

Self-employment, the gig economy and the National Minimum Wage

A report by the Low Pay Commission

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Introduction

- 1** At the Low Pay Commission, our main job each year is to recommend the rates of the National Minimum Wage (NMW), including the National Living Wage (NLW), to the Government. Behind this (apparently) simple task lies a complex and wide-ranging set of questions about the world of low-paid employment.
- 2** One group of interest are the self-employed. While they are not entitled to the minimum wage, they may nevertheless be affected by our recommendations. One example is that the Minimum Income Floor which applies to self-employed people on Universal Credit rises each year in line with the NMW. More generally, employers have the option of shifting from an employee model to a self-employment model in response to our recommendations on the NMW.
- 3** In some circumstances, defining employment – and self-employment – can be a fuzzy or contested space. One area where we have seen this play out is the gig economy – loosely characterised as a space where digital platforms facilitate the exchange of labour for money by matching providers and customers, on a short-term and payment by task basis. The employment status of gig workers – and the employment rights available to them – is a contested area, and the blue box below sets out some of the background to this. Individuals in the gig economy with ‘worker’ status will be directly affected by our recommendations; those with self-employed status are not eligible for the minimum wage.
- 4** Last year, we set out to speak to individuals working in the gig economy and their employers. We weren’t trying to intervene in debates about employment status – although it quickly became apparent that self-employment models remain the norm and “employee” status the rare exception. Our main goals were to understand what, if any, commonality there was between these jobs and the low-paid work which falls within our usual brief; and whether the minimum wage played any role in individuals’ decision-making.
- 5** This paper collects our findings. It stands apart from the main stream of the LPC’s work on low-paid employment, but offers insights into different kinds of work. The gig economy remains a dynamic space where ways of working and models of employment are not set in stone. It was a useful exercise for us to speak to individuals outside the mainstream of low-paid employment, and it is one we intend to come back to in the future.
- 6** This note draws principally on conversations held in spring 2023 with individuals working in the following sectors: food delivery, private hire, parcel delivery, nannying and yoga teaching. Conversations with platform workers in other areas, and with app providers themselves, also helped shape our conclusions. We do not state that these conversations are representative of all workers within the sectors in question, but they offer insights into the experiences and attitudes of some of the workers involved. We are grateful to all the individuals who gave up their time to take part in our research.

What is the gig economy?

We do not try to tightly define the gig economy in this note. A 2018 report by the Department for Business, Energy and Industrial Strategy defined the gig economy as “the exchange of labour for money between individuals or companies via digital platforms that actively facilitate matching between providers and customers, on a short-term and payment by task basis.”

Some of the groups to whom we spoke – food delivery riders, for example – fall squarely into what is commonly understood as the gig economy. Other groups – yoga teachers, for instance – are probably not within what most people would imagine as the gig economy. Not all of these groups rely on digital platforms for their work, but all share a concern with employment status, and the borderline between employment and self-employment.

Defining employment status

Employment status relates to how individuals are classified in the labour market. It can relate either to tax status or to their employment rights. Our concern is with the latter – the right to the National Minimum Wage is one of the key rights which hinges on employment status.

There are three categories of employment status for employment rights:

- Employee status. This covers the majority of individuals in the UK labour market. Employees are entitled to all existing employment rights, although for some of these there is a qualifying period.
- Worker status, also referred to as ‘limb (b) worker status’. This group are entitled to a core set of rights (including the minimum wage) but are not entitled to others (for example, maternity leave or protection against unfair dismissal).
- Self-employed status. Individuals with this status are not eligible for employment rights.

Employment status is a complicated area, and one which Government has attempted to better clarify in recent years¹. The complexities involved are outside the scope of this note. At the outset, we were interested in what role, if any, the NMW had in the decision-making of individuals in the gig economy. As our research unfolded, we became interested in the models of work involved, their advantages and disadvantages for workers and the pressures they produced. Most of the individuals we spoke to were classed as self-employed, in some cases benefiting from a ‘self-employed plus’ model negotiated by a trade union. A number of the private hire drivers we spoke to had worker status. None had employee status.

