

The Gig Economy: a Model for Work in the 21st Century

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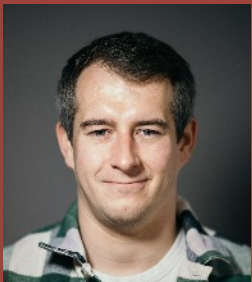
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About Coadec

The Coalition for a Digital Economy (Coadec) is an independent advocacy group that serves as the policy voice for Britain's technology-led startups and scaleups.

Coadec was founded in 2010 by Mike Butcher, Editor-at-Large of technology news publisher TechCrunch, and Jeff Lynn, Executive Chairman and Co-Founder of online investment platform Seedrs.



Coadec works across a broad range of policy areas that matter the most to startups and scaleups: Access to Talent, Access to Finance & Technology Regulation. We represent the startup community on the Government's Digital Economy Council, and the UK on the international organisation Allied for Startups Board.

Introduction

The gig economy is a business model that allows customers who require very short term services to be paired with individuals who provide these services via an intermediary. For instance, you may need a haircut. A self-employed hairdresser may provide their services through a physical salon or online platform - the intermediaries - that will in turn take a percentage of the fee.

The gig economy has existed for decades on the high street: in hairdressers, station minicab offices, gyms and beyond. It has allowed people to work and earn flexibly around their commitments. Through startup innovation this model has exploded over multiple industries and sectors. Online platforms are now disrupting traditional models that have typically favoured the employer. From riders, to drivers, to hairdressers, masseuses, lawyers and coders, more and more trades and professions now have the opportunity to work in the gig economy, with more control over when, where and for whom they work. In fact, nearly 60% of people who earn in the gig economy list convenience as the main reason for doing so.

The gig economy has become an important part of the UK's wider economy. In 2018, the Government assessed that roughly 2.8 million people had worked in the gig economy in the last 12 months.¹ As the labour market has shifted and demand for services has grown during the pandemic it is likely that this number will now be significantly bigger. This is unsurprising: nearly half of UK 25-34 year-olds use gig economy apps or services at least once every few weeks.²

As the gig economy has grown, so too has interest in it and scrutiny of it. We know that our current system of work and employment is outdated and is not fit for the 21st century. Innovation is butting up against tradition and the outdated legislation which accompanies it.

Startups, innovative businesses and individuals that earn in the gig economy struggle with a regulatory framework that hinders growth and consequently, investment. We believe that now is the time for the UK to look again at regulation and legislation around work and employment to reflect the needs of a modernising society and the economy of the future. Certainty will allow innovative businesses to plan for growth in the UK and will give investors the confidence to back brilliant entrepreneurs and companies from founding all the way through to IPO: a key tenet of the Government's post-Brexit ambition for the UK and its capital markets.

This Coadec report highlights the challenges caused by the uncertainty which impacts our current system, and offers recommendations to Government for ensuring that regulations around work and employment are fit for the 21st century. These recommendations have the potential to maximise the economic benefit of the gig economy through helping to create the conditions which encourage investment into the UK, whilst enabling both individuals and businesses to understand their roles and responsibilities in today's workforce.

How Work Works

The legal model for work and employment in the UK is complicated. Our rules are built on a long history of statutory definitions and case law. Through this, the UK has settled on a system with three categories: self-employed, worker (also known as 'limb (b) worker' or 'dependent contractor', these are individuals who provide a service for another business) and employee - each with different degrees of flexibility for the individual and control for the employer.

These categories offer a tradeoff between flexibility for an individual and regular obligations for an employer:

- **Self-employed people** are independent. They are able to decide what work to do, usually provide their own tools and equipment, and are free to work on multiple jobs and for multiple clients. This means that they incur their own expenses when carrying out work. This includes obligations to self-assess and pay their own tax and National Insurance contributions (NICs).
- **Workers** are a hybrid category, with a basis in European law, between an employee and somebody who is self-employed. They provide work under some form of contractual arrangement but do not carry out the work as part of a business or profession and cannot subcontract to other people. They must be paid the minimum wage. They may be entitled to auto-enrolment on a pension scheme.
- **Employees** have greater obligations towards their employers. They usually have to work regular hours on tasks set by their employers. In exchange, employers must provide regular hours and they provide usual employee entitlements such as a fixed salary and paid leave, as well as statutory protections at the workplace.

