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# Trade Unions and Platform Workers in the UK: Worker Representation in the Shadow of the Law

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## ABSTRACT

Drawing on a series of interviews with key actors including representatives of the main trade unions, this paper considers the response of unions in the UK to the emergence and growth of platform work. Comparing the partly different strategies adopted by traditional and alternative unions in respect of the representation of platform workers' interests, it demonstrates that the unions' choices have been shaped by the characteristics and resources of the unions themselves, by prevailing political conditions and, perhaps above all, by the restrictive legal framework that excludes many platform workers from the scope of employment legislation. Without recourse to either a legally protected freedom to take industrial action or the statutory recognition procedure, unions have only exceptionally been able to negotiate collective agreements on behalf of platform workers. Instead, traditional unions have focussed on broader political strategies to fight precariousness, including wielding an influence on policymaking, especially through their relations with the Labour Party. Alternative unions have channelled resources into organising and mobilising platform workers and supporting them in campaigning, protesting and bringing strategic litigation.

## 1. INTRODUCTION

In their seminal work on *Industrial Democracy*, the Webbs famously identified three 'methods' available to trade unions in the representation of members' interests: mutual insurance, collective bargaining and legal

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enactment.<sup>1</sup> The choice of method was shaped by the strength of the trade union in question, they explained, with mutual insurance being, at the time of writing, the only option available to weaker unions. It was shaped too by the different policy priorities of the unions, and especially the degree of their prioritisation of sectional over universal, class interests. Over time, the increasing participation of the working class in political life, and the growing influence of the unions, was likely to result in greater use being made of legal enactment, they believed, which had the benefit of universal application to every worker and every firm.

Drawing on a series of interviews with key actors, including representatives of all of the main trade unions, this paper provides the first systematic analysis of the response of British unions to the emergence and growth of platform work.<sup>2</sup> Which ‘methods’ or strategies have been adopted by the unions in their efforts to represent the interests of platform workers understood here as a new type of non-standard worker? By comparing the partly different responses of so-called ‘traditional’ and ‘alternative’ unions, the paper demonstrates how union strategising has been shaped by the characteristics of the unions themselves, by prevailing political conditions and, perhaps above all, by a restrictive legal framework that excludes the majority of platform workers from the scope of employment legislation and employment rights. Precisely because it is *not* universally applicable, in other words, employment law figures here not only as a method of furthering worker interests but also as an important element of the context within which strategic choices are made. Union strategising proceeds, we might say, in the shadow of the law.<sup>3</sup>

Having explained the matter of the non-application of employment law to many platform workers, we review the existing literature concerning trade union representation of non-standard workers in the UK. The

<sup>1</sup>S. Webb and B. Webb, *Industrial Democracy*, 1 edn (London: Longmans, Green & Co., 1897). See also K. D. Ewing, ‘The Function of Trade Unions’ (2005) 34(1) *ILJ* 1–22; M. Ford and T. Novitz, ‘There is Power in a Union? Revisiting Trade Union Functions in 2019’ in A. Bogg, J. Rowbottom and A. L. Young (eds), *The Constitution of Social Democracy: Essays in Honour of Keith Ewing* (Oxford: Hart, 2020).

<sup>2</sup>By platform work, we mean any form of platform-mediated work including both (i) ‘geographically tethered platform work’ or ‘work on-demand via app’, where the worker has to be physically present in a specific location in order to perform the task and (ii) ‘cloudwork’ or ‘crowdwork’, which is work that can be performed remotely via the Internet. See J. Woodcock and M. Graham, *The Gig Economy: A Critical Introduction* (Cambridge: Polity, 2019).

<sup>3</sup>R. H. Mnookin and L. Kornhauser, ‘Bargaining in the Shadow of the Law: The Case of Divorce’ (1979) 88(5) *Yale Law Journal* 950–97.

characterisation of certain unions as ‘traditional’ and ‘alternative’ is explained here, together with scholarly assessments of the respective strengths and weaknesses of those unions when it comes to representing the interests of members with non-standard working relations. In part 4, we present our own research, focussing on four core dimensions of trade union representation: (i) organising and mobilising, (ii) collective bargaining, (iii) strategic litigation and (iv) involvement in policymaking and legislation through lobbying and other means. Our main finding is that without recourse to the statutory recognition procedure or to a legally protected freedom to take industrial action, unions have only exceptionally been able to negotiate collective agreements on behalf of platform workers. Instead, traditional unions have focussed on broader political strategies to fight precariousness, including wielding an influence on policymaking. Alternative unions have channelled resources into organising and mobilising platform workers and supporting them in campaigning, protesting and bringing cases to court.

## 2. PLATFORM WORKERS AND THE LAW

Like ‘gig work’, platform work refers to the kind of platform-mediated work performed, prominently, by Uber drivers and Deliveroo couriers, and by armies of people working from home, performing online micro-tasks of only a minute’s or a few seconds’ duration. In the UK, it was estimated in 2019 that 1 in 10 adults engaged in platform work, accounting for at least 4.7 million workers.<sup>4</sup> By now, the figure is likely to be significantly higher.<sup>5</sup>

Fundamental to the business models of platforms is the characterisation by them of their workers as ‘entrepreneurs’—in law, self-employed independent contractors to whom employment rights do not apply and in respect of whom tax and social security contributions may not be payable, or payable only at a reduced rate.<sup>6</sup> In jurisdictions in which platforms are active, the question of platform workers’ legal status has been litigated and courts have found, more often than not, that the workers are employees,

<sup>4</sup><https://www.tuc.org.uk/news/uks-platform-economy-workforce-has-doubled-2016-tuc-and-peps-backed-research-shows> (date last accessed 20 July 2021)

<sup>5</sup>Between 2016 and 2019, the TUC estimates that the platform economy workforce doubled in size: *ibid.* We presume that the upward trajectory has continued, especially given the massive growth in the delivery of goods during 2020 and 2021.

<sup>6</sup>J. Prassl, *Humans as a Service: The Promise and Perils of Work in the Gig Economy* (Oxford: Oxford University Press, 2018); J. Freedman, ‘Employment Status, Tax and the Gig Economy: Improving the Fit, or Making the Break’ (2020) 31(2) *Kings Law Journal* 194–214.

or dependent rather than independent contractors.<sup>7</sup> Unless and until such decisions are reached by the courts, however, the opportunities for appeal exhausted, and the judgements respected by the platform in question, many platform workers will continue to be treated as independent contractors with no employment rights—neither individual nor collective rights.<sup>8</sup> If platform workers are found to be employees, they may nonetheless fail to meet the ‘continuous employment’ conditions that attach to some employment rights. Even where they are recognised to be employees or dependent contractors, then, platform workers will likely enjoy only some rather than the full range of employment rights accorded to other ‘standard’ workers. Moreover, the extreme precariousness of their employment relation will constitute a very significant barrier to enforcement of any rights that they have, since any course of action that displeases the platform may prompt their ‘deactivation’, or summary dismissal.

As is no doubt well known to readers of this journal, UK law recognises three categories of worker: ‘employees’, who are those with contracts of employment; so-called ‘limb (b)’ workers, or dependent contractors, who enjoy some but not the full range of employment rights; and a residual category of self-employed independent contractors, to whom employment law does not apply. The term ‘limb (b)’ refers to the various statutory definitions of employee and worker, of which section 230 of the Employment Rights Act 1996 provides a prominent example. According to subsection (3) of section 230:

In this Act ‘worker’ ... means an individual who has entered into or works under (or, where the employment has ceased, worked under):

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

Other statutes contain identical or similar definitions, providing rights to limb (b) workers to *inter alia* the national minimum wage,<sup>9</sup> breaks and

<sup>7</sup>V. De Stefano *et al.* ‘Platform Work and the Employment Relationship’ (2001) *ILO Working Paper 27*.

<sup>8</sup>Workers may perceive this as an advantage because it means that they do not have to comply with the notice and balloting requirements contained in the TULRCA: C. Cant, *Riding for Deliveroo: Resistance in the New Economy* (London: Polity, 2020), 114–5. Of course, it also leaves striking workers without legal protection against retaliatory action by the platform.

