-employed under both frameworks. But for people in the grey area this is a concern.

**The frameworks don’t align.** Firstly, limb (b) does not exist in tax law – people in this group are usually assumed to be self-employed for tax purposes, and no court to date has classified a limb (b) worker as an employee under tax law. But that is not necessarily the case. The legal tests and case law are slightly different between employment law and tax law. For example while the courts have factored in the purpose of employment law in determining employment status, they haven’t done so in determining tax status.

**The link between contribution and reward is no longer clear.** NICs also fund part of the NHS and the national insurance fund is not a true social insurance fund. Its level has no bearing on policy or entitlement, and it is sometimes ‘bailed out’ by general taxation or vice versa. Self-employed people are entitled to the same state pension, despite paying lower NICs. Even though the fund bears more fiscal pressure, national insurance rates have recently been cut.

**Statutory sick pay (SSP) is particular-**

**ly odd.** People qualify for SSP if they have an employer paying in class 1 NIC, but it is not funded by the taxpayer – it is funded directly by the employer, with no refund from the national insurance fund (ie unlike statutory maternity pay). This oddity derives from SSP being a descendent of a long-dead contributory sickness benefit (in fact, SSP technically helps fund the national insurance fund, because it is earned income, subject to income tax and NIC). Sick pay is also far lower than in other countries.

**A small group of people pay in employee NICs but do not have employment rights.** Off-payroll working reforms (also called IR35) have led to an increase in ‘zero rights employment’ – whereby people are paying employee NICs at source (via PAYE) even though they have no employment rights because their employment status is self-employed or company director.

Some have called for the alignment of the two frameworks. This would theoretically make life simpler for people trying to determine their status for themselves. However, it could be complex in practice and could have unintended consequences.

But there is a more pressing issue: for limb (b) workers and self-employed people to qualify for statutory payments, the system may need to be changed to one in which entitlement is no longer determined by tax status. This isn’t a large step given that self-employed people already have equal entitlement to the largest draw on the national insurance fund – the state pension. Other entitlements still linked to national insurance status are small by comparison.

though employees are also workers. The phrase ‘limb (b)’ refers to the letter of the sub-clause of the Act that defines the status. These ‘workers’ do not work in a way which quite meets the threshold for employee status, but nor are they sufficiently independent to be regarded as ‘fully’ self-employed. In theory, this category of work should provide a compromise option that suits both parties, that sits between employment and self-employment, enabling a combination of autonomy and protection.

Limb (b) status has a purpose. Many

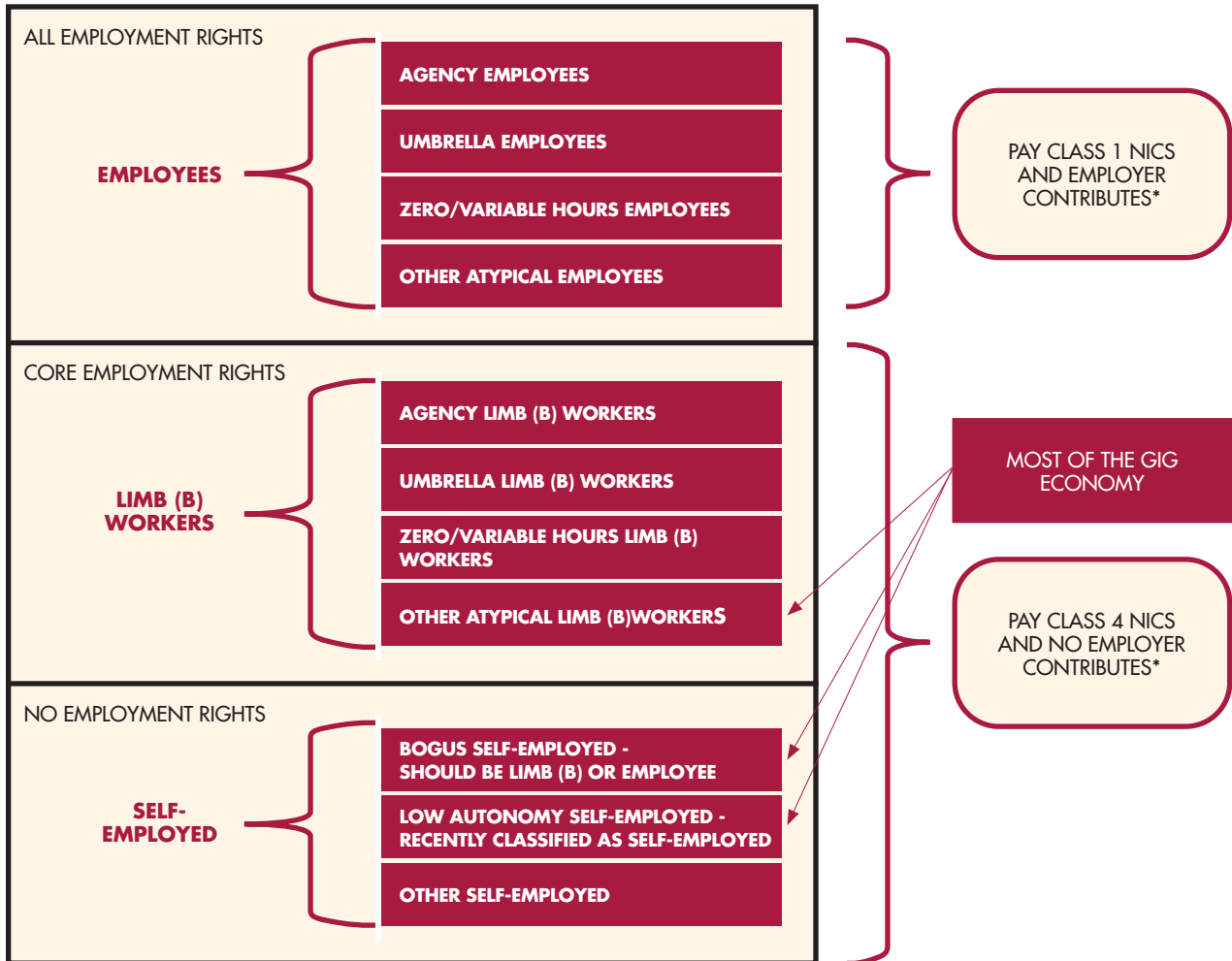
conversations around limb (b) status and single worker status can be confusing; some are even poorly informed. But parliament was clear when passing this legislation: limb (b) status was not intended to facilitate weaker employee protections, and we found no evidence of employers shifting employees into this status – at least, to date. Rather it was set up to create stronger self-employed protections, to protect the self-employed from the risks involved in working with less autonomy. Further, it was not created for the purpose of facilitating tax avoidance, as some

allege – although it is true that employers can avoid employer NICs by contracting limb (b) workers, and limb (b) workers have been classed as self-employed for tax purposes when courts have made such judgments. However, there is not necessarily a link between limb (b) and being self-employed for tax, as there are separate tests and legal frameworks governing tax and employment.<sup>15</sup>

The UK is highly unusual in having this intermediate status set out in law. There are a handful of other countries, which have three statuses. In Italy, for

## FIGURE 2: ATYPICAL WORK AND THE GIG ECONOMY INTERACT WITH EMPLOYMENT STATUS AND TAX

Different categories of atypical work, employment status and NIC contributions



Source: Author's analysis based on Department for Business and Trade, Employment status and employment rights: guidance for HR professionals, legal professionals and other groups \*Tax status and employment status don't necessarily align<sup>16</sup>

example, there is now a status of “lavoro etero-organizzato”, which has been confirmed as applying to food delivery riders by various courts, the public prosecutor, labour inspectorate and the Supreme Court.<sup>17</sup> Austria and Germany have an ‘employee-like’ status, and in Germany this has been discussed as extending to the gig economy.<sup>18</sup> Other countries do not necessarily lack a ‘middle ground’ arrangement in practice, they mostly manage flexible arrangements within a binary employee/self-employed framework – sometimes via an interme-

diary agency, for example with ride hail drivers in Berlin and Paris.<sup>19</sup>

Limb (b) worker status has several key features and interacts with atypical work and the gig economy as follows:

- **Employment rights and autonomy.** ‘Limb (b) workers’, often referred to as ‘workers’, have greater flexibility than employees in terms of when and how they work, and have some, but not all, of the same employment protections as employees (see table 6 below). The

main rights are to the minimum wage, annual leave, and working time regulations.

