

Domestic Work and the Gig Economyⁱ

Dr Natalie Sedaccaⁱⁱ

1. Introduction

The gig economy and platform work present a series of challenges for workers' rights, including a lack of security and guaranteed hours, mis-classification of workers as self-employed independent contractors, the absence of basic rights protections, and obstacles to collective bargaining (e.g. De Stefano and Aloisi 2019; Behrendt, Nguyen, and Rani 2019; ILO 2021b). This chapter addresses domestic work in the gig economy: the provision of cleaning, childcare and other housework through online platforms.ⁱⁱⁱ This is a growing sector, with figures showing a rise from a total of 28 domestic work platforms worldwide in 2010 to 224 in 2020 (ILO 201a, xvii) but it has received little attention to date compared to its importance (Mateescu and Ticona 2020, 58; Dukes 2020, 222). As a form of labour primarily performed by women within the 'private sphere' of the home and family, domestic work has long been devalued and is often subject to exclusions from rights protections and / or failures to enforce rights (e.g. Gutiérrez Rodríguez 2012; Mantouvalou 2012; Albin 2012; Mullally and Murphy 2014). The move to provide domestic work through platforms could be expected to increase the sector's visibility and therefore to facilitate increased protection and recognition of domestic workers. However, this chapter argues that the risks in the gig economy model tend to intersect with and exacerbate, rather than offset, longstanding shortcomings in the regulation of domestic work.

The chapter draws on a small number of existing studies of domestic work in the gig economy, which focus on Australia (Flanagan 2019), South Africa (Hunt and Samman 2020), the US (Mateescu and Ticona 2020), Berlin and New York (van Doorn 2021), and Denmark and other Nordic countries (Kilhoffer et al. 2019; Jesnes and Nordli Oppegaard 2020). Given the lack of empirical or detailed studies of domestic work and the gig economy in Britain,^{iv} it also utilises first-hand analysis of platforms providing cleaning services (cleanzy.com, helping.co.uk, Handy UK, Task Rabbit UK, Emop and Tidy Choice) and childcare (childcare.co.uk, sitters.co.uk, Yoopies and Bubble), which were identified as relevant through references in the limited literature and web searches. Each platform's website was reviewed, including the information this provides about working for them, alongside external articles about the platform and worker reviews on the site indeed.com where available.^v

The next section addresses key challenges raised by domestic work and the gig economy, considering their interrelations with (a) other forms of domestic work and (b) work in other sectors of the gig economy. It analyses how the denial of employee status and employment rights existing across the gig economy manifests itself in domestic work, creating a precarious situation for workers. It further argues that the increased visibility that comes from working via a platform has not translated to improved rights in and valuation of domestic work, instead exacerbating surveillance and control of workers. Ranking and algorithms amount to a new means for the domination of workers and can undermine the supposed flexibility of work in the gig economy, amplify prejudiced views by service users, and cause unfairness when utilised to determine whether workers can remain on platforms and the work available to them.

Section 3 begins by outlining the longstanding devaluation of domestic work through its association with the ‘private sphere’ of the home and family and conflation with women’s unpaid labour in family homes. It addresses the distinctive manifestation of this phenomenon in the gig economy through a lack of guaranteed hourly rates and unpaid travel time / costs, lower rates for domestic and cleaning work and the segmentation of women into these roles. It argues that these conditions perpetuate devaluation in the sector and undermine attempts to improve conditions. Section 4 considers the difficulties of collective bargaining and organisation in domestic work and the gig economy before presenting two known examples of collective agreements between unions and domestic work platforms. It highlights the significance of these developments and the setbacks the more established agreement has faced, identifying shortcomings in legal protection for gig workers’ freedom of association and arguing for the universal protection of collective organisation based on human rights standards. The chapter concludes by outlining an agenda for further research, drawing some preliminary conclusions from the material available to date. Given the continuities it highlights between the exploitation and lack of rights for gig economy domestic workers with those in other types of domestic work as well as elsewhere in the gig economy, it argues for strategies to improve rights to take on board insights from analysis of feminised forms of labour that have traditionally been excluded from labour law protection.