<sup>9</sup>Section 54 National Minimum Wage Act 1998.

paid holidays,<sup>10</sup> and equal treatment.<sup>11</sup> Under the Trade Union and Labour Relations Consolidation Act 1992 (TULRCA), limb (b) workers have broadly the same collective rights as employees.<sup>12</sup>

To date, there has been a series of judicial decisions in the UK concerning the employment status of platform workers.<sup>13</sup> While court decisions in favour of platform workers are always to be welcomed, it is also important to recognise that their significance beyond the parties to the dispute at issue can be limited. Under UK law, the question of employment status depends on the terms agreed by the parties to the relevant contract. Notwithstanding a landmark Supreme Court ruling in February 2021 that a number of Uber drivers were limb b workers, then, it remains possible for Uber and other platforms to negotiate contractual terms that are indicative of independent self-employment rather than employment, or (dependent) ‘worker’ status.<sup>14</sup> Without new legislation, in other words, the question of the legal status of platform workers cannot be decided once and for all but rather falls to be judged on a case-by-case basis. For as long as the Conservative Party is in government, the likelihood of legislation extending employment rights to platform workers appears small indeed.<sup>15</sup> The furthest the Government has gone to date is to endorse a proposal of the 2017 *Taylor Review* to develop legislation and guidance setting out the tests to establish employment status.<sup>16</sup>

### 3. UK UNIONS AND THE REPRESENTATION OF THE INTERESTS OF NON-STANDARD WORKERS

Over the course of the past three decades, the UK has experienced a particularly dramatic decline in union membership and collective bargaining

<sup>10</sup>Regulation 2 Working Time Regulations 1998.

<sup>11</sup>Section 83 Equality Act 2010.

<sup>12</sup>The definition of ‘worker’ in s 296 TULRCA is broader than that in ERA 1996. For discussion, see M. Freedland and N. Kountouris, ‘Some Reflections on the “Personal Scope” of Collective Labour Law’ (2017) 46(1) *ILJ* 52–71.

<sup>13</sup>See especially the decisions of the Supreme Court: *Pimlico Plumbers v Smith* [2018] UKSC 29, [2018] 4 All ER 641, discussed A. Cefaliello, *Jur. Rev. Issue 4*, 292. *Uber v Aslam* [2021] UKSC 5, discussed A. Bogg and M. Ford (2021) 137 *LQR* 347–53.

<sup>14</sup>*IWGB v CAC (Deliveroo)* [2021] EWCA Civ 952.

<sup>15</sup>K. D. Ewing and J. Hendy, ‘Covid-19 and the Failure of Labour Law: Part 1’ (2020) 49(4) *ILJ* 497–538, 533–4.

<sup>16</sup>M. Taylor et al, *Good Work: The Taylor Review of Modern Working Practices* (Department of Business, Energy and Industrial Strategy, 2017), 40.

coverage relative to other western European countries.<sup>17</sup> Debates about the ‘revitalisation’ of the union movement have found fertile ground,<sup>18</sup> with scholars documenting the efforts of traditional unions to fight decline by adopting the kind of ‘organising model’ first developed in the USA.<sup>19</sup> ‘Traditional’, in this context, denotes long-established unions, funded by their membership and organised along occupational or industry lines. While in 1998 the Trades Union Congress (TUC) created an Organising Academy to train union staff,<sup>20</sup> a number of trade unions began to develop their own organising policies and individual campaigns aimed specifically at non-standard workers.<sup>21</sup> More recently, an increasing number of unions have sought to cater to new employment constituencies by embracing the organising model and developing strategies to organise and mobilise non-standard workers.<sup>22</sup> Prominent campaigns have been launched, including the *Living Wage Campaign* against low-paid jobs and, in Scotland, the *Better than Zero* campaign against the increased casualisation of employment, especially among young workers.<sup>23</sup> Overall, traditional unions have demonstrated an increasing awareness of the need to organise and represent the interests of non-standard workers as part of broader efforts at revitalisation. At the same time, however, they have not always been quick to channel resources into doing so. To date, many protests and campaigns in the platform economy have been self-organised by groups of platform workers, with no involvement whatever from the traditional trade unions.<sup>24</sup>

<sup>17</sup>J. Waddington, ‘United Kingdom: A Long-term Assault on Collective Bargaining’ in T. Müller, K. Vandaele and J. Waddington (eds), *Collective bargaining in Europe: towards an endgame*, vol. II (Brussels: ETUI, 2019).

<sup>18</sup>J. Kelly, ‘Rethinking Industrial Relations Revisited’ (2018) 29(4) *Economic and Industrial Democracy* 701–09.

<sup>19</sup>E. Heery, J. Kelly and J. Waddington, ‘Union Revitalization in Britain’ (2003) 9(1) *European Journal of Industrial Relations* 79–97.

<sup>20</sup>E. Heery and M. Simms, ‘Constraints on Union Organising in the United Kingdom’ (2008) 39(1) *Industrial Relations Journal* 24–42.

<sup>21</sup>Heery, Kelly and Waddington, 2003.

<sup>22</sup>R. Gumbrell-McCormick and R. Hyman, ‘Renewing Power Resources: Recruitment, Representation, and Mobilization’ in R. Gumbrell-McCormick and R. Hyman (eds), *Trade Unions in Western Europe: Hard Times, Hard Choices* (Oxford: Oxford University Press, 2013).

<sup>23</sup>E. Heery, D. Hann and D. Nash, ‘The Living Wage Campaign in the UK’ (2017) 39(6) *Employee Relations* 800–14. <https://www.betterthanzero.scot/> (date last accessed 20 July 2021).

<sup>24</sup>K. Vandaele, ‘Will Trade Unions Survive in the Platform Economy? Emerging patterns of platform workers’ collective voice and representation in Europe’ *ETUI Working Papers* (ETUI, 2018); A. Tassinari and V. Maccarrone, ‘Riders in the Storm: Workplace Solidarity among Gig Economy Couriers in Italy and the UK’ (2020) 34(1) *Work, Employment and Society* 35–54.

It seems that greater engagement by traditional unions in organising and mobilising non-standard workers, including platform workers, may be hindered by persistent, significant barriers. Alberti has emphasised that the leadership of traditional unions can be conservative, predominantly focussed on the interests of ‘male and pale, standard members’, and failing to provide an adequate organisational response to non-standard workers.<sup>25</sup> Keune highlights that the resources and efforts of traditional unions have not always been sufficient to implement and sustain organising initiatives for the non-standard workforce.<sup>26</sup> Focussing specifically on platform workers, Woodcock finds that although traditional unions are strong in terms of their broad membership and greater financial resources, their rigid and hierarchical organisational structure makes it difficult to reorient their strategies to include workers that lie outside their traditional constituencies.<sup>27</sup> In the USA, scholars have stressed the incapacity of traditional unions to organise and mobilise the non-standard workforce, having an entrenched ‘bargaining and institutional culture’<sup>28</sup> and being overly bureaucratic.<sup>29</sup> At the same time, precarious workers themselves may find it difficult to identify and be represented by traditional unions. The gender, age and ethnicity of union staff poorly reflect the socio-demographic characteristics of the non-standard workforce, and workers may feel alienated by the formality and complex rules of some union activity.<sup>30</sup>

In contrast to traditional unions, so-called non-traditional or alternative unions seem to be better equipped to represent non-standard workers. Relative to traditional unions, alternative unions are small in scale, with horizontal and less formal organisational structures, making their organisation more ‘agile’.<sup>31</sup> They are generally rooted in communities rather than

<sup>25</sup>G. Alberti, ‘Mobilizing and Bargaining at the edge of Informality: The “3 Cosas Campaign” by Outsourced Migrant workers at the University of London’ (2016) 19 *WorkingUSA: The Journal of Labor and Society* 81–103, 82.

<sup>26</sup>M. Keune, ‘Trade Union Responses to Precarious Work in Seven European countries’ (2013) 5(1) *International Journal of Labour Research* 59–78.

<sup>27</sup>J. Woodcock, ‘Digital Labour and Workers’ Organisation’ in M. Atzeni and I. Ness (eds), *Global Perspectives on Workers’ and Labour Organizations* (Frankfurt: Springer, 2018).