- **Tax, statutory payments and pensions.** ‘Workers’ are usually self-employed for tax purposes, despite coming under employment law. Like the self-employed, they will pay class 4 NICs if they have profits of £12,570 or more. They should be auto-enrolled into a workplace pension with employer pension contributions (there

are some exceptions that also apply to employees, for example excluding those who earn less than a qualifying threshold). Some organisations voluntarily provide other benefits to limb (b) workers which are similar to statutory payments – including paid parental leave and non-statutory sick pay (they would only be entitled to statutory sick pay or maternity pay if they had an employer paying class 1 NICs).<sup>vi</sup>

- **Atypical work.** All of the work which ‘workers’ do is by definition ‘atypical’, although they probably make up a small proportion of all atypical work.
- **Gig economy.** Following a 2021 supreme court judgment, Uber private hire drivers now have limb (b) status.<sup>20</sup> Just Eat riders used to – before moving to a fully self-employed model. This status seems to be rarely explicit in contracts or represented in the rights people are given by their employer. But there are potentially large numbers of people, especially in the gig economy, whose relationship with their ‘engager’ or platform is that of a limb (b) worker. The problem is that this is not recognised and they are not benefiting from limb (b) rights – a problem known as ‘bogus’ (or ‘sham’) self-employment.<sup>21</sup> This is a major point of contention, discussed later in this report. It is important to note that there are limb (b) workers outside the gig economy too – camera operators, for example, will often work on this basis.
- **Size.** The size of this group is inherently challenging to quantify. Many people will not know that they have a ‘worker’ contract (or relationship), but would be found to have this status if their situation were examined by a court. Williams et al estimated that that 1.4 million, or 36 per cent of self-employed people (in 2017) worked with low



levels of autonomy and 15 per cent have an uncertain employment status.<sup>22</sup> These are people who could potentially be classified as limb (b) workers, but there is a lack of awareness and clarity and so surveys are not able to easily isolate this group. Again, this is the key consideration for this report, discussed in the next section.

- **Examples.** Some private hire drivers (Uber), stage technicians, camera operatives, and agency workers.

### Employment status ‘tests’ help courts decide ‘grey area’ cases

Employment status is clearly important and has been contested many times through the courts. There are a number of ‘tests’ which tribunals have used to determine employment status in various cases where it has been unclear. We might expect that the legislation itself would do this, but there are no tests laid down in legislation. Instead, the courts have developed their own tests, which were

first delineated in a key case in 1968.<sup>23</sup> From this and other case law since, the following are broadly the ‘tests’ which tribunals apply to determine whether someone is an employee:<sup>24</sup>

- **Personal service.** The individual agrees to work personally for pay and the provisions of the contract are consistent with it being a contract of service – fundamentally, as an employee, you cannot send someone else to do your job, and this is what we mean by ‘personal service’. This can be contentious, for example, when someone’s contract allows them to send a substitute, but in reality that right of substitution is not used in practice by that person or more generally by others doing the same work under the same contract.
- **Mutuality of obligation.** There is a mutuality of obligation between the parties – a ‘wage-work bargain’ must exist by definition of employment. This can be contentious, for example,



in discussions about whether a contract applies in between periods of work, or in cases where people are free to turn down work, and employers are not obliged to provide work – for example, zero hours contracts.

- **Control.** The employer exerts a sufficient degree of control over the work – ultimately, employers give instruction to employees, over the time, place and manner of their work, they will have disciplinary measures to enable this, and usually provide the necessary tools to undertake this work. This can be contentious when ‘independent contractors’ are told how to undertake their work and penalised or rewarded for

## Rulings on employment status can be as complicated and nuanced as the relationships they describe.

### Box 4: The gig economy and employment status

Technology has facilitated an increase in work in the ‘grey area’ of employment status. Challenges with employment status are not new, nor are they isolated to the gig economy, as this report shows. Some sectors where the gig economy proliferates, such as takeaway delivery, suffered from low rates of pay and poor enforcement a long time before gig economy companies came along. Even payment by task is not a new, gig economy phenomenon. ‘Piece rates’ (ie payment by piece of work) are a longstanding practice too, for example in garment manufacture. Not all jobs now grouped within the ‘gig economy’ were founded on the use of technology in this way – some have adapted it, and do not rely on it at the core of their business, in the way that others do.

But what is new, and concerning, is the way technology has enabled businesses to control ‘self-employed contractors’ more than they arguably should (motivated by the platforms’ wish to offer a consistent service). Contractor models have the advantage of keeping administrative costs low and often come with lower taxes. This business model essentially relies on ‘grey area’ employment status, and firms are incentivised toward lower protections and greater control, to compete and turn a profit.

There are many different arrangements, but here are four key ways in which a gig economy relationship can work:

- A ‘contractor/worker’ has a relationship exclusively with the customer or end user via a digital platform – for example, people advertising their services on a website, with no active ‘matching’ or management of that relationship from the company owning the website itself. This will usually be a self-employment relationship, depending on how their relationship relates to other ‘tests’.
- A ‘contractor/worker’ has a relationship exclusively with the business selling a service – as in many courier services, where people work for the person or organisation either selling, or responsible for delivering, the package, but not the person buying the package. In theory, this kind of work could come under all three employment statuses, depending on how their relationship relates to other tests.
- A ‘contractor/worker’ has a relationship with both the customer and the business – for example, private hire apps which link ‘contractors’ up

working in certain ways.

These are the bare minimum criteria needed to qualify for employee status, but they do not guarantee it. If these are established, a tribunal will look at other factors.

Rulings on employment status can be as complicated and nuanced as the relationships they describe. And because judgments are sometimes finely balanced, they can be very marginal: one case can appear to be in tension with another – or even to contradict it. All countries have these challenges, and the employment relationship is understood in a similar way between different countries.<sup>25</sup> But they have all dealt with these challenges slightly differently. The UK’s major divergence is in having a ‘middle ground’ limb (b) status. ■

<sup>25</sup> Often by paying 12.07 per cent more to cover the implied paid leave entitlement

with customers more ‘actively’ and have some control over how they undertake that work. Again, this could come under any of the employment statuses depending on how their relationship relates to other tests.

- An employee, worker or self-employed contractor has a direct relationship with an intermediary, in turn contracted by a platform. This is not common in the UK but it is more common in European countries, including Germany, France and Spain. And reforms could make this more common in the UK.

The gig economy encompasses a diverse range of sectors and business models. The sector includes firms seeking to operate ethically and well within the bounds of the law. Some voluntarily offer additional benefits, such as pensions and maternity leave. But platform businesses also take expensive legal advice to push the law to its limits and have been challenged through the courts for bogus self-employment in countries across the world. In the UK, some formerly self-employed people have been moved into limb (b) status as a result.

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# Three employment rights problems

**E**MPLOYMENT STATUS IS VITAL. Thankfully, most of us can afford to take our status, and the rights that come with it, for granted on a day-to-day basis, as we do not have to constantly enforce our rights in practice.

But there are some problems, which this section sets out.

## Problem 1: Poor rights

The UK has a relatively weak framework of employment rights. Table 7 below presents the scores academics have given to countries, based on their analysis of the strength of their employment rights, on a scale of 0 to 1, to compare them.<sup>26</sup> This reveals just how far behind the UK is – not just behind France or Germany, but almost all other high-income European countries, with levels of protection more comparable to the USA. Limb (b) workers will have fewer rights again, and the self-employed will have none, as discussed in section 7 above. There are several areas which are particularly relevant to employment status:

- **Different forms of employment.** This measures the strength of protections for people in atypical work. The UK performs well, and comparably to peers, on some of these. But we score poorly against two areas which relate to agency work and its regulation: we have no substantive constraints on its use; and do not have a right to equal treatment for agency workers (France, Germany and Norway score well on these). We are also behind France, Norway and Spain on another relevant area – that the law, as opposed to the contracting parties, determines the legal status of the worker. This is highly relevant to employment status as it protects people from ‘sham contracts’ and asymmetry of power in contract negotiation and working practices.

- **Regulation of working time.** This includes measures from annual leave to overtime, weekend working and duration of the working week. The UK is behind other high-income countries on almost all of these, with the exception of maximum daily working time, and annual leave entitlements (though our public holidays score is very poor, and these two relate to one another).
- **Regulation of dismissal.** This includes factors such as notice periods, redundancy and re-instatement. Only the USA has weaker protections than the UK, with a few exceptions: Spain and Italy offer poorer protection from a legally mandated notice period; and Sweden, Norway and Finland offer worse legally mandated redundancy compensation; many countries offer similar re-instatement and notification of dismissal protections; and the UK has comparably strong protections for ‘redundancy selection’ (ie the process of making people redundant is relatively fair).
- **Employee representation.** This includes rights to unionisation, collective bargaining and board representation. The UK has very weak protections compared to peers across all of these measures except for the employers’ legal duty to bargain with unions, where our score is similar to those of France, Sweden and Norway.
- **Industrial action.** This includes regular, unofficial and political industrial action and protection from lockouts. The UK has relatively non-existent protections across most of these measures, except for not having a ‘peace obligation’ (ie not striking during

negotiations); and by not being required to enter conciliation or alternative disputes resolution before industrial action can take place.