¹ See <https://www.gov.uk/government/publications/employment-status-and-employment-rights>

What we found

Gig workers recognise that flexibility is both an advantage and disadvantage

"I love the flexibility. I can choose my hours... But that comes with the premise that you don't have that stability of pay."

Food delivery rider

7 Flexibility can mean different things in different occupations. One delivery rider summed up the promise of gig economy flexibility: "even though you don't know what you're going to earn, you are your own boss. You have a device in your hand and you can turn it on and start whenever you want and wherever you want." But the unpredictable nature of the work and income can be stressful: "The last couple of weeks have been really, really frustrating working, hardly making £40 - £45. On Sunday, I kind of gave up. We actually went to play golf because I was so fed up" Another said "It's a bit of a roulette. And you know, sometimes you're waiting. You don't get anything. Sometimes you'll be flooded and inundated". One private hire driver (who worked around 60 hours per week) noted that despite having flexibility in principle over hours, drivers needed to work at certain times of day to maximise their earnings.

8 Delivery riders, classed as self-employed, highly valued the flexibility and control of hours they had, but noted the downsides of unpredictability too. One told us: "I love the flexibility. I can choose my hours. I can wake up whenever I want to wake up. I can go to the gym when I want to go to the gym. ... You have much more control over your life rather than sticking it to 9:00 to 5:00. But that comes with the premise that you don't have that stability ... of pay and also sick pay." Riders' attitude to their employment status varied according to their preferences; those who valued the freedom to work flexibly across different platforms were more likely to be content with self-employment.

9 One private hire driver we spoke to said the flexibility helped with family needs: "I do like the flexibility because I'm a family man, so I want the flexibility ... to start whenever I want, to finish whenever I want so I can work around my family life." Delivery riders agreed that the flexibility helped with their family needs, for example, with school drop-offs. In the long term, though, the volume of hours required to earn enough and the evening and weekend working wasn't viewed as family friendly: "for long term working and making money for life as a family father I think it would be very difficult. I mean you wouldn't have a proper life to spend with your family."

10 In other areas, the entrance of platforms into a given sector has created a more fractured and chaotic working life. In nannying, we heard from one individual that platforms have made the work "more fractured, more scattered and therefore more frightening." The use of gig platforms by parents to source childcare has increased in recent years. From the individual's perspective, platforms have shifted the work away from longer-term relationships with families that, over time, would result in

worker-like status where nannies would get holiday pay and sick leave. Instead nannies “get booked for tiny bits of work” and during holidays need to find another family. The growth of platforms, we were told, represented “a step backwards” from the long fight to have nannying recognised as “proper work” with the associated rights (maternity pay, sick leave, holiday pay). The newly fragmented nature of the work had changed traditional patterns of career progression, preventing nannies from leveraging their experience in discussions over pay: “now you’ve got these people who arrive and get into the app and ... don’t understand that there used to be a different work environment where you could actually aspire to career progression.”

Pay varies unpredictably and can be hard to understand

“On delivery you don’t have a set structure for the price, so they make it up as they go in my opinion.”

Food delivery rider

11 We heard frequent complaints about the opacity of pay, with platform workers across several sectors agreeing this had worsened over time. Food delivery riders told us they were paid per delivery, but the base price per delivery could vary unpredictably. Rates of pay for a task could vary across time and space, even within the same city. Riders told us (in spring 2023) that the usual minimum for one order was around £3.80 and for two orders went up to around £5. Rates increased with distance for delivery and were subject to ‘surges’, ‘multipliers’ or ‘boosts’ added on to rates (for example, if it was particularly busy or the weather is bad). The group noted these were inconsistently applied, hard to predict and their usage had fallen.

12 Delivery couriers faced a similarly opaque system of bonuses. A driver receives a ‘courier star’ bonus of £1.50 per day if their rating is over 4.9; an ‘ETA bonus’ for setting and reaching an estimated time of arrival; a ‘speed of service’ bonus for delivering a certain number of parcels per hour. Against this, drivers for some companies faced fines if they arrived late. Couriers estimated their pay would only match the minimum wage if they received all three bonuses. When asked if there were days when she was paid below the minimum wage, one courier told us: “yes, definitely, and the last few months have been really hard, I’ve got couriers using foodbanks”.

