

# Getting Organised

## Low-paid self-employment and trade unions

Jason Brock | June 2019



## About the project

This report is the outcome of the findings of a literature review, a research roundtable with union officials and interviews with self-employed workers. It is the first of two Fabian Society research reports on improving employment conditions for low-paid self-employed workers.

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The Changing Work Centre was established by the Fabian Society and Community union in February 2016 to explore progressive ideas for the modern world of work. Through in-house and commissioned research and events, the centre is looking at the changing world of work, attitudes towards it and how the left should respond. The centre is chaired by Yvette Cooper MP and supported by an advisory panel of experts and politicians.

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## Summary

This report examines how unions are currently organising self-employed workers and seeks to identify best practice and to make proposals to improve organisation in the future. The report focuses on the low-paid self-employed and concludes there is ample scope for unions to develop a membership 'offer' directed at these workers, including both those who are genuinely self-employed and those who experience 'bogus' self-employment. It also focuses on the need for better use of 'WorkerTech' - technology that supports workers - and digital tools by unions to better connect with the self-employed. The report also identifies the need for coordinated campaigning action to address legal and regulatory issues around self-employment.

**Self-employment in the UK:** There are 4.8 million self-employed workers in the UK with 4 million of these being solo self-employed (ie without any employees themselves), respectively forming 15.1 per cent and 12 per cent of the total workforce. There has been a significant increase in self-employment over the past 20 years and this expansion now appears to be an entrenched feature of the UK labour market. Around 49 per cent of self-employed workers are low-paid, rising to 55 per cent in London.

**Self-employed workers and trade unions:** Only around 7 per cent of self-employed workers are members of a trade union, but there is no reason that the growth of self-employment in the UK cannot be converted into a new culture of self-employed worker trade unionism. In order to do this, unions will first have to be prepared to embrace new methods of organising, especially around the use of digital technologies, so that the lack of any straightforward 'shop floor' for self-employed workers can be overcome. Second, unions will have to acknowledge that self-employed workers are likely to desire a more individualised offer that appeals to their circumstances as sole traders.

**WorkerTech and digital organising:** Unions should invest in new digital tools and WorkerTech to allow them better to engage and to organise self-employed workers. Applications that are designed to promote and protect workers' rights, as well as facilitate campaigning to enhance their bargaining position, are flourishing in the United States and parts

of Europe but are still relatively underdeveloped in Britain. Initiatives like Work-It, Coworker.org and FairCrowdWork have demonstrated the reach and efficacy of WorkerTech in other countries and are suitable for adaptation to Britain's self-employed workforce. Since self-employed workers generally lack a consistent workplace, they are more likely to need the flexible and convenient service that WorkerTech can provide in order to access the full benefits of union membership.

**Union services for the low-paid self-employed:** Unions also need to build a service-based membership offer for the low-paid self-employed. Self-employed workers are concerned about their lack of rights and 'safety nets' in the world of work, even if they don't want to be classed as formal employees. The trade union offer to these workers should therefore focus on the provision of services to ameliorate these concerns – establishing insurance and benefit funds that are tailored to the needs of the self-employed. Similarly, unions can encourage the growth of self-employed worker cooperatives that provide a means for pooling risks and resources while also enhancing workers' bargaining positions with prospective clients. Unions such as BECTU, Equity and the Musicians' Union have used exactly these approaches to successfully recruit and organise a predominantly self-employed membership in the entertainment and creative industries. There is also a key role for unions in the provision of support services, including high-quality training offers that can help the low-paid self-employed to develop new skills and expand their business and earnings.

**Campaigning for legal change and better conditions:** Legal and regulatory changes are needed to improve the working lives of low-paid self-employed workers and unions should lead these campaigns. In particular, there is a need for better mechanisms to ensure prompt payments from clients and for a statutory definition of self-employment to help obviate the problem of bogus self-employment. There is also scope to negotiate day-to-day improvements for self-employed workers by promoting codes of practice or collective agreements for groups of self-employed workers, much as the National Union of Journalists has done with its Charter of Freelance Rights and as GMB has achieved in its 'self-employed plus' deal with Hermes.

## Key lessons for unions

### **Embrace WorkerTech solutions for self-employed members.**

Platforms like Work-It and FairCrowdWork can be adapted to the needs of the self-employed in Britain while commonplace apps like Slack and social media services can be readily used to promote 'connective action', as has been demonstrated by recent industrial action among fast-food workers. Since a traditional shop floor is often absent, new technology-enabled approaches are required to help workers communicate with each other and to form campaigns. As union membership is generally acknowledged to be an 'experience good' (ie its benefits are difficult to observe in advance), unions should make a particular effort to talk to new self-employed members proactively and discuss how they can help them in their particular situation so as to secure their ongoing membership.

**Provide tailored insurance and support services that appeal to low-paid self-employed members.** Unions should work with external providers to give the self-employed access to ameliorating coverage and to offer services that support self-employed workers in the particular challenges they may face, for example tax compliance.

**Encourage and aid efforts to set up cooperatives of self-employed workers.** Cooperatives formed by low-paid self-employed workers offer the opportunity to collaborate on the provision of administrative business functions and allow the low-paid greater scope to expand their business. They can complement the work of unions and protect against some legal challenges, resulting from interpretation of competition law, that organising workers could otherwise pose.

**Offer training provision for self-employed members.** Access to high-quality training provision can be especially difficult for the low-paid self-employed, but it can offer a route towards greater earnings and job satisfaction. The experience of unions catering to self-employed workers in the entertainment sector suggests that becoming a provider of such training can help unions and workers to better defend their interests. Similar provision should be extended to self-employed workers in other sectors.

**Build partnerships beyond the labour movement to appeal to self-employed workers.** By building partnerships with services that low-paid self-employed workers use, unions will have an opportunity to raise awareness and recruit members, while also being able to promote the interests of those workers. For example, co-working spaces are becoming more common and present an opportunity for unions to forge partnerships and encourage organisation of the self-employed workforce.