The UK also tends to fall short of other countries on key statutory payments and benefits. The Fabian Society’s 2023 report *In Time of Need* examined UK protections, compared to other countries, for both employees and the self-employed:<sup>27</sup>

- **Sickness.** Almost all European countries have earnings-related sickness payments. These often take the form of a short period of sick pay followed by a sickness benefit. Many of these schemes include self-employed people. The UK offers only a very low, flat rate of statutory sick pay at 16 per cent of average earnings, payable after three days of absence. Employers pay this directly, without a public subsidy, and many employers pay significantly above this level voluntarily. Employment and support allowance is offered to people out of work due to sickness who are not eligible for sick pay, but that it is paid at a very low level, poorly promoted and only available after a week of sickness.
- **Babies.** For mothers, almost all European countries provide earnings related maternity pay for the duration of statutory leave, of between 75 per cent and 100 per cent of earnings. For fathers and partners, most EU countries offer two weeks paternity leave and at either 100 per cent, 90 per cent or variable rates.<sup>28</sup> The UK offers earnings-related statutory maternity pay for only the first six weeks, with a low flat-rate available for the remainder of the nine months of statutory maternity leave. Those

**TABLE 7: THE UK HAS A RELATIVELY WEAK FRAMEWORK OF EMPLOYMENT RIGHTS**

Employment rights 'scores' (0-1) by area

		UK	FRANCE	GERMANY	SWEDEN	NORWAY	FINLAND	DENMARK	ITALY	SPAIN	USA
<b>A DIFFERENT FORMS OF EMPLOYMENT</b>											
1	The law, as opposed to the contracting parties, determines the legal status of the worker	0.8	1.0	0.8	0.8	1.0	0.8	0.8	0.5	1.0	0.5
2	Part-time workers have the right to equal treatment with full-time workers	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	0.5
3	The cost of dismissing part-time workers is equal in proportionate terms...	1.0	1.0	1.0	1.0	1.0	1.0	0.5	1.0	1.0	1.0
4	Fixed-term contracts are allowed only for work of limited duration	1.0	1.0	1.0	0.5	0.3	0.8	1.0	0.5	1.0	0.0
5	Fixed-term workers have the right to equal treatment with permanent workers	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	0.0
6	Maximum duration of fixed-term contracts	0.6	0.9	0.8	0.9	0.6	0.5	0.0	0.8	0.9	0.0
7	Agency work is prohibited or strictly controlled	0.0	0.8	0.8	0.0	0.8	0.5	0.0	0.5	0.7	0.0
8	Agency workers have the right to equal treatment...	0.8	1.0	1.0	1.0	1.0	0.8	1.0	1.0	1.0	0.0
<b>B REGULATION OF WORKING TIME</b>											
9	Annual leave entitlements	0.9	1.0	0.7	0.8	0.8	1.0	0.8	0.7	1.0	0.0
10	Public holiday entitlements	0.0	0.6	0.6	0.7	0.6	0.7	0.8	0.6	0.8	0.0
11	Overtime premia	0.0	0.1	0.3	1.0	0.4	0.8	0.8	0.3	0.2	0.5
12	Weekend working	0.0	1.0	0.3	1.0	0.0	1.0	1.0	0.3	0.0	0.0
13	Limits to overtime working	0.0	1.0	0.5	0.6	0.5	0.6	0.6	0.2	0.2	0.0
14	Duration of the normal working week	0.0	0.4	0.8	0.7	0.7	0.7	0.9	0.7	0.7	0.7
15	Maximum daily working time	0.6	0.6	1.0	0.5	0.5	0.5	0.5	0.5	0.6	0.0
<b>C REGULATION OF DISMISSAL</b>											
16	Legally mandated notice period	0.3	0.7	0.3	0.7	0.3	0.3	0.3	0.2	0.2	0.7
17	Legally mandated redundancy compensation	0.3	0.3	0.5	0.0	0.0	0.0	0.3	1.0	1.0	0.0
18	Minimum qualifying period of service for normal case of unjust dismissal	0.3	0.3	0.8	0.8	0.9	1.0	0.8	0.8	0.9	0.0
19	Law imposes procedural constraints on dismissal	0.3	1.0	1.0	0.3	1.0	1.0	0.3	1.0	1.0	0.0
20	Law imposes substantive constraints on dismissal	0.5	1.0	0.7	0.3	0.7	0.5	0.7	0.7	0.7	0.0
21	Reinstatement normal remedy for unfair dismissal	0.3	0.3	0.7	1.0	0.7	0.3	0.3	0.3	0.7	0.0
22	Notification of dismissal	0.7	0.7	0.7	0.7	0.7	0.7	0.7	0.7	1.0	0.7
23	Redundancy selection	1.0	0.5	1.0	1.0	1.0	0.0	0.0	1.0	1.0	0.0
24	Priority in re-employment	0.0	1.0	0.3	1.0	1.0	0.8	0.0	1.0	0.0	0.0

Source: Armour, J, Deakin, S and Siems, M, CBR Leximetric Datasets, CBR, 2023

		UK	FRANCE	GERMANY	SWEDEN	NORWAY	FINLAND	DENMARK	ITALY	SPAIN	USA
<b>D</b>	<b>EMPLOYEE REPRESENTATION</b>										
25	Right to unionisation	0.7	1.0	1.0	1.0	0.7	1.0	1.0	1.0	1.0	0.0
26	Right to collective bargaining	0.0	0.0	0.9	0.3	0.0	1.0	0.0	1.0	1.0	0.0
27	Duty to bargain	1.0	1.0	0.0	1.0	1.0	0.0	0.0	0.3	0.7	0.3
28	Extension of collective agreements	0.0	0.8	1.0	0.0	0.5	1.0	0.0	1.0	0.8	0.0
29	Closed shops	0.0	0.0	0.0	0.0	0.3	0.0	0.0	0.0	0.0	0.0
30	Codetermination: board membership	0.0	1.0	1.0	1.0	1.0	0.8	1.0	0.0	0.0	0.0
31	Codetermination and information/consultation of workers	0.3	0.7	1.0	0.3	0.7	1.0	0.7	0.7	0.7	0.0
<b>E</b>	<b>INDUSTRIAL ACTION</b>										
32	Unofficial industrial action	0.0	1.0	0.0	0.0	1.0	0.0	0.0	1.0	0.0	0.0
33	Political industrial action	0.0	0.5	0.0	0.2	1.0	1.0	0.7	1.0	0.0	0.0
34	Secondary industrial action	0.0	0.5	0.3	1.0	1.0	1.0	1.0	0.8	0.0	0.0
35	Lockouts	0.0	0.9	0.3	0.0	0.0	0.5	0.7	0.7	0.8	0.0
36	Right to industrial action	0.0	1.0	0.9	1.0	0.0	0.9	0.0	1.0	1.0	0.0
37	Waiting period prior to industrial action	0.0	1.0	0.5	0.0	0.0	0.0	0.0	0.8	1.0	0.0
38	Peace obligation	1.0	1.0	0.0	0.3	0.3	0.0	0.0	0.8	0.0	0.5
39	Compulsory conciliation or arbitration	1.0	1.0	0.8	0.0	0.0	1.0	0.0	0.8	1.0	0.5
40	Replacement of striking workers	0.5	1.0	1.0	1.0	1.0	1.0	0.0	1.0	1.0	0.0

not eligible for statutory maternity pay who have a recent link to work, including the self-employed, are eligible for maternity allowance. The UK offers only a flat rate of paternity leave for employees and there is no paternity leave for the self-employed.

- **Caring.** Some European countries offer flat-rate payments for carers who stop work, with some offering an earnings-related scheme. The UK offers a very low benefit for carers and has just introduced a right to a week per year of unpaid carer's leave.
- **Retraining.** Some European countries have statutory schemes that cover salaries while people retrain; others offer a flat-rate retraining benefit, or pay unemployment benefit while people retrain. The UK offers no retraining benefit and access to

retraining is often restricted for those claiming unemployment benefits.

- **Dismissal/redundancy and unemployment.** Almost all European countries offer earnings-related unemployment insurance schemes between 50 and 80 per cent of typical earnings, and a number also routinely offer furlough schemes to cover reduced hours or temporary lay-offs when a business is in financial difficulties. The UK offers statutory redundancy pay after two years of service, up to £29,780, but offers a very low flat-rate unemployment benefit, that is available for only six months.