13 As one food delivery rider summed up: “they’ve upped the prices, the delivery fee, but we ... actually get less money. Sometimes during the day when it’s quiet you get very long jobs ... and they pay you £3.40 and when it’s busy that same job could be £4.50 without any multiplier, without any extra. So that’s what frustrates me because sometimes when it’s quiet they try to make you work for peanuts.”

14 Some riders had an idea of their hourly pay: “I earn per hour – maybe £15 would be the maximum – but that would be just two hours or three hours per week, maybe four hours per week.” Across the week riders thought hourly pay for time spent on delivery was likely above the NLW (£10.42 at the time) on average – but that this would change if you included waiting times. More often, riders thought in terms of daily rather than hourly pay and often had a daily target in mind after which they might head home (around £80-100 in the week and £100-£150 at the weekend). It had grown more difficult over time to reach these targets as work had become less busy. Earnings had been much higher during the pandemic; one rider noted that £200 per day was not unusual then.

15 Transparency was a major concern for rideshare drivers who wanted to know what the passenger was paying and what the platform was keeping: “Now we do not get to see what commission [the platform] is taking and then sometimes the passengers will tell us what they're paying, and when you look at the maps, you can see, the deduction is about 30 to 40%”. Drivers felt transparency had worsened and wanted to “know what is going on, like they were doing before. You can see what the passenger is paying, what you are getting and what [the business] is keeping. And even if, if even if there's VAT on it, everything needs to be transparent...”

16 Couriers felt their work was less casual or variable in nature than other kinds of platform work. Despite this, the model of calculating pay for self-employed couriers included multiple and variable factors, such as volume of parcels for delivery, rates for particular types of parcels, time and mileage, bonus payments (variable on customer satisfaction, speed of delivery etc.) and ad hoc payments in response to specific circumstances if required.

17 In other occupations, individuals noted a lack of independence over what they were able to charge. Yoga teachers we spoke to noted there “isn't any consistency in terms of pay. It varies from £20 per hour to £40,” but this did not take into account preparation time or the cost of renting a space. A pay survey run by the Independent Workers of Great Britain (IWGB) union had found during the pandemic that for every hour of paid work there were around 2.5 hours spent planning the lesson. The average rate per class came in at £27.54, with an hourly rate of £9.18. Individuals felt their pay levels had “stalled”, with one noting that “I qualified in 2008 and I'm still being paid the same as I was in 2008,” and that this was not uncommon.

18 Nannies told us that big platforms didn't directly control how much they charged but did pressurise them to charge around the NLW and limited their ability to negotiate over extra costs. It forced nannies to name a single rate, but allowed parents to tick a range of boxes for different tasks (cleaning, dog walking, ironing etc). This shifted the working norm from one where nannies negotiated for higher pay for additional tasks, to one where they were locked into a single rate at the outset. The general view was that around half of the jobs taken on these platforms paid below the NLW. More experienced nannies were more resistant to these platforms, which they described as “an environment for the desperate”. The apps made finding work easy, which was attractive to new entrants to the profession, particularly migrants, but left people easier to exploit.

Platforms exert varying degrees of control

“There's a soft unspoken pressure ... in which the kinds of situations and demands that you might feel pressured to say yes to really change.”

Nanny working via a platform app

19 Individuals tended to be self-employed, but some questioned their employment status. They cited the degree of control around prices, uniforms, where and when work was done etc and lack of substitutability as evidence that they should have worker status. Delivery firms controlled prices per package, enforced uniforms and stipulated how many days should be worked. The people we spoke to felt the sector's employment models were becoming more and more inflexible, with a recent shift to a six-day minimum.