<sup>28</sup>J. Fine, ‘A Marriage Made in Heaven? Mismatches and Misunderstandings between Worker Centres and Unions’ (2007) 45(2) *British Journal of Industrial Relations* 335–60.

<sup>29</sup>R. Milkman, ‘Back to the Future? US Labour in the New Gilded Age’ (2013) 51(4) *British Journal of Industrial Relations* 645–65.

<sup>30</sup>Fine, 2007; Y. Aslam and J. Woodcock, ‘A History of Uber Organizing in the UK’ (2020) 119(2) *South Atlantic Quarterly* 412–21.

<sup>31</sup>P. Osterman, ‘Community Organizing and Employee Representation’ (2006) 44(4) *British Journal of Industrial Relations* 629–49; M. Tapia, ‘Marching to Different Tunes: Commitment and Culture as Mobilizing Mechanisms of Trade Unions and Community Organizations’ (2013) 51(4) *British Journal of Industrial Relations* 666–88.

specific workplaces. They also tend to have a narrower agenda; their activities generally confined to organising and mobilising workers in respect of specific issues.<sup>32</sup> Because of their limited size and grassroots nature, they are not typically part of any larger organisation capable of exerting political power.<sup>33</sup> In contrast to traditional unions, alternative unions tend to have only limited financial resources—because they represent some of the lowest-paid workers, they can charge only minimal membership dues. In part, they rely instead on external sources of funding, including crowdfunding and donations, which can be volatile.<sup>34</sup> Organisational resources are likely to be limited too.<sup>35</sup> Even the biggest alternative union in the UK, the Independent Workers of Great Britain (IWGB), has a very small staff of only a few dozen (Table 1).

In other respects, alternative unions seem to be particularly well suited to organising and representing non-standard workers. Discussing the ‘3 Cosas Campaign’ among contract migrant cleaners in London in 2016, for example, Alberti hailed the more informal organisational structure of the IWGB, associated with the use of a range of flexible organising tools.<sup>36</sup> In the platform economy, Tassinari and Maccarrone found that the unconventional organising strategies utilised by the IWGB and the Industrial Workers of the World (IWW), such as the organisation of public stalls and cycle repairs drop-ins, proved successful in organising and mobilising platform couriers.<sup>37</sup> The horizontal and flexible organisational structure, the use of grassroots mobilisation initiatives and community-based rather than workplace-based reach are seen as strengths of these alternative forms of unionism in organising and mobilising platform workers, which traditional unions are unable to mimic.<sup>38</sup>

Compared with other European countries, the lack of strong legal and institutional supports in the UK, such as an extension mechanism for

<sup>32</sup> Alberti, 2016; R. Saundry *et al.* ‘“It’s More Than Who you Know”: Networks and Trade Unions in the Audio-visual Industries’ (2006) 16(4) *Human Resource Management Journal* 376–92.

<sup>33</sup> Osterman, 2006.

<sup>34</sup> E. Kirk, ‘Contesting “Bogus Self-employment” via Legal Mobilisation: The Case of Foster Care workers’ (2020) 44(4) *Capital and Class* 531–9.

<sup>35</sup> Woodcock, 2018.

<sup>36</sup> Alberti, 2016.

<sup>37</sup> Tassinari and Maccarrone, 2020.

<sup>38</sup> Aslam and Woodcock, 2020; D. Però, ‘Indie Unions, Organizing and Labour Renewal: Learning from Precarious Migrant Workers’ (2020) 34(5) *Work, Employment and Society* 900–18.

Table 1.  
Summary Table of UK Unions' Characteristics, 2019

Union	No. of Members	Total Income (£)	Type	Affiliated to the TUC
GMB	608,929	79,065,000	Traditional	Yes
IWGB	4,623	723,000	Alternative	No
IWW	2,481	123,000	Alternative	No
UNITE	1,141,208	208,254,000	Traditional	Yes

Source: GOV.UK, 2019, \*TUC and STUC are union confederations; hence, they do not have individual membership.

collective agreements, has significantly constrained British unions' ability to bargain on behalf of non-standard workers. The statutory recognition procedure introduced in 2000 had only a limited positive impact in this respect.<sup>39</sup> The characterisation of platform workers by the platforms as independent contractors constitutes an additional hurdle to union efforts. A union that wishes to make use of the recognition procedure, or lawfully to call its members out on strike in support of recognition, must first convince the courts that the platform workers in question are in fact employees or dependent contractors: 'workers' as defined in the TULRCA. Notwithstanding these difficulties, there have been some successful attempts by traditional unions to bargain on behalf of non-standard workers, such as in the temporary agency sector, among freelancers in the entertainment industry or for specific occupations, such as archaeologists and cleaners.<sup>40</sup> In contrast, the literature suggests that alternative unions have only comparatively rarely been involved in collective bargaining, on behalf of both platform and other non-standard workers.<sup>41</sup> This might be because the main aims of these unions tend to consist in organising workers rather than engaging in institutionalised forms of negotiation; additionally, as we have seen, they have more limited organisational and financial resources to devote to recognition campaigns.<sup>42</sup> It is also the case that alternative unions tend to adopt a more

<sup>39</sup>TULRCA 1992, Sch A1; Heery, Kelly and Waddington, 2003.

<sup>40</sup>H. S. Pedersen, C. B. Hansen and S. Mahler, *Temporary Agency Work in the European Union* (Dublin: European Foundation for the Improvement of Living and Working Conditions, 2004); E. Heery, 'The Representation Gap and the future of worker representation' (2009) 40(4) *Industrial Relations Journal* 324–36; Alberti, 2016.

<sup>41</sup>See, for instance, Alberti, 2016; Roberts, 2018; Staton, 2020.

<sup>42</sup>Woodcock, 2018.

adversarial style vis-à-vis employers and may be less willing to participate in formal bargaining.<sup>43</sup>

Collective bargaining is of course not the only means by which unions can influence the regulation of non-standard employment. In an effort to secure legal protections for members, trade unions might alternatively engage in strategic litigation or legal activism,<sup>44</sup> supporting workers to bring test cases that might effect a change in the law or clarification of existing rules in a manner that favours workers' interests.<sup>45</sup> Litigation may be regarded as *strategic* insofar as it achieves legal change with application beyond the parties to the case in hand; alternatively, insofar as it serves to publicise the issue and to contribute to ongoing efforts to organise and mobilise workers.<sup>46</sup> In recent years, strategic litigation in support of the rights of non-standard workers has concerned matters such as equal treatment in higher education and working time in the entertainment industry as well as the fundamental issue of so-called 'bogus' self-employment.<sup>47</sup> Once again, the organisational expertise and financial resources of traditional unions might be understood to constitute a potentially important strength in this regard. Discussing the case of Uber drivers in London, however, Aslam and Woodcock argue that the internal culture of the General, Municipal Boilermakers' (GMB) union hampered cooperation between the union and a predominantly migrant and Muslim group of drivers, with workers finding it difficult to build mutual trust and cooperation.<sup>48</sup> Thanks to their horizontal and grassroots organisational structure and their adversarial, combative approach towards employers, alternative unions have been characterised as more readily supportive of legal challenges against platform companies.<sup>49</sup> These unions have been able to compensate for their limited financial resources through the use of innovative funding models, such as crowdfunding, and pro-bono services from lawyers.<sup>50</sup>

<sup>43</sup> Alberti, 2016.

<sup>44</sup> Kirk, 2020; M. Oswalt, 'Improvisational Unionism' (2016) 104(3) *California Law Review* 596–670.

<sup>45</sup> T. Colling, 'What Space for Unions on the Floor of Rights? Trade Unions and the Enforcement of Statutory Individual Employment Rights' (2006) 35(2) *ILJ* 40–160.

<sup>46</sup> J. Moyer-Lee, 'Challenging National Law in Occupational Health and Safety' presentation at ETUI Conference *Strategic Aspects of Occupational Safety and Health Litigation*, 24–25 February 2021.

<sup>47</sup> E. Heery, 2009; *Pimlico Plumbers Ltd and another v Smith* [2018] UKSC 29, [2018] 4 All ER 641; *Uber BV v Aslam* [2021] UKSC 5.