There are further problems with the quality of work. Many employees lack the job security and stability that supposedly comes with employee status:

- A third of all workers are given less than a week's notice of their shifts. This rises to half of all workers earning below the real living wage, and more than half of workers whose work includes variable hours or shift work.<sup>29</sup>
- The UK has the longest working week of any G7 country, alongside the US, with many people overworking, often unpaid and eating into holiday time.<sup>30</sup> Many workers report a negative impact that work has on their physical and particularly their mental health.<sup>31</sup>
- Too many workers also continue to be unhappy with the training and development opportunities available to them and their chances for career progression. There has also been no progress in addressing longstanding problems with management practices.<sup>32</sup>



- Despite labour shortages, a fifth of people are in involuntary part-time or temporary work and many would like to do more work, but can not.<sup>33</sup>
- Increasing numbers of workers report that they are 'often stressed' (41 per cent); and 'work very hard' (51 per cent).<sup>34</sup>

The majority of people are generally happy at work, but there are clearly some major problems that need addressing.

Government policy has failed to improve employment rights and the quality of work generally. New laws have restricted the work of trade unions, and employment rights have largely remained the same despite other countries advancing, with a long-awaited employment bill now delayed indefinitely. Further, economic policy has failed to raise productivity or pay since the 2008 financial crash. More positively, the previous government has passed a law allowing a day one right to request flexible

working – though this is easily refused. The Labour party's new deal for working people has proposed a wide range of employment rights improvements, which are discussed below.

### Problem 2: Weak enforcement

Many people are unable to benefit from the above rights in practice. There are several related problems:

- **The law is unclear.** The intermediate limb (b) status is not well understood; different courts give different weight to the 'tests'; there are two statuses in tax law, and three under employment law; and individuals can be self-employed for tax purposes but not for employment rights (and the case law is different for each).
- **Enforcement agencies are under-resourced.** We have far fewer labour inspectors than other countries, and the range of agencies that are responsible for inspection and enforcement have lacked

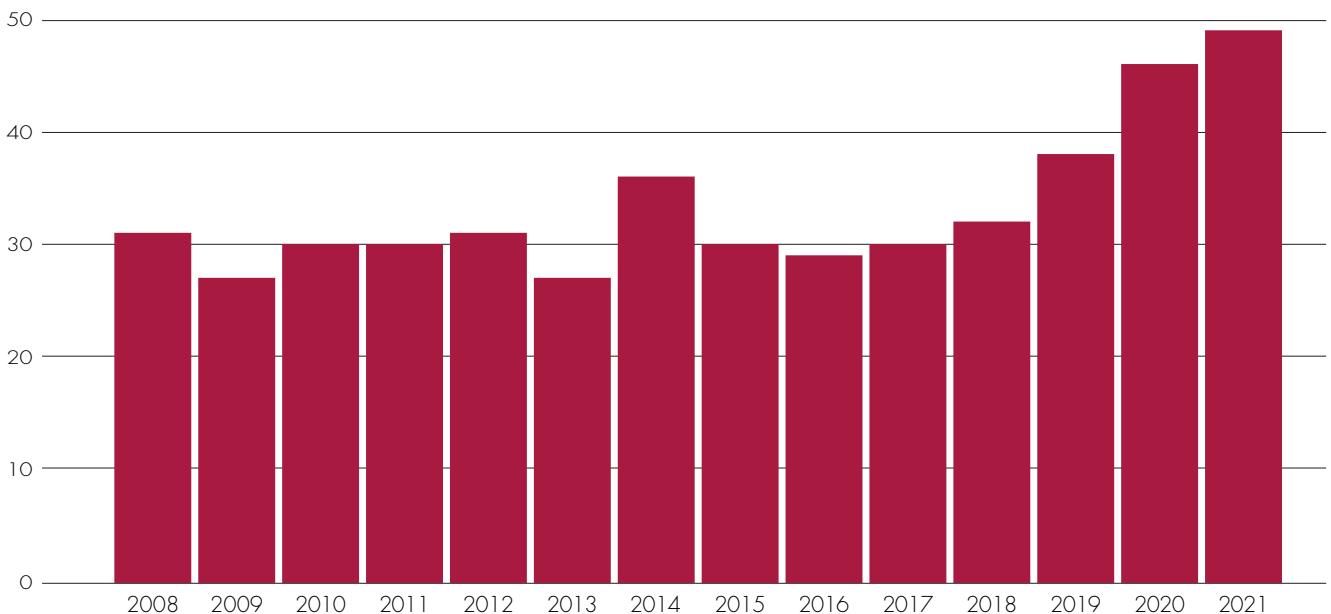
resources to prosecute large volumes of cases.<sup>viii,35</sup>

- **Trade unions lack a presence in many sectors.** Trade unions can inform people of their rights and help enforce those rights informally, and through the tribunals. But the UK has seen a particularly steep decline in trade union density and collective bargaining.<sup>36</sup>
- **Informal and internal processes are lacking.** A combination of poor management practices, and a lack of informal alternatives mean many cases are either dropped or move into formal and tribunal processes.<sup>37</sup>
- **The tribunals backlog is too long.** Our system relies on individuals to have the time, energy and money to bring a claim against a much better resourced business. And even then, there is currently a major backlog, as figure 3 shows: there are almost 475,000 cases outstanding and the average wait for just a preliminary hearing is one year.<sup>38</sup>

<sup>viii</sup> Agencies include the Health and Safety Executive, the Employment Agency Standards Inspectorate, the Gangmasters and Labour Abuse Authority, EHRC and TPR

## FIGURE 3: THE AVERAGE WAIT FOR A TRIBUNAL HAS INCREASED TO ALMOST A YEAR

Employment Tribunal, Average Waiting Time (in Weeks) from Receipt to First Hearing for the Period January 2010 to March 2021



Source: Ministry of Justice, 2023

- **The maximum penalties are often too low to be an effective deterrent.** Low penalties, combined with low reporting rates and the tribunals backlog, fail to act as an effective deterrent.<sup>39</sup>

The rate of general employment rights violations is very concerning. Minimum wage violations have spread, especially in some sectors: pre-pandemic, the Low Pay Commission estimated that 400,000 employees were paid less than the hourly legal minimum wage.<sup>40</sup> There remain whole sectors where illegal pay is prevalent: retail, social care, hospitality, cleaning and maintenance, and childcare.<sup>41</sup> And there are a number of other violations without adequate enforcement, ranging from failing to auto-enrol into pensions to health and safety violations and modern slavery.

There may be a specific problem with limb (b) status not being adequately enforced. People on zero-hours contracts or working for agencies and especially for umbrella companies are at particular risk of employment status violations. And our survey found that half of people working in agencies and on zero-hours contracts described themselves as ‘middle ground’ or potential limb (b) workers, and they reported relatively low levels of autonomy, rather than the higher autonomy we would expect.

Proposals for reform have come forward. In 2017, employment tribunal fees (introduced in 2013) were deemed unlawful by the Supreme Court, following a challenge from Unison. Previous Conservative administrations, the Labour party, and many others have proposed a single enforcement body (SEB) to bring the enforcement agencies together, as well as addressing the above problems of resource and deterrence. This is discussed further below.

### **Problem 3: Bogus and low-autonomy self-employment**

There is a specific problem directly related to employment status itself: ‘bogus self-employment’. This is when people are self-employed in terms of rights but are treated in practice as if they are an employee or limb (b) worker. In a complex modern economy, there are always likely to be some marginal cases, when a supposedly independent contractor is overly controlled or ‘managed’ for example.

But there is sometimes a strong incentive for a company to operate in this way.

As discussed above, employment status has a major impact on a businesses’ costs and obligations. There is a significant difference in business costs and risks between operating on an employee model, compared to a self-employed contractor model. There is a large gap even between operating on a limb (b) worker model, and a self-employed model. And in particular sectors, the competition is fierce, which has resulted in an employment status ‘race to the bottom’ – where companies compete by minimising their costs with a self-employment model. Firms do sometimes offer additional benefits voluntarily, including sick pay and maternity pay, when labour markets are tight and firms are competing for scarce labour. But these benefits are relatively limited and are clearly contingent on a business case.

There are many examples of businesses being successfully prosecuted for not providing people with the rights they should have, because they are treating people as self-employed for employment rights when they are not. Some of these are outside the ‘gig economy’. For example:

- A hairdresser successfully challenged her self-employed status, because the company controlled the way she worked, dictating pricing and promotions, time off, working hours and when she was paid.<sup>42</sup>
- A car valeting company had written contracts which specified their contractors as self-employed, but the tribunal ignored the contracts and looked at the facts ‘on the ground’ which showed they had very limited control over how they worked, the rates of pay and their ability to send someone else to do their job – among many other reasons.<sup>43</sup>
- Recently, two Oxford University lecturers were on long-term fixed term ‘personal services’ contracts, and were not granted any employment rights by the university. They successfully challenged this, and were judged to be full employees because they were treated as if they were full members of staff by the university in practice, even

though their contracts were constructed to indicate otherwise.<sup>44</sup>

Many gig economy companies have essentially made a business model operating in the employment status ‘grey area’ and technology has helped them do so. This has several common features in all countries and across most sectors, although there is a lot of variation within the gig economy. Essentially some businesses use technology to manage their ‘independent contractors’ to provide a consistent service. This has been judged by the courts in some cases to be more of a limb (b) worker, or employee relationship than one of self-employment. The contractors have a number of flexibilities similar to the self-employed, but not others.