20 The delivery drivers we spoke to were paid 75p for a standard parcel, 56p for smaller “packets” are smaller and lighter paid at 56p, and less still for “postables”. A “heavy” a package of 17kg attracts a £1 fee. These rates varied throughout the country; rural areas were paid differently for example. One driver complained that parcels were regularly mis-categorised so (as with food delivery riders) boosts to pay were inconsistent. The driver had recently delivered a lawnmower which was categorised as a ‘packet’. To challenge this she has to take a photo and go through a time-consuming challenge process. The complexity of the payments, the tendency for error in labelling and unpredictability of other elements such as mileage all made it difficult for individuals to know what their income actually was. They argued for a flat rate for delivery. They also called for measures to help understand their status and rights; and for delivery firms to help individuals understand their earnings.

21 For rideshare drivers, their concerns over control centred on the fear of deactivation and removal from the apps they used. Some told us colleagues have been removed from apps without any explanation being provided, and unions told us they had fought and won compensation on individual cases of unfair deactivation. As one driver told us, “If you ask [why you’ve been deactivated], they refuse to disclose the nature of the complaint and who made it.” In some cases, the reason may be a passenger making a complaint (for example, about dangerous driving). The driver might dispute this but it takes a long time to resolve. Deactivations lasted a minimum of three days but in some cases could take weeks or months to resolve. One union rep gave an example of a driver whose licence had been revoked due to an administrative error who then didn’t work for that platform for two years. Drivers told us that not working even for a few days could make a massive difference to their ability to pay their bills: “that’s one thing drivers are not happy about and we do not feel to some extent valued.”

22 This fear of deactivation was also a central concern for nannies working via apps. Both the rating system and threat of account cancellation created a “soft unspoken pressure ... in which the kinds of situations and demands that you might feel pressured to say yes to really change. Because if you get a bad rating that is going to severely impact your ability to continue accessing work.” Because of the nature of childcare work, bad reviews had a big impact. We heard stories of nannies putting up with bad treatment by families or feeling unable to refuse additional tasks for fear of a bad rating. Individuals felt they had few alternatives but to put up with this because of the market power of the platform in question. They also complained that openly racist adverts (for example, that said things like “please don’t apply if you are black or Asian”) were common and tolerated by the platform.

23 Nannies described the platform gradually becoming more “invasive”. It was apparent the platform read all messages exchanged between users; and it was common for nannies to receive messages and calls from the app if they did not accept job offers. One person we spoke to was blocked for two months because a parent had messaged her suggesting payment outside the app. On another occasion the same nanny had to take care of a sick family member and cancel at short notice. Despite the parents being happy with this, the platform blocked her account without discussion or notice. In these cases, it takes a lot of time and effort to get back on the app, creating a great deal of stress.

24 Yoga teachers we spoke to made a distinction between genuinely working for themselves, or working via gyms or yoga studios: “If I work for myself ... it’s my responsibility to hire my local community centre, and I pay for that hire and it’s my students. I can set the rates, I can set the methods by which I’m paid. And that is wildly different to.... corporate settings such as gyms and yoga studios where ...those people that are procuring our services are setting those rates to us.” In both cases, the teacher would be formally classed as self-employed. Venues could ask teachers to wear uniforms; some

venues controlled “what you’re teaching, what you wear, when you turn up, when you leave, what you’re supposed to say”. They were unlikely to accept substitutability (a key feature of self-employment). “I couldn’t send another person in my place ... that would be unheard of”. Teachers also raised issues around intellectual property; if a gym or studio wanted to record a class, “who does that belong to?”

25 Taking account of all of this, one interviewee summed up: “I can’t think of anything further from being self-employed”. Employers, she felt, may argue that the “whole industry would fall apart if we....gave the protections that come with [employee status], holiday pay, sick, sick pay or if we gave you the rates you’re asking for. But then if it’s a model that’s based on exploitation, then should it really be there anyway?”

Self-employed status leads to disagreements over working time

26 Across a range of sectors, individuals felt that self-employed status allowed employers to blur the lines on “time on task” resulting in unpaid work. Both food delivery riders and rideshare drivers felt substantial (unpaid) time was spent waiting between jobs. Likewise, yoga teachers were paid by the class but spent significant prep time and were asked to undertake tasks before and after their classes too. Delivery drivers spent hours each day on unpaid parcel sorting to speed up their deliveries later on.