<sup>48</sup> Aslam and Woodcock, 2020.

<sup>49</sup> Roberts, 2018; Aslam and Woodcock, 2020; Kirk, 2020.

<sup>50</sup> Vandaele, 2018; Kirk, 2020.

As regards trade union influence on policymaking, the main channel for this, historically, was the unions' strong relationship with the Labour Party.<sup>51</sup> In the post-war decades, Conservative Governments also acknowledged the role of unions and employers' associations in policymaking and legislation. In the 1980s and 90s, however, the political influence of the unions was heavily curtailed as successive Conservative Governments took a strong anti-union stance and heavy industry contracted in favour of a mostly non-unionised service sector.<sup>52</sup> Although the election of Tony Blair certainly represented a turning point for unions, New Labour had a rather ambivalent relation to unions, wishing to distance itself from the union movement and *de facto* leaving limited room for unions to influence its policy choices.<sup>53</sup> Nonetheless, most major unions continued to be affiliated to the Labour Party and played a non-negligible role in influencing some significant reforms in the regulation of non-standard employment. For instance, they helped shape government regulations on fixed-term work and they negotiated regulations on agency work.<sup>54</sup> The return to power of the Conservatives in 2010 meant a renewed exclusion of unions from the policymaking process, however, which persists at present.<sup>55</sup> As regards alternative unions, given their generally limited size and local dimension and the fact that they are not affiliated to the TUC, they are not generally directly involved in policymaking, confining their initiatives predominantly to the local level.<sup>56</sup>

#### 4. UK UNIONS AND THE REPRESENTATION OF PLATFORM WORKERS: METHODOLOGY AND FINDINGS

Following a literature review and initial mapping of unions' representation of platform workers in the UK, our research focussed on UNITE, GMB, TUC, STUC, IWGB and IWW as the most important unions and union confederations active in sectors where platform work is widespread.<sup>57</sup> We used

<sup>51</sup>Gumbrell-McCormick and Hyman, 2013.

<sup>52</sup>Heery, Kelly and Waddington, 2003,

<sup>53</sup>Gumbrell-McCormick and Hyman, 2013.

<sup>54</sup>Heery, 2009.

<sup>55</sup>M. Ford and T. Novitz, 'Legislating For Control: The Trade Union Act 2016' (2016) 45(3) *ILJ* 277–98.

<sup>56</sup>H. Johnston and C. Land-Kazlauskas, *Organizing On-demand: Representation, Voice, and Collective Bargaining in The Gig Economy* (Geneva: International Labour Organization, 2018).

<sup>57</sup>An additional union, ADCU, was created following the split of some members from the IWGB, after our fieldwork had been completed.

a range of qualitative methods, beginning with an in-depth documentary analysis of written sources produced by the trade unions: research reports, campaign material, documents concerning protests or industrial action, submissions to legislative proposals and government consultations, written and oral evidence provided to government and parliament, newspaper articles and blog posts. We also analysed court reports, newspaper and magazine articles, parliamentary and government documentation. Desk research continued throughout 2019, 2020 and 2021, in order to track any relevant development in union activity.

Desk research was supplemented by a number of in-depth semi-structured interviews with 13 representatives from UNITE, GMB, TUC, STUC and IWGB<sup>58</sup> involved in the following activities: organisation and mobilisation, collective bargaining, policy advocacy and litigation in relation to platform workers.<sup>59</sup> These interviews allowed for both the triangulation of findings from desk research and the acquisition of in-depth insights concerning union activities and strategies, the rationale behind union actions and approaches, and barriers to alternative forms of action.

Access to interviewees was gained through initial email contact with the relevant union department and through subsequent redirection to the official most suitable to be interviewed on a specific dimension of representation. Interviews with representatives of trade unions were complemented by interviews with stakeholders involved in union activities, including five platform managers and business associations' representatives involved in negotiations with unions, five lawyers involved in relevant court cases and nine policymakers involved in issues surrounding the representation of platform workers. In respect of these interviewees, access was gained through initial email contact with the policy or external relations department of the company, through direct email contact with relevant lawyers and to policy makers' offices. In total, over 30 interviews were carried out in person in London and Edinburgh, or via Skype or telephone, between April and September 2019, each of a duration of one to two hours.

Both documents and interviews were analysed using *thematic analysis*, which allowed for the identification of all relevant themes and sub-themes as well as the mapping of their interconnection.<sup>60</sup> The initial coding of the

<sup>58</sup>We were unable to gain access to IWW officials.

<sup>59</sup>NB: in some cases, a representative was involved in more than one of these activities.

<sup>60</sup>G. Guest, K. M. MacQueen and E. E. Namey, *Applied Thematic Analysis* (London: Sage, 2012).

documents and the interview transcripts was carried out according to different forms of trade union representation (organising and mobilising, bargaining, litigation, policy and legislation) and union types. The second round of coding entailed the identification of any relevant sub-theme (for example, union strategy, limitations and type of barriers). This round of coding allowed for the identification of points deemed of empirical relevance for the understanding of unions' actions for each form of union representation. The analysis was carried out using the software NVivo, which allowed exploration of data according to content or topic, coding and re-coding, a meaningful organisation of data and the creation of connections between data.<sup>61</sup>

### A. Organising and Mobilising

For all trade unions, the spread of platform work has compounded existing challenges.<sup>62</sup> The fragmentation of the workplace, already observable in other forms of atypical employment, finds an extreme form with platforms. Most platform workers do not have a physical workplace and might never meet in person with their managers. This makes it difficult for unions even to initiate contact with workers, let alone to organise them.<sup>63</sup>

Our findings confirm that one of the main issues traditional unions face in representing platform workers is to adapt their vertical and hierarchical organisation to the specific needs of platform workers.<sup>64</sup> As a GMB official remarked, 'The structure of GMB is very old, it is not very flexible'.<sup>65</sup> Unions may have only limited resources to dedicate to platform workers.<sup>66</sup> '[Platform workers] require resource-intensive strategies, it's a greenfield sector'.<sup>67</sup> Union officials also recognised that the socio-demographic characteristics of union staff (for example, white and middle-aged) and their inability to communicate in languages other than English can hinder initial union approaches to platform workers, the vast majority of whom are young, migrant or from an ethnic minority.<sup>68</sup>

<sup>61</sup>C. Silver and A. Lewis, *Using Software in Qualitative Research: A Step-by-Step Guide* (London: Sage, 2014).

<sup>62</sup>eg Osterman, 2006; Fine, 2007; Keune, 2013; Milkman, 2013; Alberti, 2016.

<sup>63</sup>eg Johnston and Land-Kazlauskas, 2018; Vandaele, 2018.

<sup>64</sup>Interviews with GMB Officer, 2019; GMB Officer 2, 2019; UNITE Officer, 2019; STUC Officer, 2019.

<sup>65</sup>GMB Officer 2, 2019.

<sup>66</sup>Interviews with GMB Officer 2, 2019; UNITE Officer, 2019; STUC Officer, 2019.

<sup>67</sup>GMB Officer 2, 2019.

<sup>68</sup>Interviews with GMB Officer 2, 2019; IWGB Officer, 2019.

Notwithstanding these constraints, some traditional unions and union confederations have made significant efforts to organise and mobilise platform workers, devising new ways of approaching workers.<sup>69</sup> As a STUC official explained, the STUC has attempted to employ the kind of organising model already experimented with in respect of other types of precarious workers:

Recently there's been a focus on organising rather than servicing. This is a narrative that's come out of America a few years ago and you know, it's talked about widely across the unions and the organizing means putting resources and testing and developing collective union power in workplaces, and I guess the STUC has put more of an emphasis on that.