There are several high-profile cases where employment status has been determined by the courts:

- Uber was taken to court by some of its private hire drivers, who thought they should be regarded as limb (b) workers (the drivers did not claim to be employees). In 2021, the Supreme Court judged them to be limb (b) workers, summarising: “The transportation service performed by drivers and offered to passengers through the Uber app is very tightly defined and controlled by Uber. Furthermore, it is designed and organised in such a way as to provide a standardised service to passengers in which drivers are perceived as substantially interchangeable and from which Uber, rather than individual drivers, obtains the benefit of customer loyalty and goodwill.”<sup>45</sup> Uber now has to pay minimum wage, amongst other limb (b) rights.
- CitySprint was taken to tribunal by a bicycle courier, who claimed for paid annual leave entitlement as a limb (b) worker. In 2020, the judge ruled that she was a worker, entitled to annual leave, including because she was directed throughout the day, required to wear a uniform and to smile, and could only substitute another CitySprint ‘contractor’.<sup>46</sup>
- In 2016, the trade union IWGB applied to the Central Arbitration Committee (CAC) to have its riders collective

bargaining rights recognised, as limb (b) workers. This was rejected, and then appealed. In 2024, the Supreme Court, in reviewing the CAC decision (albeit only under the ECHR), held that “the contract between the riders and Deliveroo gives riders a broad and virtually unfettered right to appoint a substitute to take on their jobs. This right, on its face, is totally inconsistent with there being an employment relationship”. They were denied the right to collective bargaining.<sup>47, 48</sup>

The scale of ‘bogus self-employment’ is hard to determine. Since employment status is so nuanced and finely balanced in exactly these sorts of cases, it is almost impossible to incorporate it definitively into a survey. Previously, the CIPD has estimated that as many as 15 per cent of self-employed people could be wrongly categorised, and further that misclassification was more likely to affect the most vulnerable.<sup>49</sup> Our own survey sought to approximate the potential scale of bogus self-employment using a number of proxies and we found that 13 per cent of people describe themselves as

in an employment status middle ground, but they are particularly concentrated amongst atypical employees (such as agency or zero-hours workers), and to a lesser extent in the gig economy. This is presented in figure 4 below.

The government has stepped back from significant reform in this space. In 2014, it commissioned the Employment Status Review, which concluded that the current framework works well. The Taylor Review was more critical, concluding that status should be clarified. The government accepted the vast majority of proposals and said that it would address them. This was followed by further consultation, but to date no reforms have followed.

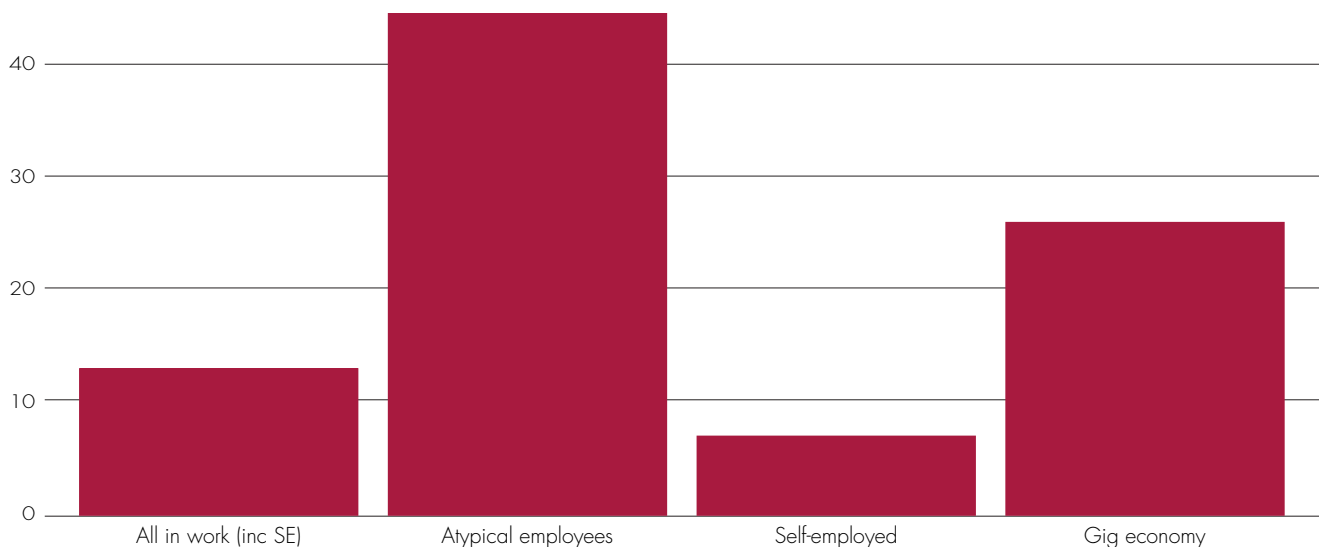
Other countries have taken action. These have brought some successes, but also demonstrate some adverse unintended consequences, which offer important lessons to UK policymakers:

- **Spain – Riders’ Law.** In 2020, the Spanish Supreme Court classified food delivery riders on digital platforms as full employees and in 2021 the Spanish parliament set out

a new law of rebuttable presumption of employment in digital delivery platforms.<sup>50, 51</sup> The law only covers riders, not the whole gig economy. The impact has differed by platform. The number of employed delivery riders doubled between May 2021 and August 2022, and there was an increase in social security contributions. Getir and Just Eat were already working with employment models and changed very little. Deliveroo shut down operations in late 2021, and the Guardian reported that the law was ‘not the determining factor’, but ‘it had resulted in an earlier withdrawal from the country’.<sup>52</sup> Trade unions also observed some adverse consequences. There was as an increase in sub-contracting, and some of the major organisations made modifications to their apps to guarantee rider autonomy and avoid employee classification. Some companies are also appealing their fines and contesting the law’s implementation.<sup>53</sup> Others have raised concerns about weak enforcement preventing a true ‘level playing field’.

**FIGURE 4: A SMALL BUT SIGNIFICANT GROUP OF PEOPLE SAY THEY ARE IN THE EMPLOYMENT STATUS MIDDLE GROUND – ESPECIALLY ATYPICAL EMPLOYEES**

‘Which of the definitions in the table do you think best describes how you currently work’, per cent responding ‘middle ground’



Source: Fabian Society and YouGov employment survey, N=1,918

- **Lisbon – TVDE ‘authorised’ intermediary company.**<sup>54</sup> The Portuguese parliament legislated in 2018 to regulate the ride-hailing sector. They required ride hail companies to work via an intermediary company – a TVDE – which sits between the platform and the driver, owns and licenses the cars, and employs drivers directly (as employees with employment rights) or contracts self-employed drivers. Further legislation has followed, which establishes an employment relation with the digital platform unless proven otherwise. The number of drivers surged, but work has intensified and pay has gone down, exacerbated by Covid-19 and the cost-of-living crisis. One study concluded that employee status has not benefited drivers, because it ‘intensified existing controversies and power asymmetries.’<sup>55</sup> This sub-contracting model has some similarities to Paris and Berlin. This has some advantages over bogus self-employment as the drivers are entitled to employment rights, job security,

health care benefits and access to vehicles. But it has been described as replacing bogus self-employment with ‘bogus employment’.<sup>56</sup> This is characterised by minimum wage evasion, unpaid working time, lack of paid leave, lack of paid sick days, and lack of social security contributions. It has a further risk of obscuring and diffusing responsibilities and relationships even more than without such an intermediary.

- **Geneva – Uber Eats and Uber private hire vehicles.** In 2020, Geneva’s courts ruled that Uber Eats was an employer of its drivers. This was then upheld by Switzerland’s Federal Supreme Court, which Uber Eats appealed unsuccessfully – the Supreme Court upheld its ruling in 2022.<sup>57</sup> Similarly, in 2022 the Federal Supreme Court also judged private hire drivers to be employees.<sup>58</sup> Uber economists’ analysis stressed the adverse employment impacts in Geneva compared with other Swiss cities, both 6 months and a year later.<sup>59</sup>

Since 2020, Uber Eats have worked with third-party fleet companies that employ drivers, providing employment rights and social security contributions.<sup>60</sup> And Since 2022, Uber private hire drivers in Geneva have operated under a similar model too.<sup>61</sup> This has many parallels with the arrangements in Lisbon, Berlin and Paris above.