**Campaign for the clarification of employment statuses, including a statutory definition of self-employment.** A statutory definition of self-employment would end the position of self-employment as an 'anything else' category and give greater clarity to workers. It would help the voluntarily self-employed to defend their rights and help prevent companies from abusing the system.

**Campaign for the Small Business Commissioner to gain greater powers to penalise late payments and for businesses to embrace codes of practice in procuring external services from self-employed contractors.** Late payments and unclear contracts mean that the low-paid self-employed can commonly experience cash flow problems and don't realise all the advantages of self-employment that they should have. Unions, especially where they have recognition agreements with businesses already, should seek to negotiate codes of best practice when it comes to engaging contractors and should campaign for greater legal guarantees for self-employed workers on pay and conditions. The Small Business Commissioner offers a potential statutory basis for enforcement action against late payments.

## Introduction

This report examines current best practice in relation to union organising for self-employed workers and sets out proposals for new methods and approaches by which unions can support the low-paid self-employed. The number of self-employed workers in the UK has grown in the past decade, but very few unions have specifically sought to recruit and organise these workers at a sizeable scale. Self-employed workers can face distinct challenges from traditional employees and they require effective organisations to ensure that their rights and interests are protected. They also offer a valuable pool of potential recruits for unions striving to arrest declining membership.

### *Focus of this report*

This report is interested in self-employed workers who do not employ another person themselves. They number 4 million people and make up 12.6 per cent of the UK workforce.<sup>1</sup> By convention, these workers are often called freelancers, sole traders, or agency staff. Broadly speaking, we can classify these self-employed workers into three camps:

- The traditionally self-employed, including those served by existing unions in what are principally the creative, technical and skilled trades sectors (eg actors, barristers, and construction workers)
- The modern self-employed, including those sectors and occupations that have seen the largest growth in self-employment since 2008 (eg IT and professional services)
- The precariously self-employed, including those bogusly self-employed and those working in the gig/platform economy (eg couriers)

The low-paid self-employed, the particular focus of this report, are predominantly found in the latter two of these groups, which are also the least unionised. The Social Market Foundation (SMF) has identified that 49 per cent of the UK's self-employed are low-paid and 64 per cent of those workers are concentrated in just five sectors: construction; administrative and support services; transport and storage; professional, scientific and technical (focusing on design, photography, and translation services); and wholesale and retail.<sup>2</sup> The SMF also noted that London has an unusually large share of self-employment, standing at 18 per cent of all those in work and with 55 per cent of these being low-paid.



### *Self-employment in the UK*

Since the global financial crisis began in 2008, the UK has seen a significant rise in self-employment. In 2001, self-employed workers (including those who employ other workers) made up 12 per cent of the labour force (3.3 million workers). By 2017 this had climbed to 15.1 per cent (4.8 million workers).<sup>3</sup> The Bank of England estimated in 2015 that a third of the rise in total employment since 2010 had been generated by increased self-employment.<sup>4</sup> Past recessions have tended to witness a rise in self-employment too, providing an obvious outlet for dislocated labour, but the current trend is more prolonged.<sup>5</sup>

Higher self-employment is likely to be a feature of the UK labour force for the foreseeable future. Most of the occupations where self-employment has increased have also seen a growth in 'traditional' employment, suggesting that the expansion of the former is not a product of labour substitution.<sup>6</sup> Moreover, although the most recent data suggest that the growth in self-employment may be stalling, there has been no sign of decline in the face of a tightening labour market and the growth of available job vacancies. Although there is constant churn of individuals, the stability of the overall share of self-employment indicates that many self-employed workers are unwilling or unable to transition to employee status.<sup>7</sup>

A significant portion of self-employed workers proactively and positively choose self-employment. Indeed, the Chartered Institute of Personnel and Development has found that the 'pull' factors of commencing self-employment (especially independence and greater flexibility) are significantly more prominent than 'push' factors (principally necessity arising from unemployment).<sup>8</sup> Added to this is the fact that new technologies have enabled more flexible ways of working, and such developments seem likely to continue.

However, self-employment can be extremely challenging for many workers. It has been established, for example, that self-employment leads to lower lifetime earnings compared with employment.<sup>9</sup> The Office for National Statistics has determined that median weekly earnings are lower for the self-employed than they are for the employed and has also broken this down by sex, full-time versus part-time working, and level of educational attainment.<sup>10</sup> For the part-time self-employed, where we find the most precarious workers, earnings demonstrate little apparent correlation with educational attainment and this is especially true among women.

Self-employed workers rarely have the guaranteed hours and regular, predictable pay of employees. They also lack access to many other benefits that employees can take for granted, such as the minimum wage, holiday pay, sick pay, employer pension contributions, and maternity/paternity leave. They can also face challenges around unclear employment status. The low-paid self-employed in particular are sometimes falsely classified as being self-employed when they should be identified as employees or as having 'worker' status and, as such, they are denied the benefits that they should be entitled to.<sup>11</sup> More generally, formal contracts are often vague or non-existent and payments for work can be delayed or never materialise. In short, self-employed workers face challenges above and beyond those of employees and are often unaware of, or are unable to enforce, the rights that they have.

### *Trade unions and self-employed workers*

Although trade union penetration among the UK workforce continues to fall, union membership among the self-employed has demonstrated a slight growth in recent years and is now up to around 7 per cent. Considering that trade union membership among private sector workers as a whole stands at 13.5 per cent, this figure is quite impressive for a difficult to reach group.<sup>12</sup> It is probable that at least some of the increase is the result of union members formerly in employment transferring to self-employment while maintaining their membership.