When targeting platform workers, the STUC learned from its previous experience with the *Better Than Zero* campaign concerning precarious workers.<sup>70</sup> Use of a Facebook page to facilitate worker–union contact proved to be valuable in the recruitment of new members, encouraging the development of digital tools to create networks between workers and coordinate collective action.<sup>71</sup> More generally, the use of social media and online tools was considered pivotal by several union officials in recruiting platform workers and mobilising them through campaigns and protests.<sup>72</sup> As an STUC officer explained:

People will contact us on Facebook and we will get back to them if and where we think it's a collectivized position [...] It is more about finding and identifying these issues themselves and then calling up the employers and we would do that as a campaign.<sup>73</sup>

Alternative unions have been very active in organising and mobilising platform workers. Since its creation in 2012, the IWGB has rapidly become the most active union in the UK in this respect, organising platform workers in a number of British cities, predominately in the food delivery, ride-hailing and

<sup>69</sup>eg Alberti, 2016, Oswalt, 2016; V Pulignano, L. O. Gervasi and F. De Franceschi, 'Union Responses to Precarious Workers: Italy and Spain Compared' (2016) 22(1) *European Journal of Industrial Relations* 39–55.

<sup>70</sup>STUC, *Better Than Zero*. <https://www.betterthanzero.scot/> (date last accessed 20 July 2021).

<sup>71</sup>Interview with STUC Officer, 2019.

<sup>72</sup>Interviews with GMB Officer, 2019; STUC Officer, 2019; TUC Officer, 2019.

<sup>73</sup>Interview with STUC Officer, 2019.

courier sectors.<sup>74</sup> The IWW has been involved predominantly in the courier and food delivery sector, through the creation of a Couriers Network.<sup>75</sup> As we have seen, both the IWGB and IWW have organisational characteristics that make them particularly well suited to organising and mobilising platform workers. Importantly, their decentralised and horizontal organisational structures combined with a grassroots mobilisation strategy have allowed platform workers themselves to gain substantial control over organising demonstrations, protests and any other form of mobilisation.<sup>76</sup>

[We] let the people have genuine ownership over their campaigns. [...] Obviously, we give our advice, and we can tell them, this is a bad idea, this is a good idea, but it's very much with them.<sup>77</sup>

The socio-demographic characteristics of union staff (predominantly young and migrant) and their active participation in many mobilisation activities mean that these unions are perceived by workers to be engaged and approachable.<sup>78</sup> Since it was formed, the IWGB has devoted resources to building its capacity to communicate in multiple languages, facilitating the recruitment and active involvement in the union of migrants, who constitute a large share of the platform workforce.<sup>79</sup> An IWGB representative emphasised the importance of this drive: 'How can you organise someone if there's a language barrier?' The union has also made very extensive use of social media, including Facebook and WhatsApp.<sup>80</sup>

Finally, compared with traditional unions, both the IWGB and IWW have adopted a confrontational approach towards platform companies. While not necessarily differing from traditional unions in terms of their objectives, they appear more willing to openly side *against* platforms and to adopt

<sup>74</sup>Roberts, 2018; Staton, 2020; IWGB, *Deliveroo riders in strike action in London and other cities against low pay* (2019). <https://iwgb.org.uk/post/5c677844c08bf/archived> (date last accessed 20 July 2021); IWGB, *Royal Mail gig economy subsidiary eCourier to face strike on 10 & 11 October* (2019). <https://iwgb.org.uk/post/5d8c656cdd3f6/archived> (date last accessed 20 July 2021); IWGB, *Uber Drivers in four UK cities to protest ahead of company's IPO* (2019). <https://iwgb.org.uk/post/5cd28b1260b6f/archived> (date last accessed 20 July 2021).

<sup>75</sup>IWW, *Couriers Network, International Workers of the World Website* (2020). <https://iww.org.uk/iww-couriers-network/> (date last accessed 20 July 2021).

<sup>76</sup>Interview with IWGB officer, 2019; IWW, 'Flamme Rouge': *Reflections on the IWW Couriers Network* (2020). <https://iww.org.uk/news/flamme-rouge-reflections-on-the-iww-couriers-network/> (date last accessed 20 July 2021).

<sup>77</sup>Interview with IWGB Officer, 2019.

<sup>78</sup>Aslam and Woodcock, 2020.

<sup>79</sup>Interview with IWGB Officer, 2019.

<sup>80</sup>Staton, 2020; Tassinari and Maccarrone, 2020.

disruptive strategies.<sup>81</sup> They have organised platform workers in several protests and campaigns throughout the UK, from a strike of Deliveroo riders in London in 2016 to the ongoing campaign to improve platform workers' protection during the coronavirus crisis.<sup>82</sup> They have been extremely active in press campaigns to put pressure on platform companies to ameliorate the working conditions of workers: 'we fight for our members and we do try to have these high pressure press campaigns, when there's something going on, we want to make sure that everyone knows about it'.<sup>83</sup> Such active and disruptive campaigning has allowed both the IWGB and the IWW to gain media and political attention over issues affecting platform workers, in a way that traditional unions have been unable to do.<sup>84</sup> All that said, IWGB staff also recognise that there are limits to their organising capacities given the very limited financial resources available: 'we have lot of high demand members, but a lot of them are very low paid, so we're working on very low resources'.<sup>85</sup>

## B. Collective Bargaining

With respect to platform workers, collective bargaining represents one of the greatest challenges for trade unions in the UK. The classification of the vast majority of platform workers within their contracts as independent contractors takes them *prima facie* outside of the scope of the TULRCA. Without first engaging in litigation to prove that the platform workers are actually 'workers' under the terms of that Act, unions are unable to have recourse either to the statutory recognition procedure introduced in 1999 or to the limited freedom circumscribed in the Act to call workers out on strike. This partly explains both the relatively low number of collective agreements

<sup>81</sup> Interview with IWGB Officer, 2019; Interview with Lord Henty QC, 2019.

<sup>82</sup> Vandaele, 2018; Tassinari and Maccarrone, 2020; IWW, *Deliveroo Workers, Keep Up The Fight!* (2019). <https://www.org.uk/campaign/deliveroo-workers-keep-up-the-fight/> (date last accessed 20 July 2021); IWGB, *Royal Mail gig economy subsidiary eCourier to face strike on 10 & 11 October* (2019). <https://iwgb.org.uk/post/5d8c656edd3f6/archived> (date last accessed 20 July 2021); IWGB, *Uber Drivers in four UK cities to protest ahead of company's IPO* (2019). <https://iwgb.org.uk/post/5cd28b1260b6f/archived> (date last accessed 20 July 2021); IWGB, *Couriers and Covid-19* (2019). <https://iwgb.org.uk/covid-19/couriers-and-covid-19/> (date last accessed 20 July 2021).

<sup>83</sup> Interview with IWGB Officer, 2019.

<sup>84</sup> Interview with Lord Henty QC, 2019.

<sup>85</sup> Interview with IWGB Officer, 2019.

negotiated to date on behalf of platform workers and the novel strategies employed by trade unions to secure a collective agreement or something like it.<sup>86</sup> Additional explanations lie, as noted above, with limited financial and organisational resources and, on the part of alternative unions, their sometimes anti-establishment, combative approach.<sup>87</sup>

In February 2019, a first, ground-breaking agreement concerning platform work was signed by the GMB union and the courier company Hermes.<sup>88</sup> After the union had supported a number of Hermes couriers to bring a claim before the employment tribunal, challenging the company's characterisation of them as independent contractors, Hermes initiated negotiations with GMB.<sup>89</sup> When the tribunal found in favour of the couriers, Hermes decided not to appeal the decision but instead to reopen negotiations with GMB.<sup>90</sup> The resulting agreement created a new 'self-employed+' status for Hermes couriers, including rights to guaranteed pay and holiday pay.<sup>91</sup> As explained by a GMB officer:

Litigation may be one route to establish status, but our agreement gives rights to those who sign up to it where presently there is no proper regulation and where the only alternative of litigation still cannot achieve what we have achieved through the recognition agreement with Hermes.<sup>92</sup>

Besides GMB, no other traditional union has been involved, to our knowledge, in collective negotiations on behalf of platform workers. Similar to the case of organising, it appears that long-established unions have found it difficult to engage in greenfield bargaining.<sup>93</sup>

In contrast, one alternative union, the IWGB, has been quite active in this respect. In the months following the negotiation of the GMB-Hermes deal, the IWGB managed to secure an historic agreement with the courier company *The Doctors Laboratory* (TDL). TDL, which provides clinical

<sup>86</sup>Però, 2020.

<sup>87</sup>See nn.42 and 43 and associated text.