The European Commission has been taking forward the Platform Workers Directive, to be implemented by its member states. This was based on five ‘criteria of control’: level of remuneration; rules for appearance and conduct; supervision by electronic means; limited choice of working hours or possibility to refuse tasks; and restricted possibility to work for a third party.<sup>62</sup> Anyone who had two of these five would be assumed to have employee status. There have been lengthy negotiations, which have weakened the Directive somewhat, in favour of national frameworks and criteria.<sup>63</sup> But the European Parliament approved it in April 2024. ■





# Options for reform

**R**IGHTS, ENFORCEMENT AND employment status all need reform. There are significant numbers of people in all employment statuses who do not have the employment law protections they need, as this report has shown.

The focus of this report is on employment status, and we return to our question: how can employment status reform improve employment rights and autonomy for people who need this most? We consider this question, alongside proposals to improve rights and enforcement generally.

First, we set out the proposed improvements to employment rights, and enforcement, drawing mostly from Labour's new deal for working people. Then, assuming these reforms are implemented, we set out and compare the two potential frameworks for employment status. These are: model 1, 'retain and reform limb (b)'- keeping three statuses, but modifying them, especially to include more of the self-employed; and model 2, 'implement single worker status' – meaning we would only have two statuses, self-employment and a new single worker status encompassing limb (b).

This section presents a discussion of the options and the various trade-offs and interactions. We do not set out recommendations but instead present the current debate, to inform policy.

## IMPROVE RIGHTS FOR ALL

Employment status reform will have a significant interaction with the many other issues associated with atypical work and measures that have been proposed to address them. These measures include:

### 1. Improved employee rights

The UK has a relatively weak framework of rights for employees, compared with other countries, which the Labour party has proposed improving.

### Box 5: Proposals to improve work for the self-employed

Previous Fabian Society work with Community and Prospect/Bectu has made further proposals to improve work for the self-employed.<sup>64</sup> These proposals include:

- Create a champion for the self-employed
- Support health, safety and wellbeing at work
- Establish parity for the self-employed on key rights and entitlements
- Empower self-employed workers to act collectively to improve their working conditions
- Support the self-employed to upskill and reskill throughout their career
- Equalise sick pay for the self-employed, as part of wider reforms to financial support during illness
- Bring leave and flexibility entitlements for self-employed new parents into line with those enjoyed by employees
- Provide income security that reflects the risks faced by the self-employed
- Modernise the pensions system to meet the needs of self-employed people
- Develop an ecosystem of business support and financing that creates inclusive access to self-employment
- Ensure contracts are respected and businesses are paid on time
- Level the playing field for the self-employed in the digital economy
- Use public procurement to drive up standards and level the playing field for the self-employed and microbusinesses

Trade union reforms that would benefit self-employed people include:

- Remove barriers to trade union organising and recognition among the self-employed
- Give trade unions a digital right of access to platform and gig economy workers
- Enable digital organising activities for gig economy workers
- Update legislation to protect the self-employed from detriments

Labour's proposals include:

- Day one right to unfair dismissal and maternity/parental paid leave schemes
- Statutory sick pay available to those on low pay and from the first day of absence
- National living wage to reflect the cost of living
- Sector-level fair pay agreements
- A ban on zero-hour contracts and reasonable notice of any change in shifts or working time
- Ending fire and rehire
- Extending maternity leave to low earners
- Extending paternity leave to low earners



**Box 6: Employment rights improvements and their relationship with employment status reform**

Proposed employment rights improvements have an important interaction with reforms to employment status in practice. Besides ‘raising the bar’ for all, they also affect the disparity between different employment statuses, in a way that will be important to consider:

- **Better rights and single worker status would increase current limb (b) workers’ rights substantially.** People working under ‘limb (b)-type’ arrangements would move from their current, ‘core’ employment rights package, to a package of rights more substantial than employees have today – with many of these available from the first day of a job. This assumes that the old test for worker status becomes a new test for employee status (and that businesses would retain existing business models).

- **Better employee rights, without reforming limb (b), would make employee status less attractive to some employers.** Employers that use flexible employee contracts may seek to reclassify employees as self-employed or limb (b) (if retained). This would be particularly likely if limb (b) workers rights were not improved, if zero-hours contracts are banned, if ‘fire and rehire’ is not adequately curtailed, and if enforcement is not improved.
- **Better rights and single worker status together, could incentivise self-employment models.** Some companies using limb (b) workers may respond by shifting their business models to be outside employment law completely, in order to avoid having to provide an expanded set of employment rights – especially protection from unfair dismissal, which would be challenging in the gig economy. Businesses cur-

rently operating on a self-employment model may act to ensure they stay there, to avoid the risks and costs of full employee status.

- **Better rights would make employee status more attractive to employees.** It would provide both more security and more autonomy under an employment contract. In a tight labour market this could be expected to have an indirect effect on the packages offered to limb (b) workers and the self-employed.
- **Zero-hours contract reforms could affect people’s employment status.** A ban on zero-hour contracts and requiring a reasonable notice of any change in shifts or working time, creates a mutuality of obligation which, alongside other considerations, can paint a picture of an employer-employee relationship – and may affect limb (b) workers on zero-hours contracts.

- Paid carers leave
- A right to bereavement leave
- A right to flexible working from day one as a default, except where it is not reasonably feasible

## 2. Improved rights for the self-employed

The Labour party has proposed some relatively modest enhancements to rights for self-employed people.

These include:

- Right to a written contract
- Health and safety protections, whistle-blower safeguards and the right to withdraw labour if there is an immediate risk
- Extending statutory sick pay (details still to be announced)
- Tackling late payments, reforming public procurement, and reforming business rates

## 3. Trade union legislation

Trade union legislation would also affect the landscape in which employment status reform takes place. Labour party proposals include:

- Repealing the 2016 Trade Union Act, which restricts trade union activity
- Strengthening trade unions' rights of access to workplaces
- Allowing trade unions to use secure electronic and workplace ballots
- Simplifying the law around union recognition

## 4. Statutory payments and national insurance

We propose exploring breaking the remaining link between national insurance class and statutory payments. This is important to enable self-employed people and limb (b) workers to qualify for statutory maternity and paternity pay and

sick pay. Note that this does not require the abolition of national insurance, just legislation which changes who is entitled to statutory payments.

## IMPROVE ENFORCEMENT AND CLARITY

### 5. Improve enforcement

Enforcement is a widely recognised problem, affecting many employees, limb (b) workers and the self-employed as well as businesses who play by the rules, undercut by those who do not.<sup>65</sup> There is one key proposal on enforcement:

- **A single enforcement body.** This has been proposed by many – including the current government in its 2019 manifesto, and the Labour party in its new deal for working people. This would bring together the various agencies that





currently enforce the law in the labour market, plus some additional powers.<sup>66</sup>

## 6. Clarification.

Most people would agree that the current situation is extremely unclear. Businesses, unions and legal experts mostly agree this is a problem, and the line is blurred between deliberate and mistaken transgression. It should be noted that some say that the Uber and Deliveroo judgments have clarified the situation. Others argue that introducing single worker status would clarify the situation (this is contestable – see discussion below).

There are two major reforms that have been the source of most debate:

- **Codification.** The Taylor Review proposed codification in law to clarify status. But the TUC contends that this would not be future-proof and could encourage gaming of the system. It believes that tribunals are better placed to make such nuanced judgments.<sup>67</sup> The CIPD have also argued that codifying the law would be little help to employers.<sup>68</sup>
- **Rebuttable presumption.** This would mean that businesses must prove that someone is not an employee, rather than requiring potential employees to fight for their status. This is the approach taken in some other countries, including Spain (see above) and the EU's Platform Workers Directive. In the UK, the Work and Pensions, and the Business, Energy and Industrial Strategy select committees jointly proposed 'worker by default' as a solution to exploitation in the gig economy.<sup>69</sup>

There are other ways to clarify status which are likely to be less disruptive and take less time to implement. They could either complement or substitute for the above:

- A statutory code of practice – as proposed by the TUC.<sup>70</sup>
- Non-statutory guidance – as proposed by the CIPD.<sup>71</sup>
- An online test for employment status, similar to CEST used for tax status determinations (though

CEST itself has been problematic).

- A 'model' limb (b) worker contract (if limb (b) is retained), alongside a Key Information Document, setting out rights and flexibilities of limb (b) work.
- Using a clearer term instead of 'worker' or 'limb (b) worker'. The Taylor Review proposed the term 'dependent contractor' but other countries have used terms which the UK could draw on.<sup>72</sup>

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## REFORM EMPLOYMENT STATUS

Assuming the above reforms were in place, we now discuss employment status reform itself.

Employment status could be reformed in one of two ways: first, while retaining the limb (b) worker status but improving its practical application and second, by merging limb (b) worker with employee status.

This discussion goes with the grain of recent Supreme Court judgments in the UK. These built on 50 years of applying the tests discussed above (control, mutuality of obligation and personal service). Recent judgments put Uber drivers into limb (b) status, primarily because of the way in which drivers were controlled in their tasks. They put Deliveroo riders into self-employed status, citing a 'virtually unfettered right of substitution' as a key reason – and having established that this does happen in practice, and is not a 'sham' contract.