2. Domestic work and the gig economy – key challenges

a) Employment rights and status classification

The gig economy is characterised by a lack of employment rights and denial of employment status, allowing platforms to shift risk directly onto workers and leave them outside labour and social rights protections (De Stefano and Aloisi 2019, 366; Hauben, Laenaerts, and Waeyart 2020, 8, 20). In Britain, this plays out against the background of three classifications: employee status, as defined in Employment Rights Act 1996, s230(1) and (2), comes with all statutory employment rights, while s230(3) of the same Act defines ‘worker’ status (‘limb b worker’) which provides for more limited rights, including minimum wage and working time protection, but not remedies for unfair dismissal. Those deemed not to meet either definition are viewed as self-employed independent contractors excluded from even the limited ‘limb b worker’ set of rights, and many platform website allude to this third status. The Helping site, for example, says ‘As a self-employed service provider, you are your own boss... You decide where, when and what cleaning offers you accept and at which hourly rate.’ While the opportunity for workers to set their own prices is portrayed as a free choice, this tends to create a ‘race to the bottom’ (van Doorn 2021, 61). It poses a danger of pay rates that are, at worst, below minimum wage, but in any event not high enough to offset other costs of being self-employed and thus without benefits such as holiday and sick pay. Cleaners placed in direct competition are pushed to minimise the rates they request, while lack of sick pay makes being ill ‘a problem that you have to solve’ – an especially troubling position to be in during a pandemic (Altenried and Niebler 2021).

The security and protection gaps in the gig economy and other forms of precarious work are often purportedly justified through the concept of ‘flexibility’ – the idea that workers benefit from choosing when they want to work rather than having to commit to particular hours. While some worker reviews praise flexibility unequivocally (e.g. regarding Tidy Choice), elsewhere this is more tempered. A review of Helping praises the flexibility of working hours before noting the lack of pension, holiday and sick pay provision give the role’s location in the gig economy, exemplifying how flexibility can be a double-edged sword. The situation calls into question why individuals that need some control over their hours should have to pay for this though a lack of basic benefits and security.

Employment security is also a substantial concern. Not only do non-employees fall outside unfair dismissal protections, but also, platform workers often lack access to social protection, which is an especially prevalent problem for those who depend on gig economy work as opposed to those who perform it as a way of generating additional income (Behrendt, Nguyen, and Rani 2019, 20-25). This mirrors the domestic work sector, where lack of social security access has been especially stark in the pandemic context: with 81.2% of domestic workers in informal employment, many lack access to income replacement or support schemes (ILO 2021b, 24, 230). This problem is pronounced in the UK owing to limitations in the coverage of schemes for employed and self-employed persons (Adam, Miller, and Waters 2020; Ewing and Hendy 2020, 519) and the bar on most migrant workers on visas accessing benefits from public funds (Yeo 2019). Even where platforms ostensibly provided sick pay or other benefits during Covid-19, this was hampered by a lack of clarity, overly demanding paperwork requirements and workers' fears of retribution including deactivation if relying on these mechanisms (Ticona and Mateescu 2021). Without a safety net, the consequences of losing platform work are more severe, intensifying pressure to accept poor conditions.

b) Visibility, surveillance and control

Domestic work traditionally suffers from a lack of visibility and scrutiny, since it takes place behind closed doors in private households and is not generally subject to the same provisions on inspection as public workplaces (ILO 2016). In the UK, the Health and Safety at Work Act 1974, s.51 excludes those employed 'as a domestic servant in a private household' from its scope, leaving workers facing many risks to their health and safety (Rodgers 2016, 181).^{vi} While individuals working via platforms may be less likely to meet the 'domestic servant' definition, they are conversely more likely to be deemed responsible for their own health and safety protection if classified as fully self-employed. 'Limb b' workers have also received more limited health and safety protection than employees, although a recent challenge to this by the IWGB union^{vii} was partially successful (Hobby 2021).

The provision of domestic services through online platforms has the potential to increase the work's visibility, which could be hoped to facilitate improved rights and valuation in the sector. Yet to date there has been little realisation of this potential, with visibility often failing to

translate into increased benefits for those performing the work or to subject working conditions to more scrutiny. Instead, the process is often unidirectional, with platforms allowing customers to rate workers while the opposite functionality may either not exist, or have little practical effect for individuals that need to work, leaving them in a disempowered position (Hunt and Machingura 2016, 27; Choudary 2018, 16). Workers often receive little detail about new clients and the amount of time they will be expected to spend (van Doorn 2021, 59) and lack protection against unreasonable demands by service users (Prassl 2018, 57).