<sup>88</sup>GMB, *Hermes and GMB in groundbreaking gig economy deal* (2019). <https://www.gmb.org.uk/news/hermes-gmb-groundbreaking-gig-economy-deal> (date last accessed 20 July 2021).

<sup>89</sup>*Leyland and Others v Hermes Parcelnet Ltd*, 2018.

<sup>90</sup>Interview with Hermes Officer, 2019.

<sup>91</sup>Interviews with GMB Officer 2, 2019; Hermes Officer, 2019; GMB, *Hermes and GMB in groundbreaking gig economy deal* (2019). <https://www.gmb.org.uk/news/hermes-gmb-groundbreaking-gig-economy-deal> (date last accessed 20 July 2021).

<sup>92</sup>Interviews with GMB Officer 2, 2019.

<sup>93</sup>Interviews with GMB Officer, 2019; IWGB Officer, 2019.

laboratory diagnostic services throughout the UK, had classified all of its couriers as independent contractors. Under the pressure of legal action by IWGB members, the company decided to reclassify some of its couriers as ‘workers’, which allowed the IWGB to apply under the statutory recognition procedure to be recognised on behalf of those workers.<sup>94</sup> Because the application was successful, IWGB became the first union to be recognised by a platform company in the UK. After strenuous campaigning and protests, lasting several months, the IWGB was then able to secure a collective agreement with TDL. According to its terms, couriers may opt to be paid per hour rather than by piece rate, a special rate is guaranteed for night work and additional payments are owed to cover the expenses of ‘workers’.<sup>95</sup>

Further attempts to engage in collective bargaining have been dealt a blow by the recent decision of the Court of Appeal in *IWGB v CAC (Deliveroo)* that since Deliveroo couriers are not ‘workers’ under the terms of the TULRCA, the Central Arbitration Committee (CAC) was right to refuse an application from the IWGB under the statutory recognition procedure.<sup>96</sup> In 2016, the IWGB had made an initial application to the CAC to be recognised with respect to a group of Deliveroo couriers in Kentish Town. Pointing to the existence of a so-called ‘substitution clause’ in the contract between the couriers and Deliveroo, the CAC found that the couriers had not undertaken to perform their work ‘personally’ and for that reason were not ‘workers’.<sup>97</sup> Seeking review of the CAC’s decision in the High Court, and later the Court of Appeal, the IWGB put a temporary halt to ongoing attempts to engage in collective bargaining on behalf of platform workers, withdrawing an application to the CAC to be recognised in relation to a group of Addison Lee drivers.<sup>98</sup> In reaction to the Court of Appeal’s ruling, the union may now resume efforts to negotiate collective agreements outside of the statutory recognition procedure, where resources allow. It has also sought permission to appeal the decision to the Supreme Court.

<sup>94</sup>CAC Case Number: TUR1/1016/2017, 8 September 2017.

<sup>95</sup>IWGB, *IWGB reaches historic pay deal with NHS contractor TDL and calls off strikes* (2019). <https://www.iwgb.org.uk/post/5d0c844ddd65b/iwgb-reaches-historic-pay-deal> (date last accessed 20 July 2021).

<sup>96</sup>[2021] EWCA Civ 952.

<sup>97</sup>CAC Case Number: TUR1/985/2016.

<sup>98</sup>CAC Case Number: TUR1/1082/2018, 18 December 2018. <https://www.gov.uk/government/publications/cac-outcome-iwgb-addison-lee-limited> (date last accessed 20 July 2021).

### C. Litigation

Platform and other non-standard workers are particularly vulnerable to poor terms and conditions and, in the absence of collective bargaining, reliant on such basic employment protections and minimum standards as are provided by the law. In order to demonstrate that employment legislation applies to them, platform workers who have been characterised in their contracts as self-employed independent contractors may bring claims before the tribunal, seeking to have it recognised that this characterisation is ‘bogus’: that they are employees or ‘limb b’ workers with employment rights.

Notwithstanding its comparatively limited financial resources, the IWGB has been particularly active when it comes to supporting workers to bring such claims. From the outset, the IWGB leadership has considered strategic litigation to be a key aspect of union representation, especially in light of its otherwise limited ability to bring companies to the negotiating table, and the necessity to fight legal battles to enforce employment rights which are otherwise denied.<sup>99</sup> The former General Secretary of the IWGB, Jason Moyer-Lee, considered strategic litigation to be an important means of achieving broader aims.<sup>100</sup> As Lord Hendy QC remarked in respect of the IWGB’s efforts to be recognised by Deliveroo:

I think that it’s largely down to the, sort of, imagination of Jason Moyer-Lee, the general secretary of the IWGB, who saw an opportunity to challenge the status by the pursuit of a claim for recognition, and it seems to me that that was a very neat way of doing it. I mean, the objective of collective bargaining obviously was the primary interest of the union in any event, but it was also a technique of bringing the legal issue [of employment status] to the forefront, so we could explore it.<sup>101</sup>

In supporting workers to bring legal claims, the IWGB has been able to mitigate economic constraints through the use of innovative funding strategies, including crowdfunding, and pro-bono representation by sympathetic lawyers.<sup>102</sup> To date, it has supported platform workers to bring claims against a number of platform companies, including, among others, Addison Lee, Deliveroo, Citysprint, Excel and Uber.<sup>103</sup> In the Uber litigation, which

<sup>99</sup>Interview with Lord Hendy QC; Interview with M Newman, 2019.

<sup>100</sup>J. Moyer-Lee, General Secretary of IWGB, ‘A Creative and Innovative Interpretation of the Existing OSH Legal Framework’, presentation at the ETUI Online Conference on Strategic Aspect of Occupational Safety and Health Litigation, 24 February 2021.

<sup>101</sup>Interview with Lord Hendy QC, 2019.

<sup>102</sup>Roberts, 2018; Kirk, 2020.

<sup>103</sup>*C Gascoigne v Addison Lee Ltd*, 2017; *IWGB v Roo Foods T/A Deliveroo*, (2018); *Dewhurst v Citysprint UK Ltd*, 2016; *Boxer vs Excel Group Services Ltd*, 2017; *Uber BV v Aslam*, 2018.

eventually resulted in the landmark decision of the Supreme Court cited above, Yaseem Aslam was initially supported by GMB, then by IWGB, and finally by the App Drivers and Couriers Union (ADCU).<sup>104</sup>

In the context of the Covid-19 crisis of 2020, the IWGB also brought two applications for judicial review. First, it argued unsuccessfully that the right to statutory sick pay, currently restricted to employees earning above a certain threshold amount, ought to apply to lower earners and to limb b workers. It also argued, without success, that the new Coronavirus Job Retention Scheme (CJRS) ought to apply to limb b workers as well as employees.<sup>105</sup> In a major victory against the Government, the union later argued successfully that certain health and safety rights, derived from EU law, must apply to limb workers as well as employees.<sup>106</sup>

Notwithstanding these significant legal advances for platform workers, it is important to bear in mind that legal activism by the IWGB might not be possible in every case in which members' legal rights are contested. Reliance on crowdfunding and other forms of donations to pursue legal cases, although allowing for flexibility and ad-hoc funding, puts the union in a relatively weak financial position compared with traditional unions, which have more disposable and secure sources of funding.<sup>107</sup> As argued by an IWGB officer, 'A lot of the cases that we've taken out in the gig economy – that's stuff that they [traditional unions] could have done quite easily with – and they have resources – like, they could have paid for lawyers to take out these cases'.<sup>108</sup>

Generally speaking, traditional unions have not supported platform worker members in bringing legal claims. Again, the GMB constitutes an exception in this respect. Second only to the IWGB, it has had the greatest involvement in litigation concerning platform workers. Aside from the already cited cases involving Uber and Addison Lee, the GMB also supported platform workers making claims against several platform companies, including DPD, DX, as well as several courier companies delivering for

<sup>104</sup>The ADCU was created in July 2020 when the private hire branch of the IWGB disaffiliated from that union. As Dias-Abey notes, new trade unions have a propensity to fracture and renew as ideological, tactical and personality differences arise: M. Dias-Abey, 'Bridging the Spaces in-between? The IWGB and Strategic Litigation' BLRP 2021/1.