These judgments are hotly debated. Before these judgments were made, the Taylor Review recommended that control be emphasised, and that less emphasis be placed on personal service as a test

**Our survey found that 20 per cent of all those in work (including the self-employed) said they would most like to work in a 'middle ground'.**

of worker status, in order to avoid the problems arising from substitution clauses.<sup>73</sup> Others have argued that the extent of substitution could be weighed in the balance alongside other indicators.<sup>74</sup> They could also look at other countries' policies, where similar considerations play a part, but with different emphases.<sup>75</sup>

Figure 5 (right) summarises the two options. It shows the key trade-off is whether we pursue breadth or depth:

- **The main advantage of model 1 is 'breadth':** it brings a broader group of people under employment law, but its disadvantage is not upgrading limb (b) workers into full employees.
- **The main advantage of model 2 is 'depth':** in that it enhances the status and rights of limb (b) workers, but its disadvantage is leaving out some in self-employment who could be limb (b) workers under model 1.

Below we present the debate. We set out each model, its advantages and challenges, and how people have responded to these. This draws on our literature review, our consultation with legal experts, unions and gig economy companies in the UK, and examples overseas. We broadly group two perspectives as: first, Limb (b) retain and reform supporters and second, single worker status supporters.

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## MODEL 1: RETAIN AND REFORM LIMB (B)

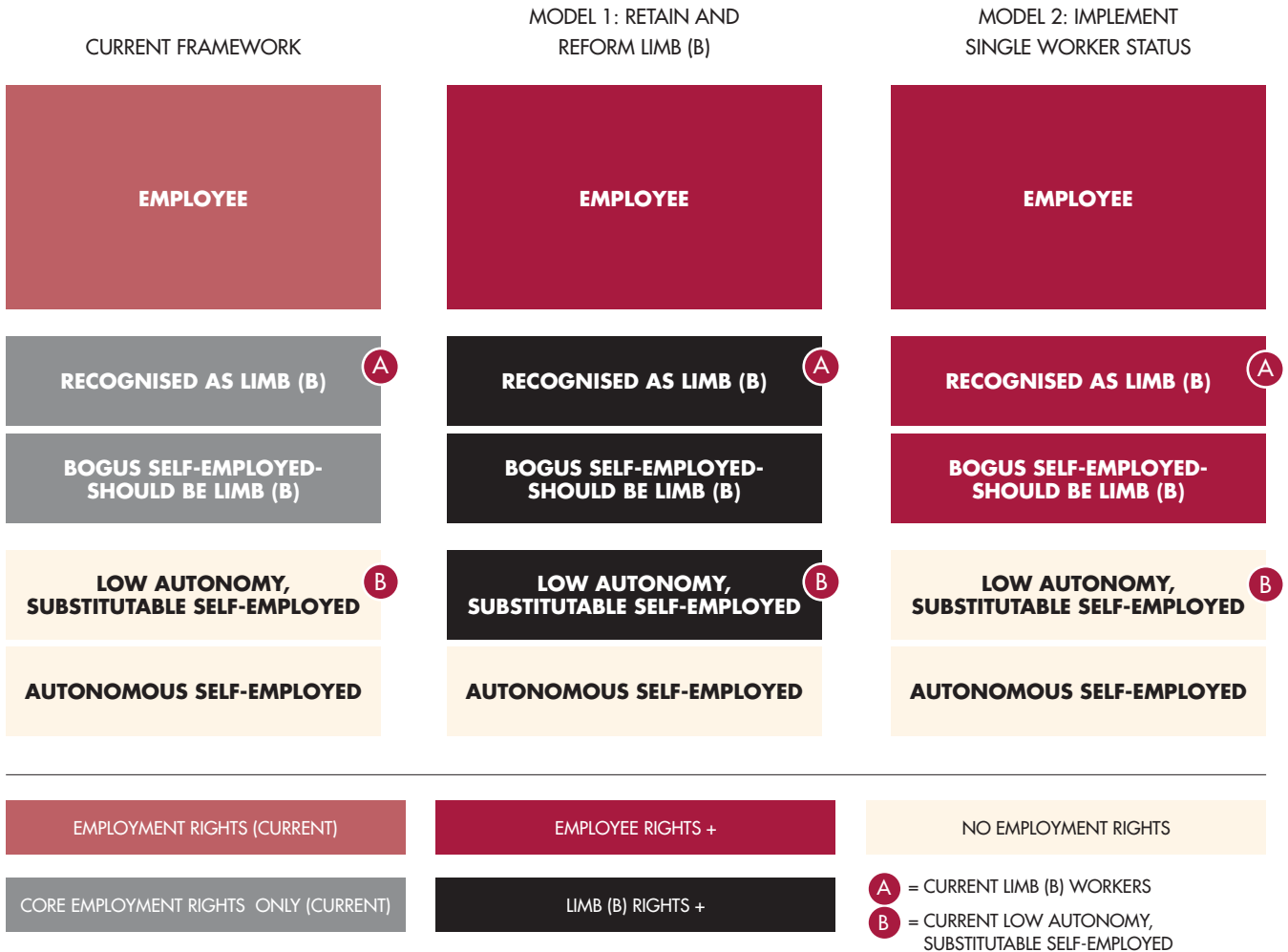
This model would involve significant reform but is more modest than moving to single worker status. A form of limb (b) worker status would remain. This would be in the context of significant changes and improvements for employees (discussed above) some of which could also be applied to limb (b) workers.

In addition to the above reforms, this model could also include: **A. A lower, clearer 'pass mark' for the intermediate 'limb (b) worker' status, to encompass more people who are self-employed (bogus or otherwise)**



## FIGURE 5: THE TWO POTENTIAL MODELS HAVE VARIOUS TRADE-OFFS IN 'BREADTH' AND 'DEPTH' OF RIGHTS

Assuming all else is equal and 'going with the grain' of recent Supreme Court judgments, employment rights implications of the two employment status models, compared to the existing framework – in reality businesses would adjust their practices under each model



- The 'pass mark' could be set substantially lower than the unified employee status envisaged under model 2. Courts would still have to consider the relationship in the round with reference to various tests. But the law or guidance could be changed in a number of ways. It could: prioritise 'control' over other tests; deprioritise the 'personal service' test; or remove 'personal service' entirely from consideration for limb (b) status.<sup>76</sup> This would mean that people who are able to send a substitute, and that substitute, are much more likely to have limb (b) status – provided the

other tests are satisfied. This point is debated below.

### B. Improved rights for limb (b) workers

- This could include: the right to bargain collectively; statutory payments, such as sick pay and maternity pay; the option of paid facility time for union workplace reps; protection from unfair dismissal and notice periods (with the detail designed to recognise the autonomy of limb (b) status).
- Some of these reforms would depend on breaking the remaining link

between national insurance and statutory payments, shifting these entitlements to employment law (as proposed above). Some self-employed people and limb (b) workers already have some insurance backed schemes which provide sick pay, for example, and these could be strengthened or reformed.

### ADVANTAGES

**Advantage 1: More people would be protected by core employment rights**

- *Limb (b) retain and reform supporters* argue that this proposal has an advantage over single worker status, because the ‘pass mark’ could be set lower than for employee status. Crucially, as discussed above, this could remove the personal service test, or deprioritise it relative to other tests for limb (b). In contrast, they argue that personal service cannot be removed from consideration for employee status, or that it has to play a larger part in employee status. This means retaining and reforming limb (b) is more likely to bring people who can send a substitute under employment law, as limb (b) workers (if other tests are met).<sup>77</sup>
- *Single worker status supporters* argue that the employee threshold can be set according to legislation or guidance at that lower level anyway, and that even food delivery riders in many other countries are afforded employee status.<sup>76</sup> Specifically, on whether substitutability and personal service should be such a strong consideration, some argue that the ‘personal service’ test should be deprioritised or disregarded anyway. This would therefore diminish this particular advantage of model 1 compared to model 2.

#### **Advantage 2: It could provide a ‘middle ground’ option some people want**

- *Limb (b) retain and reform supporters* argue that there is a significant minority of people who want the combination of flexibility, autonomy and rights that limb (b) status affords. This would include, for example, people with caring responsibilities or who do not want a ‘boss’. Our survey found that 20 per cent of all those in work (including the self-employed) said they would most like to work in a ‘middle ground’.
- *Single worker status supporters* argue that the level of flexibility and autonomy which limb (b) workers have should be possible, or be made possible, as an employee. Again they refer to other countries where many courts are classifying people working in the gig economy as employees.<sup>79</sup>

#### **Advantage 3: It could create a ‘level**

#### **playing field’ for the whole gig economy**

- *Limb (b) retain and reform supporters* argue that all companies could be brought under a limb (b) worker model, preventing a race to the bottom on the basis of poorer rights and less tax.<sup>80</sup>
- *Single worker status supporters* argue that if all gig economy companies, including those who can substitute, were forced into an employee model, then it would have the same effect.