At the same time, platforms provide additional mechanisms for surveillance and discipline of workers, who may be under pressure to upload detailed personal information, such as links to social media pages to attract clients, even if some resist this (Mateescu and Ticona 2020, 63). The increased control and surveillance interacts with pre-existing negative assumptions about domestic workers. This can be traced back to the concentration of racialized women in the sector and the construction of domestic work as dishonourable because of its association with the body and physicality (Anderson 2000, 142), with both ‘femininity’ and ‘raciality’ understood as markers of inferiority (Gutiérrez Rodríguez 2010, 110). Accordingly, the new surveillance mechanisms can be understood as ‘shaped by centuries of suspicion about the mostly Black and brown women who perform essential reproductive labour’ (Ticona 2020). Longstanding distrust can have a particular impact when mediated through a platform. Consider the case of a US parent quoted in a news article on their concerns about using a babysitting app: ‘I’ve tried a few cleaning ones and ended up with crap cleaners. I can cope with an unmopped floor... but can’t compromise on my son’s safety’ – with the platform’s response emphasising the screening process and information to be shown about the babysitter’s history (Rampton 2019). This demonstrates how such concerns, albeit understandable, can drive an intensification of surveillance, which can be particularly problematic if the impression the platform creates about the worker is shaped by opaque systems of ratings and algorithms.

c) Discipline and the role of ratings

Domestic work outside the gig economy has been heavily characterised by employer domination, facilitated by legal frameworks that fail to protect workers. In Britain, the historical category of ‘menial servant’ from the 15th century was a precursor to the ‘domestic servant,’ with a relationship understood to be based on status rather than contract and a

personal, deeply unequal relationship with the ‘master’ (Albin 2012, 232-38; Dukes, this volume). The current legal framework in Britain recreates the relationship of domination in various ways, including the exclusion of workers classed as ‘domestic servants’ from normal weekly working hours limits, leaving little time for a private life, and a highly restrictive visa that makes it very difficult to change employer or challenge poor conditions (Mantouvalou 2015; Gower 2016; Sedacca 2021b, 144-7).

In the gig economy, direct domination by a single employer is superseded by the discipline and control of workers through the platforms’ systems of ratings / rankings and algorithms (Prassl 2018, 54). As platform labour substitutes for more direct and casual ways of obtaining domestic services, a transition takes place ‘from *servant labour* to *capitalist service labour*’ with workers ‘brought directly within the disciplinary scope of transnational corporations: closely monitored, expected to be available at short notice’ but lacking the ‘job security or collective voice’ expected in a unionised workplace (Huws 2019, 19-20). This can be conceptualised as a shift from ‘dyadic domination’, marked by the need to fulfil the whims of an individual employer, to ‘structural domination,’ where the market becomes the primary method of disciplining workers via rules that lack transparency and are not open to workers’ contestation (Flanagan 2019, 71). Therefore, even where workers are nominally free to move jobs, this does not necessarily amount to a substantive liberty because alternatives fail to offer ‘sufficient remuneration or security to facilitate the conditions for a flourishing life’ (Flanagan 2019, 71, citing Rahman 2017; see also Buendia and Bogg, this volume).

These systems mean the perceived advantages of working on the platforms are highly contingent, and flexibility may be more apparent than real. Even where work in the gig economy helps working mothers and others with caring responsibilities, the emphasis on adaptable schedules alone fails to address societal structures that lead to the expectation on women to perform the bulk of this unpaid labour (Hunt and Samman 2019, 23). In any event, since the ratings systems tend to favour those with wider availability, those seeking hours that are more limited are often disadvantaged. Cancellation tends to have a negative on ratings (van Doorn 2021, 62), with Handy workers in the US reporting severe penalties for missing jobs and needing to keep extremely high ratings to earn competitive wages (Griswold 2015). Such practices clearly stand to disadvantage those with caring responsibilities who may become unavailable at short notice or have more restricted schedules. In a claim against Deliveroo in Italy, the algorithm’s failure to consider whether cancellations were caused by legitimate

grounds such as childcare needs was held to contribute to its discriminatory nature (Gramano and Kullman, this volume).