Taken together, the UK has created a system which is relatively unique around the world for providing a third category, which provides both protections and flexibility to those who are designated as a 'worker'.

However, how people are categorised - and the rights or obligations that follow - is a complicated and contentious area as there is currently no uniform process (other than through employment tribunal) to determine where a person falls between self-employed, worker or employee. Nor has the notion of work status remained static. Worker status in particular has evolved over time, especially during the UK's membership of the European Union. Factors include the degree of control over an individual, the relationship with their employer or client, and the ability to subcontract. This complexity came to light in the recent *Uber v Aslam* case in the Supreme Court, which put front and centre the question of how we categorise work and define working relationships.³

Good Work: the Taylor review of modern working practices, an independent report commissioned by the Department for Business, Energy and Industrial Strategy, concluded as much. The report highlighted the complexities and unique nature of the gig economy, which challenges existing employment legislation and case law. One of the report's conclusions was the need to clarify the situation by providing a framework that better reflects the realities of the modern economy and the spectrum of work carried out. In doing so, the review took particular interest in the dividing line between a worker and self-employment and recommending adapting worker status to a category of "dependent contractor".⁴

The UK's regulatory framework for employment and work is complex and hard to navigate for people and for businesses but it is notable that despite the significant growth in the gig economy over the past decade, there have been no legislative updates. This limits the ability to experiment with different business models to create flourishing companies. It also makes it challenging for businesses to plan for growth in the UK, which in turn puts off investors in the UK's dynamic tech sector. And, most importantly, the absence of certainty around the nature of work, and the lack of enforcement once certainty is provided by tribunal, makes it hard for both businesses and individuals to ensure that the right protections, benefits and freedoms are conferred.

The Gig Economy: Not just Digital

The term 'gig economy' has become synonymous with internet apps connecting customers with service providers. But the gig economy is much broader than this narrow definition, and it existed long before we ordered food or booked a manicure via apps on our smartphones.

At its core, the gig economy provides people with the opportunity to carry out short and flexible work (or 'gigs') around other commitments such as studies, full time employment and care responsibilities. People carrying out 'gigs' could create their own companies, but most prefer to reduce the costs associated with finding and connecting with potential customers by relying on other companies to act as intermediaries.

This latter model is the gig economy. It is the process by which companies act as an intermediary between a customer and a person providing the service. The intermediary does not provide the service - instead it reduces search costs and acts as marketplace to match demand with supply. These intermediary businesses create markets for both service providers and customers, often through harnessing their reputation or brand.



The gig economy is far broader than the apps on our smartphones - it has been a part of our economy for decades in the pre-digital world.

For example, hairdressers often operate out of a salon but are self-employed, giving a portion of their earnings to the salon or paying a fixed rent for a salon chair. This helps the hairdresser because they have none of the overheads of a salon and are able to choose where and when they work. Equally important is that a customer knows they can go to that salon and expect a certain quality of service.

Similarly, many personal trainers operate out of gyms but are not full employees of those gyms. Instead, they pay a percentage of their earnings or a flat rent to the gym. The trainers know that the brand name of the gym will attract customers, while customers know exactly where to go if they need personal training services.

Tutoring agencies make it easier for people to find 'gigs' in teaching. An agency will provide a service by allowing parents to find tutors for their children, while at the same time building a market of potential customers for the tutor. In exchange for creating this market and providing this service, the agency will typically take a commission on the hourly fee.

All of these examples involve a company acting as an intermediary between a self-employed person and a customer. None require a smartphone or an internet connection, but all represent the gig economy.

The changes in the last fifteen years have taken us from a gig economy, which was principally found in brick and mortar locations or on notice boards, to one which now uses technology to support intermediation. The

gig economy has grown and evolved, it has not emerged suddenly and fully-formed from smartphones. When considering how to ensure the gig economy works for both service providers, intermediaries and customers, we must consider it in the round.