#### **Advantage 4: It could be implemented more quickly, and it leaves the option of single worker status open, or could be a stepping stone toward it**

- *Limb (b) retain and reform supporters* argue that single worker status is a major and challenging reform, which risks unintended consequences, particularly if undertaken concurrently with the improvements to employment rights discussed above.<sup>81</sup> Retaining and reforming limb (b) doesn’t carry such high risks and doesn’t rule out single worker status if needed.
- *Single worker status supporters* often acknowledge that single worker status will require consultation, and that there are other ways to improve limb (b) workers’ rights in the meantime. Some are also open to the idea that reforming limb (b) could be a stepping stone toward single worker status.

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### **CHALLENGES**

#### **Challenge 1: Limb (b) workers would not have as many rights as employees**

- *Single worker status supporters* argue that limb (b) workers could never have the full rights of employees, because of the autonomy that retaining this status would require. They would lack full rights to unfair dismissal and redundancy for example.
- *Limb (b) retain and reform supporters* argue that this is a trade-off people can make themselves and is inherent in the

flexible and autonomous relationship they choose to have.

#### **Challenge 2: Limb (b) workers may have few realistic employment options and might be unclear about the downsides**

- *Single worker status supporters* argue that limb (b) workers lack the real ability to choose their status. First, they question whether there are real alternatives for people to choose from – and our survey also indicates they are more likely to say they do their job because it is ‘the only realistic option’ than average. But they also question whether someone could choose between the three statuses in practice, in a labour market that is shaped by employers and the government, not workers.<sup>82</sup>
- *Limb (b) retain and reform supporters* argue that there is a tight labour market, and self-employed people make a positive choice to work in this way, even when employee options are available.

#### **Challenge 3: It could lack the apparent simplicity of two statuses**

- *Single worker status supporters* argue that three statuses is more complex than two, meaning there are two boundaries to police and enforce and continued inconsistency and confusion due to the lack of alignment with the two taxation categories.
- *Limb (b) retain and reform supporters* – argue that two isn’t necessarily clearer than three, especially if the situation being categorised fits more neatly into three statuses rather than two.

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### **MODEL 2: IMPLEMENT SINGLE WORKER STATUS**

This model again presumes a set of improvements to employment rights and related policies set out above. But unlike model 1, model 2 would remove limb (b) worker status, ‘merging’ limb (b) workers with employees, and essentially extending full employment rights to all those who should currently be limb (b) workers – at the cost of some of their autonomy.

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## ADVANTAGES

### Advantage 1: Rights and entitlements could improve for current limb (b) workers

- *Single worker status supporters* argue that current limb (b) workers would now have full employee rights. Alongside other measures to improve security at work, this would have knock-on benefits to businesses and wider economic growth.<sup>83</sup>
- *Limb (b) retain and reform supporters* argue that people are currently choosing limb (b) work for a reason, and there are other downsides which outweigh improved employment rights – primarily a loss of autonomy for limb (b) workers (see below).<sup>84</sup>

### Advantage 2: Rights and entitlements could improve significantly for some self-employed people, due to improved enforcement

- *Single worker status supporters* argue that combining clarification and enforcement with single worker status, would upgrade the rights of many who are currently classified as self-employed, as they would now be employees, with the enhanced package of rights discussed above.<sup>85</sup>
- *Limb (b) retain and reform supporters* argue that limb (b) could be made to have a broader reach into the self-employed, therefore benefiting more of the self-employed, albeit not entitling them to full employee rights.

### Advantage 3: Two statuses could be simpler for all to understand

- *Single worker status supporters* argue that limb (b) status adds an additional layer of complexity, which doesn't align with tax status, or common conceptions of employment status and which authorities struggle to enforce.<sup>86</sup>
- *Limb (b) retain and reform supporters* argue, as above, that having two statuses is not necessarily simpler than three, if there is a need for three statuses

to align with the reality of work or with arrangements people want. They argue that there are better ways to clarify status, presented above.<sup>87</sup>

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## CHALLENGES

### Challenge 1: People would lose a 'compromise' option

- *Limb (b) retain and reform supporters* argue that people want limb (b) status and do not want to be an employee. Employee status opens people up to potentially being treated in a way in which a limb (b) worker would not want to be treated. The lack of autonomy and flexibility and having a boss are often cited as problems. This was a view expressed in our focus groups and interviews, and again, our survey found that 20 per cent of all those in work (including the self-employed) said they would most like to work in a 'middle ground'.
- *Single worker status supporters* argue that people can negotiate autonomy and flexibility as an employee, as well as having full employee rights – and note Labour's proposal for a 'day one' right to flexible work by default.<sup>88</sup>

### Challenge 2: There could be adverse employment consequences

- *Limb (b) retain and reform supporters* argue that single worker status would affect people working for businesses either currently using limb (b), or who would potentially use limb (b) work in future. Businesses would lose an option for how to operate, and would be faced with a potential administrative and tax cost of an employee model. This could then have an effect on people currently undertaking limb (b) work, but could also remove a flexible option that might help economically inactive people return to work. This would depend on how businesses adapt, which they could do in several ways.

1. Leaving the country altogether – in other countries this has had an effect on some companies.<sup>89</sup>

2. Changing their business model to work via an agency or an intermediary – as is the case in Lisbon, Berlin, Paris and Geneva – and our survey found atypical employees appear to have a worse experience of work.<sup>90</sup>

3. Changing their business model to a fully self-employed model – as some have in Spain.<sup>91</sup>

4. Intensifying work under an employee model – as in Lisbon.<sup>92</sup>

5. Reducing in size or consolidating in major cities – as Getir did in the UK (albeit in response commercial and financial pressure, not regulatory change).<sup>93</sup>

- *Single worker status supporters* argue that businesses would adapt and have adapted to employee models overseas. They argue that some of the problems that have arisen can be addressed by enforcement, improved rights, and trade union representation. The UK would remain a relatively easy and lucrative country to do business in. And that, despite these challenges, the employment rights improvement is substantial enough to warrant the risks.

### Challenge 3: Single worker status is a big change that could take time

- *Limb (b) retain and reform supporters* argue that single worker status is a more material change than model 1, which would take longer to consult on, legislate for and implement, and would then require the courts to set new precedent on marginal cases.

- *Single worker status supporters* often agree that consultation will be necessary, but once implemented its effect could be relatively swift. If codified, the law could be clearly drafted so that the courts have to enforce it. And, whether codified or not, they argue that the attorney general could accelerate any important judgments through to the Supreme Court. Measures to improve enforcement and clarity discussed above would also accelerate the changes on the ground. ■

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# Annex 1: Methodologies

## Focus groups

The Fabian Society facilitated two virtual focus groups. Most participants worked in the gig economy, but others were self-employed or freelancers. One was a group of four men, another was with a group of three women (one woman was unable to connect, but was interviewed separately). They were diverse in terms of age and ethnicity.

Fabian Society researchers facilitated a discussion, probing at some of the key questions surrounding employment status. This included: the nature of work people do and how it compares to other forms of work; their knowledge of their rights and autonomy; the trade-offs and choices they have made, or felt able to make, around work; and their responses to policy proposals, with a focus on single worker status.

Their views are represented in the paper with key quotes from some of the participants. And the discussion helped to shape the in-depth interviews and the survey. They spoke to us on an anonymous basis and their names have been changed in the text of the report.

Participants were recruited by Leftfield Ltd on behalf of the Fabian Society.

## Interviews

The Fabian Society conducted six in-depth interviews. Most participants worked in the gig economy, but others were self-employed or ‘freelancers’ and some also had atypical employee jobs. The interviews were semi-structured, and participants were asked about: their circumstances, their work, the knowledge of their rights, the trade-offs and choices they felt they had made, and their views on policy. They spoke to us on an anonymous basis and their names have been changed in the text of the report.

Participants were recruited by Leftfield Ltd on behalf of the Fabian Society.

## Survey

The opinion survey was conducted by YouGov on behalf of the Fabian Society. All figures, unless otherwise stated, are from YouGov Plc. The findings of this paper are based on analyses done by the Fabian Society. Total sample size was 1,918 adults. Fieldwork was undertaken between 11th–21st March 2024. The survey was carried out online. The figures have been weighted and are representative of all GB adults (aged 18+).

We included boosted samples for atypical workers. This involved screening YouGov’s panel for people who said they fell into atypical categories of work. This screening was done via a sample building question which ran on fifteen of YouGov’s political surveys between 19 February and 14 March 2024. These people were then surveyed alongside a representative sample of all GB adults. ■



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