Some unions have experienced particular success in recruiting the self-employed. The National Union of Journalists' London freelance branch alone, for example, has 4,000 members, more than 13 per cent of the union's total membership.<sup>13</sup> Similarly, specialist unions in the creative sector (where self-employment is either the norm or predominant) such as Equity, the Musicians' Union, and the BECTU sector of Prospect, have the majority of their membership drawn from the self-employed. Construction, another key area of self-employment, is well-catered for by Unite's construction section. The so-called 'gig economy' is another area of interest for union activity, with both established unions like GMB and newer outfits like Independent Workers of Great Britain actively organising with a view to exposing bogus self-employment.<sup>14</sup>

That being said, the lowest union penetration among the (genuinely) self-employed mostly exists in exactly those sectors where self-employment has grown and where low-paid self-employment is most concentrated – principally professional services, the broader service industry, and administration. Although specialist unions have long catered for self-employed members in certain high-skilled sectors there are only a few initiatives designed to appeal to the general self-employed.

There is no reason that the growth of self-employment in the UK could not be developed into a new culture of self-employed worker trade unionism. In order to do this, unions will first have to be prepared to embrace new methods of organising, especially around the use of digital technologies, so that the lack of straightforward ‘shop floor’ for self-employed workers can be overcome. Secondly, to attract self-employed members, unions will have to acknowledge that such workers are likely to desire a more individualised offer that appeals to their circumstances as sole traders.

A membership offer that focuses on the provision of specialised support, training and insurance is likely to be the best approach. Unions should have an advantage over professional associations in this area as they can appeal to a membership that crosses industries and sectors while also being able to reinforce a service offer with practical negotiation expertise and campaigning action that can deliver material benefits to the self-employed. Unions are also better suited than professional associations to tackle issues like bogus self-employment, for example. Moreover, since a business is likely to engage contractors across a wide variety of professions, only unions have the opportunity to build collective solidarity and to negotiate universal benefits for freelancers with any single company.

The success and continuing growth of the Freelancers Union in the United States demonstrates the potential appeal of trade unionism to self-employed workers. Its success lies in appealing to self-employed workers, whatever their profession or industry, by providing a package of benefits that works for them while also fostering a sense of collectivism through campaigning, hosting events and facilitating training that helps freelancers to develop their careers. This is exactly the kind of model that unions should embrace in the UK to ensure that they deliver meaningful benefits for self-employed workers.

## 1. WorkerTech and digital organising

Self-employed workers have to manage a far greater variety of administrative tasks than employees – contracts, tax, invoicing, regulatory compliance and so on. They are also far more likely to experience isolation and the challenges that come with it. Unions are ideally placed to help self-employed workers with these work-based issues. Yet the self-employed are also much harder for unions to reach than employees on the shop floor and different modes of communication are required to help bridge this gap. Since digital tools can help produce a sense of community across geographic distance, they are an obvious solution and the self-employed are prime candidates for engagement via WorkerTech, as overseas examples like FairCrowdWork and Turkopticon demonstrate.

Although the concept of WorkerTech has had some traction in the United States and in parts of Europe, there is much room for development in Britain. The TUC digital service offers workshops and support to member unions in developing tools, but much of its work has been directed to ensuring that unions have got their existing tools optimised rather than on crafting new approaches.<sup>15</sup> That being said, innovations like the TUC's WorkSmart programme offer an insight into how digital tools could be targeted to attracting self-employed workers into union membership.

At the same time, it should also be acknowledged that better use of existing digital communications technologies can help unions reach out to the self-employed. Successful examples of this can be found in the UK and unions in the entertainment industries have been trailblazers in developing this approach. General unions can apply lessons from their experience to the low-paid self-employed.

## TUC and WorkSmart

The TUC launched its WorkSmart pilot in June 2018 with the aim of recruiting low to medium income private sector workers in the 21 to 30 age range to the trade union movement. The project is built around an online platform on the basis that only a model on these lines will allow for the scale that the initiative, and indeed the union movement, needs. WorkSmart is not in itself a union membership, but the plan is to eventually take young workers on a journey towards integrated union membership ('WorkSmart Extra').

At its core, WorkSmart is a digital app that offers career advice alongside tools to help young workers navigate the challenges of their jobs while also offering a means to encourage them to consider issues in a collective way. The offer is much more individualistic than that of a traditional union – an approach informed by the TUC's research into what younger workers want – but it ultimately serves to encourage new forms of issue-based organising. The approach of WorkSmart is readily transferable to organising the self-employed, where an offer would also need to be more individual-focused while also seeking to build networks of disparate workers into a more formal organisation to tackle the common challenges they face.

### *WorkerTech for the self-employed*

Many unions, especially smaller and more specialised ones, are already using digital tools to organise workers. One roundtable participant told us about his union's use of teamchat app Slack to facilitate communication between members, something especially useful for branch-level organisation and quickly dealing with collective issues that arise. Almost all unions now use Facebook and Twitter – although they are far from uniform in how they do so – and are increasingly interested in exploring ways to develop conversations with users and members rather than simply acting as repositories of information.<sup>16</sup>

Yet the British trade union movement does seem to be behind at least some of its peers elsewhere in embracing and developing new technologies. The United States has many examples of innovative organising in which WorkerTech plays a fundamental part. One of the most successful instances is to be found in the OUR Walmart campaign where activists make use of an app called Work-It.<sup>17</sup>

OUR Walmart is a not-for-profit organisation that seeks to change Walmart's practices through collective action, although it is not seeking to formally unionise workers as such. Meanwhile, the Work-It app offers advice to workers when they have an issue and can quickly resolve most queries from its ever-expanding knowledge bank by employing artificial intelligence processes. Work-It then puts workers in touch with others who have similar issues and provides an ecosystem for developing ongoing engagement, seeking along the way to develop organisers who will take up online issues offline.

In Europe, a collaboration of German, Austrian and Swedish unions has established FairCrowdWork as an online discussion and review space for gig economy workers.<sup>18</sup> The site allows workers to share their stories of workplaces as part of an effort to understand the worker experience. More substantively, it allows for the aggregation of data to facilitate campaigning and acts as a way of directing users towards union membership.