27 GMB argued to us that these issues challenge the effectiveness of the NMW. “While ‘minimum earnings’ thresholds in platform companies’ pay models are supposed to ensure workers’ hourly earnings do not fall below the NLW, GMB members continue to see cases of colleagues becoming aware that they have been effectively underpaid the NLW for the time they have been at work, because not all of this time or the tasks they carried out was accounted for, and remaining underpaid for long periods of time due to poor processes for redress.”

28 For couriers, pay was only based on work counted between the time the first parcel was scanned for delivery to the last delivery or collection made. This took no account of time spent sorting parcels, whether at home or at the sub-depot. The employer in question claimed its pay model included ‘top ups’ to ensure couriers’ earnings did not fall below the NLW. This depended, though on a contested interpretation of ‘time on task’ and also took into account bonus payments for factors outside couriers’ control (for example, customer satisfaction ratings). Those interviewed argued this was not an acceptable factor to use to subsidise compliance with the statutory minimum.

29 We spoke with drivers for one private hire firm, which had instituted a system to calculate minimum time on task and make up the difference if pay fell below the NMW. Drivers argued, however, that the company only paid from the request for a pick-up to the drop off, so waiting time was not counted. They calculated that after ten hours of work on the app they could have been working 14 hours including waiting time. For the hours counted, pay would be above the NMW, but including waiting time and expenses (petrol, repairs), they thought it was difficult to say whether drivers were getting the NMW. They also complained that the formula for calculating holiday pay was difficult to understand. In other companies which did not have these systems in place, pay could be considerably worse. One union rep told us about drivers for a separate firm undertaking £3 minimum journeys; with four journeys

an hour. They told us that taking off fuel and wear and tear costs, drivers would easily fall below the NMW.

Conclusions

30 People working in the gig economy accept some trade-off between flexibility and security – but only when this is consistent with them keeping control of their work. Individuals were happiest with the trade-offs involved in self-employed status when they felt they still had meaningful control over when and how they worked. Food delivery riders, for example, generally enjoyed the freedom over their hours of work and accepted the loss of income security this entailed. Other individuals, though, felt they had the worst of both worlds, income insecurity combined with restrictive conditions of work. Delivery couriers described a highly regimented working routine; yoga teachers felt forced to comply with the policies and practices of the settings where they operated. Both groups were denied the security and rights that would come with employment – or even worker – status.

31 Pay transparency is a real problem. For several of the groups we spoke to, pay was composite and variable; rates changed from hour to hour, and overall pay depended on bonuses or tips which individuals felt were not fully in their control. Some didn't feel like they grasped all the components of their pay, or could challenge when they thought there had been a mistake. The relationship between the individual's earnings and what the end-user paid was not always clear. Across different areas of work, individuals agreed their pay had grown more opaque over time. This lack of transparency over pay aggravated the income insecurity discussed above, and – unlike the trade-off between flexibility and security – created a real sense of unfairness.

32 Individuals working in the gig economy can face hard and soft forms of control. For nannies, although they had some scope to define the work they were willing to do, the features of the platform they used – for example, the rating system – still had a coercive effect on what they ended up doing. In addition, deactivation and exclusion from a platform can be a huge threat hanging over individuals, particularly where the platform has a large market share. Individuals often face a further layer of opacity finding out why they have been excluded and what they need to do to be reinstated. People can be threatened with losing their livelihoods, and have little idea why. In this way, platforms can exercise considerable power with little accountability.

33 A lack of clarity over working time makes it hard to use the minimum wage as a benchmark. Although the NMW had no direct effect on the workers we spoke to, many were aware of it and used it as a point of reference for their own earnings. Fundamental issues with measuring working time make any such calculation complicated and contentious. These disagreements over working time are likely to continue as long as worker status is contested, and will make it difficult to apply the NMW in either theory or practice.