Ratings are also susceptible to be influenced by prejudice related to factors such as ethnicity, gender and age (Hunt and Machingura 2016, 27, Prassl 2018, 62), such that the need to protect workers against the adverse effect of algorithms is increasingly recognised (European Commission 2020, 7). For example, a worker review of handy.com in the UK refers to racism among customers, leading to bad feedback even after being told they had completed jobs well. Despite the opaque processes behind ratings, they often have a very significant impact, including on whether a worker can continue getting work through the platform at all, and the quality of jobs available to them (Prassl 2018, 61-62). Across the gig economy, there is significant variation in the way platforms terminate or suspend workers' contracts, which often happens without a review process or even an explanation, fuelling exploitation and precariousness (Hauben, Lenaerts, and Waeyart 2020, 27-28). For example, a worker's comment on Task Rabbit refers to carrying out almost 500 tasks over two years with an excellent rating followed by a sudden removal from the platform without reason. The lack of recourse to challenge decisions made on the platform is compounded by exclusion from unfair dismissal remedies for those who are not employees.

Additionally, the ratings-driven system tends to increase competition, exerting downward pressure on hourly rates (van Doorn 2021, 60-61) and compelling workers to self-brand and market themselves online. A US study shows care workers' view of platforms as obscuring differences between roles and longevity in the sector, undermining a view of their work as a long-term vocation and making it difficult to 'stand out in the crowd,' compelling many to use extra payable features (Mateescu and Ticona 2020, 69-74). While some workers have a positive experience of using platforms to build client networks that can translate into reputation and sustained income (Mateescu and Ticona 2020, 74-75), this depends on being comfortable with self-branding and technology, which not all are. The result is increased stratification, leaving those who do not 'make it' with inadequate hours and earnings. In South Africa, 2018 analysis of platform-based domestic work shows around a quarter of available working hours being taken by the 'top' 10% of workers, who were successful based on their ratings, availability and length of time on the platform, again suggesting pressure on workers to have widespread availability (Hunt and Samman 2020, 111-12). The stringent management of domestic workers through technology can therefore be viewed as a new mechanism and distribution for a

longstanding dynamic of domination. While the varied form of employer control creates new challenges, its intensity is not novel but mirrors historical forms of control, such as the central role of employer references in 19th century Britain, which made the relationship ‘more like vassalage’ than a contractual relationship (Dukes 2020, 222-23). This has parallels in the ongoing devaluation of domestic labour and the understanding of domestic workers as being ‘like a member of the family.’

3. Devaluation of domestic work and gendered bifurcation of roles

The devaluation of domestic work is a longstanding phenomenon, which is related to its association with the ‘private sphere’ of women, the home and the family, as opposed to the ‘public sphere’ of law, work and rationality (e.g. Duffy, 2007; Fredman and Fudge 2016). The divide between public and private spheres obscures the work and requirements of women through the assumption that only paid work in the public sphere contributes to the economy or properly counts as work (Charlesworth, Chinkin, and Wright 1991, 626, 640; Okin 1998, 116). As industrialisation brought an end to the subsistence economy and led to monetary relations dominating economic life, domestic labour increasingly came to be viewed as inferior (Boyd 1997, 8; Federici 2014, 63-74; Fredman and Fudge 2016, 232; Davis 2019, 505). There are many examples of devaluation of work in the private sphere that play out in the treatment of paid domestic workers. These include their frequent conceptualisation as akin to members of the employing family (Albin and Mantouvalou 2012, 68) based on conflating their labour with work women would otherwise perform for free for their own families (Cox 2012, 45-46).

In Britain today, devaluation is manifested in the exclusion of workers classed as ‘domestic servants’ from normal weekly limits on working hours (Working Time Regulations – SI 1998/1833, Reg 19). Furthermore, s57(3) of the National Minimum Wage Regulations 2015/621 allows for an exemption for minimum wage for live-in domestic workers where they are ‘treated as a member of the family’ as regards accommodation, meals and the sharing of tasks and leisure activities. After a judgment^{viii} holding the application of this exemption to a former domestic worker to be unlawful and indirectly discriminatory, its repeal has now been recommended (Low Pay Commission 2021), but the fact it has existed for so long starkly demonstrates the devaluation of domestic work (Sedacca 2021a).