Profiles of the Gig Economy

The Traditional Gig Economy:

- **Hairdresser** - A hairdresser who works around commitments with a young family. For two days a week he works at a salon. He is not an employee, but self-employed, taking work from his own customers and those of the salon where there is work to be done. He is saved the effort of constantly finding new customers. To work at the salon, he pays the salon a percentage of his daily income and they do not pay him an hourly wage or set shifts.
- **Personal trainer** - A personal trainer who works from a gym. She is not employed by the gym, but offers personal training to her own clients and to members of the gym as a self-employed person. She pays the gym a rent to base her services in the gym, and when there is a member who wants training, she is able to take that work while also paying a commission. She benefits from the gym's name attracting clients, and pays the gym a cut for creating the market and infrastructure.

The New Gig Economy:

- **Paperound** - Paperound was founded to help students build experience whilst at university to help them find work after graduation. Paperound matches companies looking for people to complete short-term tasks with students ('Taskers') needing valuable work experience. Paperound onboards Taskers, who are self-employed, onto their platform where they can be approached by companies based on their profile. If selected for work, the students are always paid an agreed fee by the company, which Paperound takes a percentage of, in return for having built the market and providing the profile pages, reviews and process.
- **Urban** - Urban is a platform that connects providers of wellness services, such as massages, manicures and osteopathy, with clients. Practitioners typically use Urban as one part of their practice: they may also work in the NHS, in a salon, have private clients, or through other platforms. Founded in 2014, Urban has allowed practitioners to work in a way that is significantly better for them and for their clients. Urban practitioners take home 72% of bookings, compared to a typical 20% in salons. Clients can book practitioners on the Urban platform which collates reviews, ratings and personal bios rather than a salon's reputation.
- **Obelisk** - Obelisk connects lawyers to clients for specific, often short-term, engagements. The lawyers that work via Obelisk are typically people who cannot or do not want to work full time, or even part time as employees. They are often, for instance, recent parents who value flexibility. Obelisk creates the opportunity for them to earn and to keep their skills sharp while at the same time meeting their other commitments. This saves them the challenge of building up a network of potential clients and this also benefits the client: they have a market of highly capable lawyers conveniently and simply available via Obelisk.

Making the Gig Economy Work in the Long Run:

The gig economy is not new, it is not a solely digital phenomenon, and it is now a central part of how people expect to earn money, receive services and interact with businesses. It is based around people having control and flexibility over their work and lives choosing if, where and when they work - rather than being locked in to minimum hours contracts and set shifts. Instead of jeopardising these benefits by trying to make gig economy platforms unviable, we should consider the ways in which we can make sure that the gig economy works for all participants: businesses, earners and consumers.

Recent proposals on the future of work tend to focus on the wrong issues, seeking to impose 19th and 20th century rules on to the 21st century economy. They assume that people want to be regulated in a way fit for production lines rather than a modern, flexible and dynamic economy. We should instead focus on making our system work for those who earn in the gig economy and the innovative startups and businesses creating new ways for people to make money.

We have spoken to our community of gig economy startups to understand their concerns, the challenges they face and the benefits they enjoy from a flexible approach to work. From legislative uncertainty, threat of legal action and regulatory prevention of providing benefits to people who earn money via their platforms, there is much that should change. The current system is hurting both gig economy startups and people who earn with them.

Based on our engagement with startups, earners and consumers, we propose five areas of focus for regulators, businesses, and others involved in the gig economy. These areas will ensure:

- **The gig economy needs to be defined**
- **Employment status should be quick and easy to define and enforce**
- **Flexibility should be valued and preserved**
- **Working time legislation should be modernised**
- **Intermediaries should be allowed to support the service providers they work with**

1. The gig economy needs to be defined

Agreeing on a definition of gig work is fundamental to be able to make it work in the long run for those who earn through and use it. Policymakers, customers and the industry have divergent views on what gig work is - this is an unhelpful starting point for policy debate and change.

Focusing on a narrow definition of gig work which only considers 'digital' and lower paying gigs would be a mistake. A person working in hospitality who uses many different gig platforms for all their work will have

vastly different needs to a full-time supermarket worker who uses a platform occasionally to bring in extra income as a photographer, who again has different needs to a professional services provider who supplements their day job by doing an occasional weekend consulting gig. Such an approach would be asymmetric and leave behind those in the gig economy who are not intermediated by an app. Only regulating the gig economy which operates digitally would also create counterintuitive incentives by encouraging companies to operate as intermediaries but without digital technologies to avoid regulation.