The Turkopticon tool works in a similar way but is specific to crowdsourcing marketplace Amazon Mechanical Turk.<sup>19</sup> Amazon's system allows freelancers to undertake specific task-based work for various engagers in return for payment, but there is very little enforcement of payment itself and no negotiation of reasonable pay rates. Turkopticon crowdsources data by allowing Mechanical Turk users to rate engagers so that prospective contractors can avoid those that don't pay and prioritise those offering good rates.

Unions should seek to deploy technologies like those already in use to reach out to self-employed workers. The model of Work-It is especially worthy of consideration since its AI-enabled functions mean that the impact on workplace organiser time is limited (as well as allowing users to get a response quicker than an email inquiry). For self-employed workers this could provide a valuable service and offer a gateway to accessing a union's other services. Even simple tools, such as an interactive questionnaire for 'checking' one's employment status, could be useful and help to build campaigns around denied rights by putting individuals in touch with one another. The TUC's WorkSmart initiative, although directed at young workers, offers an adaptable model that can be tailored to self-employment.

The nature of self-employment also means that unions need to recruit from a geographically dispersed pool of workers. The lack of a straightforward shop floor is a considerable challenge to organising and, as was noted in

our roundtable, there has been a 'cultural decline of unionism'. Another roundtable participant noted that there has also been a 'shift to instantaneous expectation' among many union members who have come to view membership as more akin to service provision than anything else. This has led to some members joining and then quickly lapsing, as individuals only pay their subs when they perceive their personal need for immediate support. One way of overcoming such challenges is to ensure that unions make proactive contact with self-employed members shortly after they join the union to discuss directly how they can help them, and this practice should apply equally whether a new member is a Deliveroo rider or an administrative worker.

Unions should also deploy already common workplace tools such as Slack and Yammer to engage self-employed members in collaborative discussions.<sup>20</sup> Promoting a sense of community, however virtual at first, helps to instil collectivism. For example, one of our roundtable participants told us how their union had used Slack, a suite of collaboration and discussion tools, to communicate with their self-employed members when negotiating collective agreements.

Successful use of digital tools can lead to so-called connective action, where unions use social media technologies to collect information, organise campaigns and workers, and spread the message to the wider world.<sup>21</sup> This approach was successfully used in the 2018 'McStrike' fast-food workers' industrial action in Britain and involved Unite, BFAWU and GMB coordinating their efforts to maximise worker turnout and public engagement.

Embracing these digital models can also allow union activism to fit more flexibly around workers' lives. The West Virginia teachers' strike in 2018 was largely organised on Facebook, for example, and it should be straightforward for unions to replicate this kind of activity with self-employed workers.<sup>22</sup>

The difficulty is moving beyond simple discussion-based platforms towards more effective digital organising. Digital platforms like Coworker.org in the United States have proven to be an efficient way of allowing workers to initiate and scale up their own campaigns while also providing a means of connecting workers with one another. They have been especially useful in reaching gig economy workers and unions here should look to coordinate with similar services to improve their reach, especially among bogusly self-employed workers.

## Key lessons

**Unions should embrace WorkerTech solutions for self-employed members.** Platforms like Work-It and FairCrowdWork can be adapted to the needs of self-employed in Britain while commonplace apps like Slack and social media services can be readily used to promote 'connective action', as has been demonstrated by recent industrial action among fast-food workers. Since a traditional shop floor is often absent, new technology-enabled approaches are required to help workers communicate with each other and to form campaigns. As union membership is generally acknowledged to be an 'experience good', unions should make a particular effort to proactively talk to new self-employed members and discuss how they can help them in their particular situation so as to secure their ongoing membership.



## 2. Union services for the low-paid self-employed

Understanding the concerns and values of low-paid self-employed workers is fundamental to developing a union membership offer that appeals to them. Self-employed workers experience unique challenges, many of which are driven by the fact that they do not have access to the protections extended to employees, such as minimum wage legislation and access to holiday pay and sick pay. Fundamentally, they are running a one-person business and unions need to identify a package of support that helps them in this endeavour.

Recent research by the Association of Independent Professionals and the Self-Employed (IPSE) has found that their self-employed members have three principle fears. Developing benefits that ameliorate these should be the basis of developing a union service offer. The three fears are: not being adequately prepared for retirement (69 per cent of respondents); the time and costs of being investigated by HMRC (65 per cent); and not being able to work through sickness or injury (60 per cent).<sup>23</sup> More positively, they also found that workers valued being away from internal office politics (82 per cent) and having the freedom to choose projects that they actually wanted to work on (81 per cent). As such, a union membership package should also seek to protect and promote those aspects of work that the self-employed value.

Some unions have successfully developed a service offer that works for the self-employed. BECTU's work, for example, demonstrates the power that unions can have in traditional craft-based contexts where self-employment is prevalent. Similarly, the construction section of Unite offers evidence of successful union organisation in a field where self-employed and employed workers co-exist. Translating these approaches to the general self-employed is challenging, but there are plenty of pertinent lessons that can be learnt from their example.

## Entertainment industry unions and freelancers

The Musicians' Union, Equity, the Writers' Guild of Great Britain, and the BECTU sector of Prospect all cater to a membership primarily formed of self-employed professionals in the creative sector. All four unions have negotiated collective agreements covering rate cards and terms and conditions of engagement for freelancers. Because of the shared interests between their memberships they also work together in negotiations and have formed the Federation of Entertainment Unions (with the NUJ), through which they offer high-calibre training provision. In general, their approach has been to seek agreement with trade bodies, thus securing widespread implementation, or with large organisations, such as the BBC.

The unions also cater to their members' specific needs by providing specialist services that support freelancers in their careers. The Musicians' Union, for example, offers insurance, contract advice, help chasing payments, and offers a quality mark for approved engagers. BECTU offers tax advice and access to a tax consultant for specialist needs while WGGB offers contract vetting. All four unions offer pension schemes, although some are closed to new entrants, and they have in some cases negotiated additional contributions from engagers. In short, they offer the kind of services that, suitably amended, should also appeal to a much broader sweep of self-employed workers.