Domestic work based on an employment relationship with a single employer therefore tends to be marked by working very long hours for low pay. The position in the gig economy raises distinct issues, including a lack of guaranteed hours and the expectation on workers to bear waiting time, unpaid travel time and travel costs (Flanagan 2019, 74). A negative Handy review refers to the rate of £8 per hour and a lack of work in the local area making it difficult to make money, highlighting the lack of guaranteed hours as well as low pay for workers, with a high proportion of fees going to the platforms. Even more positive or mixed workers' feedback can demonstrate analogous issues. For example, a reference to the lack of payment towards travel expenses from Helpling underscores how otherwise acceptable hourly rates can be undermined by additional exclusions. Furthermore, the dominance of ratings systems can push workers to carry out work beyond what they are paid for to gain the service user's approval (Dukes 220, 223), which dovetails with the extensive and 'boundless' set of tasks that domestic workers have often been expected to perform (ILO 2010, 7).

Furthermore, rates of pay for domestic workers on platforms are often low compared with other roles. Of the UK platforms analysed, the Handy website is most emphatic about providing low cost labour, with its website referring to 'cheap cleaning services' and 'the best cleaner... at a price that doesn't break the bank.' While stating that it is 'not an employer, but simply connects independent service professionals with customers,' it shows a maximum hourly rate for a cleaner as £9, a little above the minimum wage for employed people (£8.72 for those age 25-plus) and well below the real living wage as calculated by the Living Wage Foundation (currently £9.90 UK wide and £11.05 in London.) Its hourly rates for a 'handyman' or lawn care pro, which are less stereotypically associated with women, are significantly higher at £30 and £44 respectively. The differences are not as pronounced on other platforms reviewed, such as Task Rabbit, but the existence of any distinction reflects the gendered devaluation of domestic work, based on viewing the role as 'women's work' and its association with unpaid work in the family home.

Gendered devaluation is also reflected in the 'high degree of occupational segregation' seen on gig economy platforms: 86.5% of cleaners on the Hassle platform in the UK are women, reflecting the trend that while women are less likely than men to work in the gig economy overall, where they do, they are more concentrated in cleaning and domestic work than in other sectors such as taxi driving (Hunt and Samman 2019, 12-13). Although some platforms have tried to push back against the idea of cleaning being a women's role, the demand for male

cleaners remains lower (Altenried and Niebler 2021), demonstrating the pervasiveness of the idea that domestic work is women's work. There is a lack of intersectional analysis specific to domestic work in the gig economy, but workers marginalised on a class and / or ethnic basis are often concentrated in the lowest paid gig work (Hunt and Samman 2019, 14), and there is a high degree of recent migrants working on platforms (Altenried and Niebler 2021). Taken together with broader trends, this indicates that domestic workers in the gig economy are likely to be disproportionately low income, ethnic minority and / or migrant women. Just as working via a platform does not address the lack of scrutiny on employers, instead making workers hyper-visible, it also appears to perpetuate the devaluation of domestic labour. On demand domestic work has therefore been aptly denoted 'as largely "more of the same",' exploiting 'the undervalued labour of marginalised women workers' and risking undermining longstanding efforts to improve conditions in the sector by reproducing poor working conditions (Hunt and Samman 2020, 116-121). For example, if the 'family worker' exemption discussed above is finally repealed in the UK, the new requirement to pay minimum wage to all domestic workers could still remain ineffective for those who are classified as fully self-employed rather than workers or employees.