<sup>105</sup>*R (Adiatu) v HM Treasury* [2020] EWHC 1554 (Admin). Ewing and Hendy 2020, 510 and 519.

<sup>106</sup>*R (IWGB) v Secretary of State for Work and Pensions* [2020] EWHC 3050 (Admin).

<sup>107</sup>Interview with GMB Officer, 2019; Interview with IWGB Officer, 2019.

<sup>108</sup>Interview with IWGB Officer, 2019.

Amazon.<sup>109</sup> Similar to the IWGB, the GMB leadership has recognised the importance of legal activism as a means of securing employment rights for workers who are prima facie excluded from the scope of application of the legislation<sup>110</sup>:

Our strategy is to try to engage with companies and seek recognition so we can best represent our members in their workplaces. If we are unsuccessful in that approach then we look at utilising the law to bring companies to account.<sup>111</sup>

As mentioned above, Aslam and Woodcock have described the internal difficulties encountered by GMB in supporting litigation brought against Uber and Addison Lee, highlighting, on the one hand, GMB's reliance upon paid membership as an obstacle for many drivers and, on the other hand, a measure of union resistance to supporting workers who lie beyond GMB's more traditional constituencies.<sup>112</sup> In the course of our research a GMB officer admitted, 'We have rigid membership fees, we have made some changes, but it's not enough.'<sup>113</sup> Although other traditional unions have been involved in court cases dealing with the issue of employment status classification, they have not been very active in the platform economy to date.<sup>114</sup> Even among traditional unions, it seems, important differences in strategy exist.

#### D. Policy and Legislation

With the contraction of collective bargaining, and the lessening involvement of trade unions in the direct negotiation of decent terms and conditions on behalf of members, the unions' ability to influence policy and law making assumes ever greater importance.<sup>115</sup> It is many decades, however, since trade unions were routinely consulted by UK governments on questions of policy and legislation, as unions in many European countries still are. Those elements of corporatism that were features of the post-war decades were systematically dismantled by the Conservatives under Margaret Thatcher,<sup>116</sup> and

<sup>109</sup>GMB, *Amazon firms face legal action* (2018). <https://www.gmb.org.uk/news/amazon-firms-face-legal-action> (date last accessed 20 July 2021).

<sup>110</sup>GMB, *GMB scores huge Addison Lee win* (2018). <https://www.gmb.org.uk/news/gmb-scores-huge-addison-lee-win> (date last accessed 20 July 2021).

<sup>111</sup>Interview with GMB Officer 2, 2019.

<sup>112</sup>Aslam and Woodcock, 2020.

<sup>113</sup>Interview with GMB Officer, 2019.

<sup>114</sup>Interview with TUC Officer, 2019.

<sup>115</sup>Ewing, 'Function', 15.

<sup>116</sup>P. Davies and M. Freedland, *Labour Legislation and Public Policy* (Oxford: Clarendon Press, 1993).

on coming to power in 1997, New Labour formally distanced itself from the unions, leaving no one in any doubt that they would not be re-introduced.<sup>117</sup>

Under the Conservative-Liberal Coalition of 2010–15, and the Conservatives governing alone, opportunities for union influence have narrowed yet further. When, in 2016, Theresa May became minded to consider employment law reform, it was not to the unions that she looked but to Matthew Taylor, Chief Executive of the *Royal Society for the Encouragement of Arts, Manufactures and Commerce*. Taylor did not include a single union representative on his team.<sup>118</sup> The resulting review—*Good Work. The Taylor Review of Modern Work Practices*—devoted considerable attention to platform work;<sup>119</sup> however, its recommendations were disappointing, amounting in respect of the question of employment status to little more than a proposed clarification of the existing law.<sup>120</sup> Law reform and law reform proposals drawn up since have been modest and will do little, if anything, to improve the terms and conditions of platform workers.<sup>121</sup>

The coronavirus crisis of 2020–21 has shone a spotlight, if one was needed, on the very significant weaknesses of a system of Government that does not take proper account of workers' interests through regular consultation with worker representatives.<sup>122</sup> In March 2020, at the same time as it urged the introduction of a job retention scheme along Danish lines, the TUC proposed that a task force be created, comprising unions, business and government agencies working together to minimise the economic and health impact of the pandemic.<sup>123</sup> The proposal was quickly rebuffed. Acting instead without proper recourse to the advice of the TUC, the trade unions and other 'stakeholders', the Johnson Government introduced a swathe of emergency measures, including the CJRS, that proved almost immediately

<sup>117</sup>The involvement of the trade unions in government and public administration under Blair is discussed in detail by Ewing, 2005, 15–20.

<sup>118</sup>K. Bales, A. Bogg and T. Novitz, "'Voice" and "Choice" in Modern Working Practices: Problems With the Taylor Review' (2008) 47(1) ILJ 46–75.

<sup>119</sup>Taylor Review, 2017; Interview with M. Taylor, 2019.

<sup>120</sup>Taylor Review, 2017, 40.

<sup>121</sup>The Employment Rights (Miscellaneous Amendments) Regulations 2019 (SI 2019/31) extended the right to request a statement of employment terms and conditions contained in the Employment Rights Act 1996 from 'employees' to 'workers'. It also made very minor changes to the ICE Regulations 2004 designed to make it easier to create a standing mechanism for information and consultation. An Employment Bill is expected in 2021 with further minor changes such as a right for those on zero hours and other precarious contracts *to request* a more predictable and stable contract.

<sup>122</sup>Ewing and Hendy, 2020.

<sup>123</sup>Ibid. 512, 517–8.

to suffer from significant shortcomings.<sup>124</sup> They also failed to take steps to address the many existing weaknesses of UK employment law including, as was rightly widely covered in the media, the non-application of statutory sick pay (SSP) entitlements to limb b workers and the lowest-paid employees.<sup>125</sup> The obvious consequence was that many workers, including platform workers, faced the choice, when suffering symptoms of the virus, or having been in close contact with someone suffering symptoms, between self-isolating with no income and continuing to work. Given the singularly low rate of SSP of £95.85 per week, even those with a right to receive, it might have felt compelled to work.<sup>126</sup> The conclusion that the failures of UK labour law may have contributed to the relatively high rate of Covid-19 infections in this country is difficult to resist.

Notwithstanding the frequent lack of any very receptive audience in the corridors of Westminster, it remains the case that each of the major traditional unions has the organisational and financial capacity to establish and sustain formal channels of influence with policy actors and regular contacts with Government and Parliament. The TUC has long-established contacts with all relevant Government departments; it holds regular meetings with MPs and is, more generally, involved in various kinds of lobbying activity.<sup>127</sup> The TUC also provides written submissions to Government consultations and legislative proposals; it prepares parliamentary briefings and other relevant documentation for both Chambers of Parliament; and it regularly publishes reports on a variety of topics relevant for policy actors. Through these channels, the TUC has advocated for reform in a number of areas concerning non-standard employment, many of which are also relevant for platform workers, including: the extension of employment rights to all workers; a new definition of ‘worker’ which would allow many self-employed platform workers to gain better employment protection; and a number of measures to improve law enforcement.<sup>128</sup> In addition to their affiliation to the TUC,

<sup>124</sup> *Ibid.* 514–6, 518–9.

<sup>125</sup> Under the Statutory Sick Pay (General Regulations) 1982 (SI 1982/894) as amended, those who earn less than £118 per week have no entitlement to SSP. As the Coronavirus crisis broke, the scheme was amended in small ways but it was not extended to low-paid employees or limb (b) workers: Ewing and Hendy, 2020, 509.

<sup>126</sup> L. Hayes, A. Tarrant and H. Walters, ‘Submission to Women and Equality Committee Call for Evidence into Coronavirus and the Impact on People with Protected Characteristics’ May, 2020, <https://committees.parliament.uk/writtenevidence/3865/html/>.

<sup>127</sup> Interview with TUC Officer, 2019.