### *Insurance and assistance services for the self-employed*

Self-employed workers often feel concerned and stressed because they do not have access to safeguards that employees take for granted. Sickness pay, holiday pay, maternity/paternity pay, and redundancy pay are all unavailable to the self-employed and such workers need to make provision for this themselves while also dealing with the other challenges that self-employment brings. Although some of these issues could be ameliorated by attaining 'worker' status, there is little drive for this among the majority of the genuinely self-employed since it would bring other issues and restrictions.

Unions can provide a means for workers to pool risks and can become repositories of specialist skills and advice for freelancers just as they are for regular employees. For example, a tax investigation is a cause of stress for any freelancer. Unions should offer specialist services to assist self-employed members with processes such as this, perhaps working with partnering organisations to facilitate delivery. The Musicians' Union offers this service to its members, inclusive of member subscription rates, through such an agreement.<sup>24</sup>

Unions can also help to ameliorate the fear of being too ill to work by offering simple sickness and injury insurance to members, most likely via voluntary schemes rather than funded out of subscriptions. Helping self-employed members prepare for retirement is, obviously, a more complex endeavour. An IPSE report has suggested that pensions for the self-employed have a PR problem and need to be better branded and advertised.<sup>25</sup> Unions could have an important role to play here by encouraging take-up of pension schemes and collaborating with other unions and representative organisations to promote schemes aimed directly at self-employed workers. Insurance intermediary Hencilla Canworth, for example, works to facilitate insurance and pension provision across a number of unions and other bodies in the entertainment industry.<sup>26</sup>

In the eyes of the law some of these services will be provided to companies not individuals because many self-employed workers trade as limited companies. This may need to be reflected in the way services are paid for. For example Unionen, a white-collar union in Sweden, has adopted a service charge levied upon the company as well as the individual member and such a model should be explored in the UK too.<sup>27</sup> This could be a flat fee, contingent on the fact that the company has no employees, or a charge based on turnover.

Although a simple service-type approach is the most straightforward way of crafting an offer to drive membership recruitment, it comes with challenges. Unions could quickly find themselves in a competitive marketplace where other organisations, including for-profit companies, might be able to offer the same provision at less expense. Some of the offers outlined above are already offered by IPSE, for example, although

this trade association generally offers cash benefits to meet needs not direct services. Unions can differentiate themselves from IPSE, or a similar service, by focusing on the low-paid self-employed and the conditions of work, since IPSE has tended to focus on campaigning around taxation issues.

In the US the Freelancers Union offers exactly the kind of benefits outlined here. They are all provided on an opt-in basis and at competitive prices that are charged independently of one another, allowing members to choose the insurance and coverage that suits them.

### *Stimulating the growth of cooperatives for the self-employed*

Across Europe and elsewhere there are examples of cooperative models being embraced by self-employed workers, often in collaboration with unions. The Musicians' Union, for instance, has encouraged the establishment of cooperatives as a way of providing employment agency services for self-employed music teachers and musicians.<sup>28</sup> Equity has promoted similar collaborations for actors.

The purpose of such cooperatives – which are jointly and equally owned by self-employed members – is to provide a means of mutual support for self-employed workers while avoiding the downsides of traditional for-profit employment agencies. Back office functions can be shared, and the collaboration can provide workers with better bargaining power when it comes to chasing payments and negotiating rates. They also allow the self-employed to collaborate around setting fees for their work without breaching competition regulations as the co-operative acts as the engaged entity. There is also the possibility of establishing credit unions to provide secure and competitive finance to self-employed workers, and cooperatives can choose to pool a certain share of each member's income to provide access to holiday and sickness pay. In short, cooperatives offer low-paid workers a chance to develop a mutual safety net and a means to grow their business.

Cooperatives of self-employed members in the UK are mainly prevalent in the entertainment and creative industries, but some cater for supply teachers, users of co-working space, and taxi drivers, among others.<sup>29</sup> The movement is more advanced in other European countries, with France, Spain and Belgium in particular offering state support and facilitative policies encouraging their development. There has generally been a recognition in those countries that cooperative societies offer a model to support self-employed workers while also providing a nursery incubator for businesses that may grow and prosper.

Cooperatives should not be seen as a surrogate for, or even as a challenge to, unions. Although some of the benefits a cooperative can deliver for its members might be deliverable by unions as well, it is sensible for a degree of specialisation to exist. The constituent unions of the Federation of Entertainment Unions have been especially supportive of cooperative developments in their industries.<sup>30</sup>

The age of digital platforms offers a golden opportunity to push forward the growth of cooperative solutions and collective ownership alternatives. Unions should capture this moment of opportunity and encourage the development of cooperatives of freelancers in their industries and sectors. They should offer advice and support to their members as to how to go about establishing such ventures and could even provide some funding by purchasing loan stocks in the societies. In return for their nurturing hand, unions are likely to develop a committed base of activists and by helping their members to coordinate they will aid in developing their collective strength with respect to clients.

#### *Unions as professional training providers*

Self-employed workers need to access high-quality training opportunities if they are to succeed and thrive. In the case of many employees these opportunities are funded and provided by their employers. For the self-employed, this is clearly not an option and time spent training is also time spent away from earning a living, unless the learning can be provided on a flexible basis. Unsurprisingly, the IPA (Involvement and Participation Association) found that participation in formal training is low among the self-employed, and especially low among low-earners.<sup>31</sup> This is very disappointing as IPSE and Community have identified the importance of training as a route out of low pay and insecurity for the self-employed.<sup>32</sup>

Unions are the obvious organisation to help tackle this issue. By virtue of their superior scale and resources they possess a capability beyond that of small-scale cooperatives to facilitate the delivery of training to their members. There are challenges, though, since members will have a broad array of interests and requirements, meaning that a one-size-fits-all model will not work.