4. Collective bargaining and organisation

a) Challenges in the domestic work sector and the gig economy

Across both the domestic work sector and the gig economy, collective bargaining and organisation pose serious challenges. A key obstacle is the isolated nature of domestic labour, with many in a workplace of one, while further issues include a lack of awareness of unions among the most vulnerable, often migrant, workers, fears over migration status, a lack of time for union activities because of long working hours, and difficulty paying membership fees on low wages (Albin and Mantouvalou, 2016, 327-31; Jiang and Korczynski 2016, 815-221 ILO 2021a, 223; Sedacca 2021b, 133, 171). Historically, the domestic work sector received a lack of support from the union movement (Dukes 2020, 224), as did other types of insecure, precarious and low paid work (Stylogiannis 2021, 6). Likewise, in the gig economy, workers tend not to be concentrated in a single workplace, while other factors deterring organising include the lack of job security, denial of employment status and dominant effect of ratings are all likely to deter workers from organising (De Stefano and Aloisi 2019, 364-5; Novitz 2021,

654). Given these compounded challenges, collective agreements relating to domestic work platforms are unsurprisingly rare. However, two known exceptions, where unions have made agreements with gig economy platforms in recent years, are discussed below.

b) Collective agreements: Hilfr Denmark and Handy Pilot US

In 2018, the 3F trade union in Denmark signed an important and innovative agreement with the cleaning platform Hilfr (Kilhoffer et al. 2019, 254; Countouris and De Stefano 2020) ('the Hilfr Agreement'). This introduced a new category of worker, 'Superhilfr,' with employment status, to run alongside the existing freelance arrangement. Each worker chose whether to be classified in this way; after 100 hours of work, they would be classed as such unless they opted out, and otherwise would remain self-employed 'Freelancehilfrs' outside the agreement (Kilhoffer et al. 2019, 254). Once the agreement was in place, some 'Superhilfr' employees set their wages higher than the minimum, demonstrating a positive impact on pay (Jesnes and Nordli Oppegaard 2020, 56). Apart from the competition law challenge discussed below, the agreement faced some practical difficulties. As the government encouraged the parties to enter negotiations, there was an apparent lack of mandate from the workers, who often are not unionised because they view the job as temporary and / or see union fees as a barrier to entry (Kilhoffer et al. 2019, 255; Jesnes and Nordli Oppegaard 2020, 58), reflecting broader issues in the domestic work sector. Relatedly, the numbers of workers benefitting from the agreement was very small, with just 36 employed 'Superhilfrs' as at January 2020, possibly stemming from a competitive disadvantage as compared with other companies that have lower costs based on less favourable conditions (Jesnes and Nordli Oppegaard 2020, 57). This demonstrates the limitations of regulation only through agreements with individual companies and points to the need for sector-wide protection.

That said, there is a further recent encouraging example of collective bargaining from the US. In June 2021, the Handy cleaning platform made an agreement with the NDWA Gig Worker Advocates, an independent entity linked to the National Domestic Workers Organisation, which negotiates with gig economy companies (Poo and Gearhart 2021). Currently a pilot scheme in three states, the agreement makes important provisions for workers' rights, including for negotiation, paid time off, a guaranteed wage of \$15 per hour (higher than federal and relevant state minimums) and health / disability insurance for occupational accidents, setting a

floor rather than a ceiling so that it does not lock workers into second-class employment status (Andrias and Sachs 2021). Albeit not a full collective bargaining structure, it is a notable advance for domestic workers who have been excluded from coverage of the National Labor Relations Act, and includes mechanisms built in for workers to make their voices heard via a committee, a Facebook group and / or an online suggestions box (Andrias and Sachs 2021). While still at an early stage, the agreement appears to contain promising avenues to overcome difficulties in engaging workers.

c) The need for effective legal protection based on human rights standards

The limited examples of collective agreements and the difficulties faced by the Hilfr Agreement underscore how it is ‘particularly urgent to reinforce the collective protection of non-standard workers’ (De Stefano and Aloisi 2019, 371). However, far from consistent protective measures being taken, gig workers’ rights to collective bargaining have been threatened, primarily by virtue of their ‘self-employed’ status. A notable example is the reaction to the Hilfr Agreement. Despite its limitation to some workers and scope for opt out, the relevant Danish authority attacked the agreement, holding that both forms of ‘Hilfr’s were enterprises and that the minimum hourly fee could limit competition between ‘Freelancehilfrs’ by creating a ‘price floor’ (Danish Competition and Consumer Authority 2020). In response, Hilfr committed to ensure Superhilfrs were employees and to remove the minimum fee for Freelancehilfrs (Danish Competition and Consumer Authority 2020). The authority’s decision was rightly criticised as unrealistically applying ‘competition law to self-employed to domestic workers as if they were undertakings’ (Countouris and De Stefano 2020). In EU law, even those who fall outside ‘worker’ status and are self-employed persons are not necessarily ‘undertakings’ to whom competition law applies unless, for example, they are professionally licensed or create a partnership or company with others (McGaughey 2021, 3). To date the Court of Justice of the European Union has only made it clear that those ‘falsely’ classed as self-employed are entitled to bargain collectively, which is overly constrictive and falls short of the expansive way the right should be understood (De Stefano and Aloisi 2019, 373-8). However, the European Commission is now consulting on new guidelines to allow collective bargaining by a wider range of self-employed people who rely on their own labour.