Policymakers must consider that gig work is not only lower paid work and is not only digital - a company intermediating between customers and self-employed people, or customers and workers, is not unique, it exists in other parts of the economy, and it raises the same policy questions regardless of whether any technology is used. As per the Government's approach elsewhere, frameworks for what happens online should be the same as those offline. Further, gig work exists across sectors and industries and will not look uniform. We must accept this, and indeed should encourage the flexibility and freedom that creates workable models for businesses and gig earners.

Coadec recommends that a definition could be: The gig economy describes a relationship whereby a person provides a service for an end customer via an intermediary. The intermediary does not provide the service - instead it facilitates the interaction through a combination of offering a brand, lowering search costs, and providing facilities or the technical means for self-employed people, or workers, to serve customers. This does not always take place online or via a smartphone app. Indeed, it regularly takes place in brick and mortar settings.

2. Employment status should be quick and easy to define and enforce

Determining the employment status of individuals and the role of intermediaries in the gig economy is inconsistent, uncertain and often relies on lengthy and expensive court cases. And, if there is case law or guidance this is often not enforced. A combination of legislation, case law, and a lack of understanding has left a confusing web for individuals and businesses operating in the gig economy. The current system not only fails the people working in the gig economy but creates burdens for businesses and puts off investment - making it unfit for purpose.

There is currently no easy way for an individual to determine their employment status. The Government has limited guidance for those in the gig economy to determine whether they are self-employed, a worker or an employee (the three employment categories in UK law).

Clear guidance fit for today's world is needed, given the importance and size of the gig economy and the issues arising from the current uncertainty. Individuals need the certainty of whether they are self-employed or not, and intermediaries need the certainty of what they can and cannot do when engaging self-employed people as compared to workers or employees.

Coadec recommends: Government should clarify employment status by giving greater certainty for workers and businesses through releasing guidance as soon as possible and working to develop an online tool. It should create a one stop shop that gives an indication of employment status based on questions that reflect (ideally simplified) statute and case law. This could feature factors such as the ability for an individual to set prices before accepting or refusing work, control over how they carry out the work, and any obligations of personal service or the right to substitute others.

Such a tool could be modelled on HMRC's Check Employment Status for Tax online tool.⁴ HMRC's own internal manual behind this online tool looks more specifically at certain sectors and gives more granular guidance with detail on factors to consider.⁵ This level of information would be extremely helpful, as long as it is presented in an easy to use and accessible format for the gig economy.

This would provide a foundation of certainty for both gig earners and businesses, while at the same time providing the freedom beyond the foundation to innovate and create brilliant businesses and products that work for consumers, gig earners, investors and beyond.

3. Flexibility should be valued and preserved

The gig economy is a great way for people to earn flexibly. From hairdressers to courier drivers, people value being able to work around other commitments. This flexibility needs to be preserved as existing employment frameworks are reconsidered. This is different from some definitions of flexi time or flexible working (from home) as it is two-way flexibility, underpinned by an individual being able to choose if, when, where and for how long they work, rather than agreeing their hours with an employer or intermediary.

One of the key factors considered when determining whether somebody is an employee is a mutuality of obligations - whereby an employer must offer work and the employee must accept work. The employee and employer have responsibilities towards the other. A mutuality of obligations is a helpful framework for many - employers have no doubts that work will be completed, and employees can depend on and plan around regular work and income.

A mutuality of obligations does not allow for the flexibility needed by both self-employed people and the intermediary. A mutuality of obligations in the gig economy would prevent those who earn in the gig economy from turning down work, from working for multiple clients, from being on multiple platforms at once and from substituting others in their place. Research such as the 2021 survey of Deliveroo riders by the Social Market Foundation found they were comparably as likely to say they were content with their work as the general workforce and, whilst they would be keen to see more benefits, 91% did not wish to become employees.