To allow for the delivery of a sufficiently robust and broad programme of training, unions will need to collaborate across their sectors and industries. They should work with outfits like FEU Training, an inter-union collaboration that focuses on business skills training, and establish more specialist vehicles where necessary that allow for sufficient scale to effectively provide a diversified programme.<sup>33</sup>

Although a causal relationship between low earnings and low training in self-employment is not clear, the correlation is sufficient to justify an immediate focus on those five sectors that the Social Market Foundation identified as featuring 64 per cent of the UK's low-paid self-employed.<sup>34</sup>

Specific training provision will doubtless vary from industry to industry, but a general programme that focuses on business development, contract advice, and financial and tax matters would have a general appeal. The Freelancers Union's SPARK programme has coupled its training offer with a 'get-together' atmosphere and has proved successful in both attracting participation and strengthening the union as a community of members.

Investing in training provision obviously benefits individual members but it can also enable unions to become 'gatekeepers' of quality in a given industry. One union official made it clear at our roundtable that one of the reasons for their success in negotiating collective agreements is that the union had become a key provider and certifier of industry-relevant training in their sector. Where unions are representing freelancers in industries that have an especially high concentration of such workers, or where those workers are otherwise indispensable, the negotiating power they possess has increased markedly by following this model. Building up this level of recognition in areas of modern self-employment will take time, but it is evident that the low-paid self-employed will benefit from training provision and that there is demand for it.

### *Building partnership offers beyond the labour movement*

As many self-employed workers will be engaged by multiple businesses, often at the same time, the standard union message of offering a voice in the workplace is less likely to appeal to them. Unions are, however, extremely well placed to develop tangible partnership offers that provide services valuable to self-employed workers and use this as a way of attracting them towards membership.

## **Labour Xchange**

The trade union Community has been working with the Labour Xchange platform to provide support to self-employed workers.<sup>35</sup> Labour Xchange seeks to develop a socially conscious version of the gig economy and incorporates safeguards, such as only allowing an engager to hire the same person three times before saying that they should be issued with a permanent contract of employment. Labour Xchange's primary user base is formed of those seeking extra income on an ad hoc basis rather than permanent employment. As such, many are low-paid and financially struggling so the app seeks to go above usual gig economy platforms by offering genuinely flexible work, a wide range of employers and a variety of work to suit different worker interests and needs.<sup>36</sup>

Community seed-funded the platform to the tune of £40,000 and offers a package of advice and support for all users of Labour Xchange, whether or not they are members of the union. The union hopes this approach will lead to increased membership over time. It is a pragmatic and creative response to the rise of gig economy platforms, by developing a 'best in class' example.

Unions are well known for offering discounts to their members. One important example is the case of discounts for work-related tools and equipment. This can bring very practical benefits and is a way of reaching out to self-employed workers who may otherwise have relatively low rates of unionisation.<sup>37</sup>

For tradespeople in construction, or workers in almost any sector, negotiating equipment discounts for members should be a top priority. A bolder initiative would be for unions to facilitate loans to help the self-employed to purchase tools. By linking this up with the development of credit unions there is also the potential to encourage the use of cooperative finance.

For many service sector self-employed workers – a growing area of low-paid self-employment – the key requirement to do the job is the ability to access a suitable working space. The growth of co-working spaces in Britain is indicative of the growth of self-employment. Developing partnerships with co-working spaces is also a way to overcome the lack of a traditional shop floor for many self-employed workers.

Co-working spaces can be a very effective means of combating isolation among self-employed workers. One of the consistent findings of surveys into the working lives of the self-employed is their concern about isolation which is a well-known cause of mental health problems.<sup>38</sup> One of our self-employed interviewees also noted that isolation was among the greatest challenges they faced, and they combatted this by using co-working space. This had also allowed them to develop a network of peers to share advice with and had even led to additional business opportunities.

Co-working spaces offer flexibility for workers and are prime candidates for cooperative models of organisation, although purchasing property requires considerable capital investment and cooperatives are often poorly placed to secure this. Again, alliances with unions provide a method for helping to overcome these challenges and it may well be prudent to rent underused spaces rather than purchase property. It should also be noted that co-working spaces are not necessarily limited to white collar occupations – the concept of ‘maker spaces’ is being pushed as a way of encouraging collaboration and co-working among physical trades.<sup>39</sup>

Unions should look to promote the development and growth of co-working spaces and seek to build relationships with providers such that they gain ready access to workers and are able to offer support. Indeed, the spaces could in themselves become a locus for member organisation even in a peripatetic workforce.



## Key lessons

### **Unions should provide tailored insurance and assistance services that appeal to low-paid self-employed members.**

Unions should work with external providers to give the self-employed access to ameliorating coverage and offer services to support workers in the particular challenges, such as tax investigations, that they may face.

### **Unions should encourage and aid efforts to set up cooperatives of self-employed workers.**

Cooperatives formed by the low-paid self-employed offer workers the opportunity to collaborate around provision of administrative business functions and allow the low-paid greater scope to expand their business. They can complement the work of unions and protect against some legal challenges that organising workers could otherwise pose.

**Unions should offer training provision for self-employed members.** Access to high-quality training provision can be especially difficult for the low-paid self-employed, but it can offer a route towards greater earnings and job satisfaction. The experience of unions catering to self-employed workers in the entertainment sector suggests that becoming a provider of such training can help unions and workers to better defend their interests and similar provision should be extended to the general self-employed too.

**Unions should build partnerships beyond the labour movement to appeal to self-employed workers.** By building partnerships with services that low-paid self-employed workers use, unions have an opportunity to better attract their attention and recruit members while also being able to promote the interests of those workers. Co-working spaces in particular are becoming more common and present an opportunity for unions to partner and encourage organisation of the self-employed workforce.