Crucially, allowing the supposedly ‘self-employed’ status of workers in the gig economy to create a bar to collective agreements is also likely to be incompatible with international / regional human rights law, which determines these rights on a more universalist basis (Stylogiannis 2021). Of particular relevance is Article 11 of the European Convention on Human Rights (ECHR), the right to freedom of association. Although not mentioned explicitly in Article 11, case law such as *Demir & Baykara v Turkey*^{ix} has indicated that it encompasses the right to collective bargaining. Unfortunately, in the recent *Deliveroo* case the English Court of Appeal rejected an argument on this basis by the IWGB union, holding that riders did not have the right to bargain collectively because the trade union freedom aspect of Article 11 is contingent on the existence of an employment relationship.^x The decision relied on ILO Recommendation 198 including a requirement that work be performed personally for an employment relationship to exist [42-57]. While acknowledging other ILO statements that individuals outside an employment relationship should have the right to organise collectively, Underhill LJ held that this did not apply to the specific right to organise *as a trade union* [86].

The *Deliveroo* decision may be subject to further appeal and can be criticised for an overly narrow application of the relevant ILO Recommendation and its factual acceptance of *Deliveroo*’s account of the terms of work (Bogg and Buendia, this volume) as well as its failure to take a universalist approach to Article 11 ECHR. Furthermore, the European Committee on Social Rights has confirmed that Article 6 of the European Social Charter covers self-employed individuals, while ILO Convention 98 on the right to organise does not exclude the self-employed (Countouris and De Stefano 2020). There is a compelling argument that competition law concerns should not be given primacy over labour and human rights standards – especially as limiting application of trade union rights to domestic and other workers in the gig economy denies protection to some of those sectors most in need of it. Another parallel can be drawn here to domestic work, for which the universality of human rights law is important for counteracting traditional exclusion from the protection of labour law based on factors such as migration status and the gendered public / private sphere divide (Sedacca 2021b, 269).

5. Research Agenda and Preliminary Conclusions

Given the increasing prevalence of domestic work in the gig economy alongside the relative lack of existing studies, an in-depth investigation of this sector in Britain would be a valuable

topic for future empirical research. This could take the form of an online survey and / or semi-structured interviews with gig economy platform workers, having regard to factors such as ethnicity, gender and migration status and covering areas including working hours, rates of pay, social security access, and the extent to which flexibility is experienced as a benefit. It would also be illuminating to study workers' experience of the rating system and other forms of surveillance, including whether this is perceived as fair and non-discriminatory, as well as examining prospects for and barriers to collective organisation. This study would require a carefully thought-out strategy on how to make contact with workers given their low level of organisation.

Pending further investigation, it is possible to draw some preliminary conclusions from the material analysed above. The challenges domestic workers face in the gig economy overlap in some respects and diverge in others from domestic workers in standard employment relationships, and from workers in other sectors of the gig economy. Compared to the extremely long hours and employer domination that often characterise traditional domestic labour, work in the gig economy is frequently marked by a lack of security, guaranteed hours or minimum pay rates, with systems of ratings, reviews and algorithms serving to discipline workers, create competition between them and potentially put their continued work on the platform at risk. Constraints on collective bargaining exist across both sectors, as demonstrated by the rarity of collective agreements and the challenges faced where these have been made. These obstacles demonstrate the importance of legal protection for platform workers' freedom of association, in contrast to the current position that makes this contingent on worker or even employee status, and point to the need for a broader regulatory framework setting standards across the gig economy.