Flexibility is key for the gig economy and, contrary to some views, is valued by individuals as it is by intermediaries. Relying too heavily on old notions of work, such as a mutuality of obligations, misses the nuances across our labour markets today and the gig economy itself. People earning in the 21st century look for different things, crucial among them the ability to work when they want.

Flexibility in the gig economy is critical to many who earn in it and should not be undermined. It is the core of how individuals are able to work alongside other commitments in a way that suits them, and allows for companies acting as intermediaries to meet customer demand.

Coadec recommends that policymakers looking at existing employment rules should preserve flexibility front of mind. If we are to introduce more certainty to employment status this should not be at the expense of individuals, and intermediaries, from being able to maintain this flexible model. The current third employment status of ‘worker’ shows how a modern approach to the economy can preserve two-way flexibility and introduce protections to workers. To remove the ability of people to work flexibly and returning to rigid employment models as the only way to provide protections to the workforce would be a regressive step.

4. Working time legislation should be modernised

Working time legislation does not translate well for those earning in the gig economy. The current system for determining wages is based on a pay per hour model. However, pay in the gig economy is often determined on a per job basis - be that one haircut or one delivery job. It is also widely accepted that many people providing services via the gig economy will regularly make use of multiple platforms simultaneously. Our legislative model is suited to a production line economy but is not fit for a modern, service-based economy.

Traditional systems for determining minimum wages are based on a pay per hour model. A person will work a certain number of hours, and will receive a set salary whether they complete five tasks or eight tasks. This system is hours-led.

The gig economy does not work this way. Instead of being paid for the amount of time a person spends completing a gig, they are instead paid a fee for the gig. A hairdresser will be paid a sum for a type of haircut, or a delivery rider quoted a price before they accept the job and they are paid that sum when they complete the work. This system is work-led, and it rewards productivity.

In the gig economy, where self-employed people and workers can “multi-app” and be available to provide services via various intermediaries at the same time, an hours-led system prevents those that earn in the gig economy from accessing benefits in the way that a traditionally employed person would. This makes the system overly complex. Policymakers should consider, for instance, minimum pension contributions per job, rather than per hour.

Working time legislation should be reconsidered to reflect reflect a work-led system in which people can ‘multi-app’ simultaneously. This would allow for pension contributions, holiday pay and more to be delivered in a way that works for the gig economy.

5. Intermediaries should be allowed to support the service providers they work with

Determining work status in the courts depends on the relationship between a company and an individual. Therefore, intermediaries have a balancing act to play between offering additional support to the self-employed people they work with and the risk that such support leads to them being classified as workers or employees.

This creates a glass ceiling, where intermediaries cannot provide benefits for fear of individuals being re-classified as employees which would strain many business models and prevent the flexibility that those that earn in the gig economy enjoy. We should instead seek to create a glass floor.

Work status is built on a number of complex factors. Some of these cover added benefits or support provided which might make a relationship seem like employment. Others will look more closely at notions of control over how the individual carries out the task⁷ or their ability to substitute another in their place.⁸

Many intermediaries want to provide extra support and benefits for the self-employed people and workers they work with, but they cannot operate a successful gig economy model if they are deemed to be employers. This leads to bad outcomes for those that earn in the gig economy, such as lack of training or non-provision of insurance.

Training is one example of this. The provision of training would support self-employed people and workers to deliver their services to a higher standard and serve to increase the fees and jobs they command. But providing training, particularly for self-employed people, can also be interpreted by the courts to be an exercise of control by an intermediary over a self-employed person. For this reason, self-employed people working in the gig economy are denied training that intermediaries want to provide.

Intermediaries should be able to offer some form of safety net to those working in the gig economy - such as sick pay, pension contributions or maternity leave - without risking becoming employers. If anything the pandemic has reinforced the need for these systems, to ensure that people are adequately protected in times of difficulty.

Legislation should be amended or brought forward to allow intermediaries to provide certain benefits, from sick pay to maternity leave to training, without risk that this leads to worker or employee status for those businesses and self-employed people that rely on flexibility. This will benefit those that earn in the gig economy without risking the flexibility that is central to why people work in the gig economy.

It remains valuable for courts to consider the circumstances of the case when determining work status, but the provision of certain benefits should be walled off and excluded from any tests.

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