### 3. Campaigning for legal change and better conditions

Unions are excellent campaigning organisations and they should do more to apply their expertise to low-paid self-employed workers, following the example set by GMB, Community and others. In doing so, they are likely to encourage positive engagement from the self-employed. There is a particularly important campaigning role for unions in the protection and extension of self-employed workers' rights since such they do not usually have recourse to employers' HR processes or employment tribunals.

Self-employed workers often face difficulties around their terms and conditions of engagement. Late payments and unclear working arrangements are common issues where unions could focus their campaigning efforts towards seeking regulatory change or better codes of practice.

Many low-paid self-employed workers also face the additional challenge of a deliberately unclear employment status. Bogus, or false, self-employment arises when an employer disguises employment as self-employment. Historically, this has primarily been an issue in the construction industry, but more recently it has expanded to cover other sectors, especially with the rise of platform-based work. In 2015, Citizens Advice estimated that up to 460,000 workers could be bogusly self-employed.<sup>40</sup> Such workers are denied their legitimate claims to holiday pay, sick pay, maternity pay, jobseeker's allowance, auto-enrolment pensions and employer pension contributions, and other workplace rights. Unions have been active in tackling this issue in individual businesses, albeit with mixed success. Greater emphasis should be directed towards regulatory change to help eliminate the issue.

## Uber, Deliveroo, and the problem of employment status

GMB has a considerable membership among private hire taxi drivers and has taken Uber to an employment tribunal in an effort to secure better rights and conditions for its members. GMB argued that Uber drivers should be classified as 'workers' not self-employed contractors and this argument was endorsed by the employment tribunal 2018. Since this ruling, Uber has refused to recognise worker status and has engaged in a series of appeals against the decision which have so far been unsuccessful. Uber maintains that its drivers are independent contractors and do not fulfil the criteria for either worker or employee status. Individuals deemed to be 'workers' would be entitled to holiday pay, sick pay and the minimum wage among other benefits. GMB estimates that Uber's 40,000 drivers have lost out on around £18,000 each as a result of the company not according the correct status to them.

In a similar example, the Independent Workers' Union of Great Britain (IWGB) recruited Deliveroo riders as members and sought union recognition via the Central Arbitration Committee (CAC). The CAC determined that the riders were, in fact, self-employed and thus IWGB had no right to recognition, although IWGB now has High Court permission to take this decision to judicial review on human rights grounds. The conditions of the Deliveroo riders and the Uber drivers are similar but the right to send a substitute to undertake the work – a fundamental element of genuine self-employment – has resulted in different decisions being reached regarding their workers' employment status.

These cases illustrate the problems in Britain's three-tier system of workers' rights. Self-employed contractors have only the protection of health and safety regulations and anti-discrimination law (and even these have been watered down in recent years); while employees have access to the full range of core protections. In between, people who are self-employed and designated as 'workers' are provided with additional rights, such as minimum wage, holiday pay, working time regulations, and access to autoenrollment pension schemes.

Where individuals sit in this structure is not a product of mutual agreement but a matter of fact in law based on the real conditions and nature of the work. A contract specifying that an individual is self-employed has no force, if the facts of the relationship mean he or she meets the criteria for a worker or employee. The complexity of defining employment status is compounded by the fact that no statutory definition of self-employment exists.

### *The problem of employment status*

The UK has a three-tier system of employment rights and it is sometimes difficult to say which category a particular worker belongs to (this is compounded by the fact that there are only two employment statuses for tax purposes). The lack of a clear, statutory definition of self-employment has led to particular concerns with respect to bogus self-employment.

These are workers who are told they are self-employed and lack the protections and benefits of employment, when the facts of the relationship suggest they are employees. There are also examples of businesses ignoring the principle that self-employed workers should be able to provide a substitute rather than being required to deliver services personally. Such practices leave workers bearing all the costs and risks of self-employment while being denied the flexibility and control which self-employment is supposed to bring. Usually these practices are adopted to save companies money, in particular pension and national insurance contributions and the costs of statutory leave. In short, structuring a workforce around bogus self-employment allows firms to avoid paying their fair share.

Although bogus self-employment directly affects a minority of the workforce, it is a growing issue for all workers because some businesses are using it as a way to obtain an unfair competitive advantage. Bogus self-employment is also commonly perceived by workers to be the most precarious form of work apart from informal or undeclared work.<sup>41</sup>

In many cases self-employed workers should have 'worker' status and the rights that go with it – as the Uber example demonstrates.<sup>42</sup> It should be noted, though, that one roundtable participant pointed out that worker status was not especially relevant in their union's sector as a great number of their members contract via a company structure in which they are sole director/employee.

The Law Society has set out a number of proposals for clarifying the status of self-employed contractors, workers, and employees and suggests that the current system is too open to interpretation and abuse.<sup>43</sup> Its proposed definitions would have the effect of ensuring that far more gig economy workers are accorded formal worker status, especially by providing a statutory definition of self-employment rather than leaving it as an 'anything else' category.

Unions should push for clarification of employment status along the lines advocated by the Law Society. A statutory definition of self-employment has merits – especially if it firmly establishes the autonomy and flexibility that the self-employed should have in carrying out their work – but the proposal is contentious, and our roundtable participants debated the issue and were divided on whether to recommend it. It is also worth noting that some unions, such as Equity and BECTU, support worker status in terms of employment law but defend their members’ ability to be classed as self-employed for tax and national insurance purposes.

A more radical possibility, floated by a one roundtable participant, would be the normalisation of employee status unless a more appropriate status could be affirmatively proven. This would fundamentally alter the existing principle that one’s employment status is a matter of fact in law and not something simply specified by contract (whether one-sided or mutually sought). It would also likely throw up challenges to those who genuinely desire self-employment, so is not included in this report’s recommendations.