<sup>128</sup> TUC, *Living on the Edge: TUC Submission to the Taylor Review of Employment Practices in the Modern Economy* (London: Trades Union Congress, 2017).

all major traditional unions have dedicated policymaking departments and staff. They hold regular meetings with relevant policy actors and provide both written and oral inputs to policy consultations.<sup>129</sup>

In comparison, alternative unions tend to lack the organisational and financial resources to establish and maintain formal channels of communication with policymakers. The IWGB, for example, does not have any staff specifically dedicated to lobbying or to maintaining relations with policy actors, and though they did write a detailed response to the *Taylor Review*, they did not go on to submit any documentation in the *Good Work* consultation process.<sup>130</sup> For the most part, the IWGB considers influence to policymaking to lie beyond its field of action and outside of its strategic priorities: ‘It’s more, like, on an “as and when” basis – it’s not something we would prioritise, because for us, it’s more about letting our members know of our presence.’<sup>131</sup> Contacts with policy actors remain for the most part sporadic and ad hoc, lacking the regularity and institutionalisation which characterises the efforts of the major traditional unions.

All that said, by reason of the prominence that it has achieved when it comes to the representation of platform workers, the IWGB has sometimes been able to punch well above its weight in respect of policymaking and legislation.<sup>132</sup> In 2020, the union spoke up loudly for platform and other non-standard workers required to work during lockdown, often without adequate personal protective equipment (PPE), social distancing, hand sanitiser and other health and safety measures. Among other things, the union made a complaint to the Department of Work and Pensions in May concerning the failure of employers to provide adequate PPE to drivers and riders in the platform economy and brought two legal challenges concerning the non-application to non-standard workers of SSP and the CJRS, in the first instance, and aspects of health and safety law, in the second.<sup>133</sup> A finding for the union in the second of these judicial reviews meant the extension of rights to PPE and to refuse to perform unsafe work from employees to limb b workers.<sup>134</sup> Though it was unsuccessful in the first case, the litigation

<sup>129</sup> Interview with TUC Officer, 2019; Interview with Unite Officer, 2019; Interview with GMB Officer 2, 2019; Interview with STUC Officer, 2019.

<sup>130</sup> Interview with IWGB Officer, 2019.

<sup>131</sup> Ibid.

<sup>132</sup> Però, 2020.

<sup>133</sup> See nn.105 and 106 above; Ewing and Hendy, 2020, 526–7.

<sup>134</sup> Council Directive 89/391/EC and Council Directive 89/656/EC.

increased the existing pressure on the government to take action in respect of self-employed workers' lost earnings, which it promptly did.<sup>135</sup> For the IWGB, it seems, there is no very clear dividing line between lobbying, litigation, protest and campaigning.

For both traditional and alternative unions, the election of Jeremy Corbyn as leader of the Labour Party in 2015 opened the door wide to closer relations between the 'two wings of the labour movement', to use a decidedly old-fashioned notion. Between 2015 and 2019, not only Corbyn but also John McDonnell as Shadow Chancellor, Rebecca Long-Bailey, Shadow Secretary of State, and Laura Pidcock, Shadow Minister for Business, Energy and Industrial Strategy, consulted regularly with trade unions on employment law matters in general and non-standard forms of employment in particular.<sup>136</sup> Corbyn and McDonnell maintained contact with the IWGB and IWW, offering support through attendance at rallies and protests organised by these unions.<sup>137</sup> In respect of employment law reform, a particularly important channel for union influence over Labour Party policy proved to lie with the unions' support of, and involvement with, the Institute of Employment Rights (IER). The IER is a think tank for the labour movement and includes among its vice presidents the general secretaries of GMB, UNITE and UNISON, and, on its executive committee, representatives of most of the biggest traditional unions.<sup>138</sup> In 2016, the IER published a *Manifesto for Labour Law*, aimed at providing an organic framework of proposals for reforming UK labour law, which was later endorsed by all of the major trade unions.<sup>139</sup> The *Manifesto* proposed several changes to the labour law framework aimed at reducing precariousness and insecurity, thereby improving the lot of platform and other non-standard workers. In 2016, the Labour Party Executive Committee endorsed the IER *Manifesto*, going on to include many of its recommendations for law reform in the Party manifestos for both the 2017 and 2019 general elections.<sup>140</sup>

Whether such productive collaborations will continue under Keir Starmer remains to be seen. In any case, for as long as the Conservative

<sup>135</sup>Moyer-Lee, 2021.

<sup>136</sup>Interviews with TUC Officer, 2019; GMB Officer 2, 2019.

<sup>137</sup>Interview with IWGB Officer, 2019.

<sup>138</sup>[www.ier.org.uk](http://www.ier.org.uk) (date last accessed 20 July 2021).

<sup>139</sup>K. D. Ewing et al. (eds), *A Manifesto for Labour Law: Towards a Comprehensive Revision of Workers' Rights* (Liverpool: Institute of Employment Rights, 2016); Interview with Keith Ewing, 2019.

<sup>140</sup>Labour Party, *For the Many Not the Few* (2017); Labour Party, *It's Time for Real Change* (2019).

Party is in Government, the unions recognise that their ability to influence policymaking and legislation at Westminster is likely to be very limited.<sup>141</sup> Both the Welsh and the Scottish Parliaments have shown themselves rather more open to consultation and collaborative relations with the unions.<sup>142</sup> In Scotland, there is something like a standing social dialogue, involving among other things bi-annual meetings between the First Minister and the STUC, though with only limited employer involvement.<sup>143</sup> For the employment rights of platform workers, however, the significance of these arrangements is limited by reason of the devolved Parliaments' lack of legislative powers in the fields of employment and trade union law.<sup>144</sup>

## 5. CONCLUSIONS

Our research into the strategies adopted by British trade unions seeking to represent the interests of platform workers mostly confirmed the suggestion made in the literature of significant differences between traditional and alternative trade unions. Taking the literature review and our own data together, we can conclude that traditional trade unions have been relatively slow to adapt their strategies to the representation of platform workers. There have been some attempts to adopt an 'organising model'; however, these have been hindered by the same organisational and cultural obstacles that stood in the way of organising other non-standard workers. Given the lack of institutional supports for collective bargaining in the UK relative to other European countries, organising is especially resource-intensive and traditional unions have mostly chosen to direct their limited resources at representing the interests of the existing membership. GMB constitutes a partial exception to this general picture, having negotiated the UK's first collective agreement with a platform company, and supported workers to bring litigation in respect of their employment status.

In comparison to traditional unions, IWGB and to some extent IWW have been very active in organising and mobilising platform workers. Steps

<sup>141</sup> Interviews with TUC Officer, 2019; GMB Officer 2, 2019; UNITE Officer, 2019.

<sup>142</sup> K. Sisson, 'The Fair Work Wales Report: a Manifesto for All of Us' (2019) 50 (5–6) *Industrial Relations Journal* 564–79.

<sup>143</sup> Ewing and Hendy, 2020, 517, 528.

<sup>144</sup> K. Myhill, J. Richards and K. Sang, 'Job Quality, Fair Work and Gig Work: the Lived Experience of Gig Workers' (2021) *International Journal of Human Resource Management*, forthcoming.

have been taken to further strengthen the organisational capacity of the unions, for example, improving the facility of union staff with foreign languages. Additional strategising by the alternative unions has been shaped by the platforms' characterisation of their workers as independent contractors; by the necessity of bringing claims to court in order to establish that workers have employment rights, including rights to be represented by a union; and by the unlikelihood, at least in the short-term, of meaningful law reform. IWGB has been particularly active in strategic litigation, supporting workers in bringing claims and, during the coronavirus crisis, challenging the non-application of emergency measures and health and safety law to platform and other non-standard workers. Having negotiated one collective agreement with a platform company, it then embarked on litigation aiming to prove that Deliveroo couriers—and, by implication, other platform workers—are 'workers' under the terms of TULRCA and that an application can, therefore, be made in respect of a group of couriers under the statutory recognition procedure. In bringing these cases to court, IWGB has been able, to date, to overcome expected financial limitations by making use of creative funding strategies. While alternative unions lack the kind of resources that traditional unions invest in formal lobbying activities and in providing regular policy inputs into the policymaking and legislative processes, the IWGB has been able at times to punch above its weight, raising its voice loudly in respect of couriers and other key workers, for example, during the ongoing coronavirus crisis.