Interestingly, when we interviewed a self-employed worker in the construction sector he indicated that his main concern was that he didn’t get the full benefits of self-employment and showed little interest in being accorded employee status. Indeed, as one of our roundtable participants noted, not all self-employed workers are keen to be accorded formal worker status as this might also increase the amount of national insurance contributions they pay, diminish their flexibility, and could limit their expense-based tax deductions. Clarification of employment status would help to both ensure that people who should be employees are classed as such and get their rights; and help those who remain as self-employed to be in a position to better assert full the full rights and flexibilities of self-employed workers.

### *Improving terms and conditions for self-employed workers*

Those who voluntarily choose self-employment often value it for the flexibility and diversity of work that it can bring. At the same time, their terms and conditions of engagement are often the product of a 'buyer's market' and workers are too often required to operate at the whim of their engagers when they should, by virtue of being self-employed, have personal control over how and where they complete their work.

The gig economy has compounded these issues in its development of complicated pay practices, often predicated upon algorithms to balance supply and demand; and the use of applications that can blur the lines of employment status by providing de facto supervision of work. Beyond the gig economy, though, there also exist ongoing problems around engagers insisting upon unreasonable and arduous terms.

## **GMB, Hermes, and the 'self-employed plus' deal**

Following a protracted dispute, the courier firm Hermes struck a deal with the GMB union to offer a new type of contract that incorporated a package of benefits for its self-employed workers. The collective bargaining deal is the first of its type and provides full workplace recognition for GMB, holiday pay for workers, and a guaranteed minimum pay rate of £8.55 per hour. Hermes' self-employed workers can decide whether or not to sign up on an individual basis. It's worth noting that some pre-existing premium pay rates are precluded, and Hermes will require workers who opt-in to utilise routing software to determine their deliver rounds.

The 'self-employed plus' deal is a positive example of unions delivering on a collective bargaining basis for self-employed workers while tackling the worst excesses of the gig economy. Some issues appear to be unresolved, however. Although the benefits won from Hermes broadly correlate with those of formal worker status, the additional supervision that Hermes will exercise over their couriers might lead HMRC to conclude that the workers are employees for tax purposes (HMRC recognising only two statuses – employed and self-employed). Moreover, the important issue of sick pay is not included. Overall, however, the deal is an example of good practice in unions and businesses who use self-employed workers coming together to negotiate an outcome that demonstrates a balancing of flexibility and security for workers.

One roundtable respondent noted that dependence on clients was a key vulnerability for self-employed workers, especially those who are low-paid. Although the context is different to an employer-employee relationship, this is still an area where unions are well placed to offer support and assistance. The main issue with clients experienced by freelancers is late payments, or even a lack of payment at all.<sup>44</sup>

Chasing a late payment is currently, at best, a time-consuming process and can often involve workers having to use the courts. Unions can establish methods of assisting freelancers in chasing payments by directly providing invoicing functions or even forming agencies (which some clients require before contracting work). Community is especially noteworthy in this area as it provides an optional invoice factoring service to members, although many workers are reluctant to use the service for fear of alienating their clients.

A more profound change would be to lobby for the Small Business Commissioner to be given greater power to enforce timely payments and levy fines against those firms that fail to pay. Indeed, even better utilisation of the commissioner's 'name and shame' powers may go some way to improving the issue, but this relies on good reporting from the self-employed. In this, unions could play a key role by facilitating the collection and dissemination of data. They may also consider seeking to establish their own 'quality mark' or similar, perhaps via the TUC, for firms that commit to making prompt payments and establishing good payment processes.

Unions should also consider following the example set by the European Federation of Journalists and the NUJ in developing a charter of freelance rights.<sup>45</sup> This charter contains some demands that are particular to journalism as a field, but many of the principles are readily extendable to freelancing in general. In particular, the stipulations that freelancers should have decent fees, equal access to social security institutions, and freedom to decide how to conduct their work have universal appeal.

Where unions have employee recognition agreements, or are seeking them, they should work with businesses to develop a parallel code of practice in procuring services from outside that includes the requirement to make payments in a prompt manner. It should also include confirmation that contractors can complete the work in their own manner with their own equipment, allow reasonable use of a substitute worker to take place, determine a clear delivery schedule, establish ownership of any copyright, and include provision for an early termination payment or paid notice period if the contract is truncated by the engager. Indeed, some of these stipulations

would be win-win for a firm's employees, as they will protect them from bogus self-employment or outsourcing motivated by firms seeking labour that under-cuts existing workers. Again, unions could consider establishing a quality mark for businesses in this respect. Positioning the union movement in this way would make it clear that it exists to support all workers, not only those who are employees in workplaces with union recognition.

Although EU competition law has been interpreted as limiting the ability of unions to collectively bargain for self-employed workers, campaigning for a procurement code should not contravene this.<sup>46</sup> Indeed, the GMB-Hermes 'self-employed plus' deal is essentially an example of this in practice. A bigger issue is that businesses might be concerned about offering too many benefits to contractors in case they might later be identified as employees, adding further weight to the need for a statutory definition of self-employment. This should include a clear set of 'safe harbour' benefits that businesses can offer their contractors, without any fear that this will lead to them being classified as employees.

## Key lessons

### **Unions should campaign for clarification of employment statuses, including a statutory definition of self-employment.**

A statutory definition of self-employment would end the position of self-employment as an 'anything else' category and give greater clarity to workers, help the voluntarily self-employed to defend their rights and help prevent companies from abusing the system.

### **Unions should campaign for the Small Business Commissioner to gain greater powers to penalise late payments and for businesses to embrace codes of practice in procuring external services from self-employed contractors.**

Late payments and unclear contracts mean that the low-paid self-employed can commonly experience cash flow problems and don't realise all the advantages of self-employment that they should have. Unions, especially where they have recognition agreements with businesses already, should seek to negotiate codes of best practice when it comes to engaging contractors and should campaign for greater legal guarantees for self-employed workers on pay and conditions. The Small Business Commissioner offers a potential statutory basis for enforcement action against late payments.



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