A common theme in domestic work both in and outside the gig economy is the gendered bifurcation of roles and the concentration of women into feminised household work attracting low pay and poor conditions. A programme for improving conditions on domestic work platforms should therefore draw on insights not only from studies of the gig economy but also from analysis of devalued, feminised forms of labour such as cleaning and domestic work. In addition to setting minimum hourly rates, this is likely to require measures to address shortfalls in payment for ancillary time such as that spent travelling, to counteract the pressure on domestic workers to perform additional labour merely to achieve ratings that give them access to work, and to tackle discrimination based on factors such as gender and ethnicity.

Furthermore, regulation should seek to guarantee wider remedies for unfair dismissal so that workers cannot lose their means of livelihood through arbitrary decisions, and a social safety net to mitigate against pressure to accept exploitative and degrading work. Across domestic work and the gig economy, human rights law has an important role to play in insisting that decent work is not contingent on a particular employment status, sector type or migration status, but applies to everyone by virtue of their humanity.

Bibliography

- Adam, Stuart, Helen Miller, and Tom Waters. 2020. "Income Protection for the Self-Employed and Employees during the Coronavirus Crisis". Briefing Note BN277. Institute for Fiscal Studies.
- Albin, Einat. 2012. "From 'Domestic Servant' to 'Domestic Worker'". In *Challenging the Legal Boundaries of Work Regulation*, edited by Judy Fudge, Shae McCrystal, and Kamala Sankaran, 231-50. Oxford: Hart.
- Albin, Einat, and Virginia Mantouvalou. 2012. "The ILO Convention on Domestic Workers: From the Shadows to the Light". *Industrial Law Journal* 41(1): 67-78.
- .2016. "Active Industrial Citizenship of Domestic Workers: Lessons Learned from Unionizing Attempts in Israel and the United Kingdom". *Theoretical Inquiries in Law* 17(1): 321-50.
- Altenried, Moritz, and Valentin Niebler. 2021. "Platforms, Social Reproduction, and Migration – the Case of Helpling in Berlin". Presented at the PLUS TALKS, Gender and Platform Labour 2: The Platformisation of Paid Care, Cleaning and Domestic Work, Webinar, February 2021. <https://project-plus.eu/platformisation-of-paid-care-cleaning-and-domestic-work/>.
- Anderson, Bridget. 2000. *Doing the Dirty Work?: The Global Politics of Domestic Labour*. London: Zed.
- Andrias, Kate, and Benjamin Sachs. 2021. "NDWA-Handy Pilot: Major Gains for Workers Long Excluded from Labor Law's Protections". *OnLabour* (blog). 17 June 2021. <https://onlabor.org/ndwa-handy-pilot-major-gains-for-workers-long-excluded-from-labor-laws-protections/>.
- Behrendt, Christina, Quyn Ahn Nguyen, and Uma Rani. 2019. "Social protection systems and the future of work: Ensuring social security for digital platform workers". *International Social Security Review* 72(3): 17-41.
- Boyd, Susan B. 1997. "Challenging the Public/Private Divide: An Overview". In *Challenging the Public/Private Divide: Feminism, Law, and Public Policy*, edited by Susan B. Boyd, 3-33. Toronto, Ont; London: University of Toronto Press.
- Charlesworth, Hilary, Christine Chinkin, and Shelley Wright, 1991. "Feminist Approaches to International Law". *American Journal of International Law* 85(4): 613-645.
- Choudary, Sangeet Paul. 2018. "The architecture of digital labour platforms: Policy recommendations on platform design for worker well-being". The Future of Work Research Paper Series. ILO.
- Countouris, Nicola, and Valerio De Stefano. 2020. "Collective-Bargaining Rights for Platform Workers". *Social Europe* (blog). 6 October 2020. <https://www.socialeurope.eu/collective-bargaining-rights-for-platform-workers>
- Cox, Rosie. 2012. "Gendered Work and Migration Regimes". In *Transnational Migration, Gender and Rights*, edited by Liam Leonard, 33-52. Bingley, UK: Emerald.

- Danish Competition and Consumer Authority. 2020. “Commitment decision on the use of a minimum hourly fee”. 26 August 2020. <https://www.en.kfst.dk/nyheder/kfst/english/decisions/20200826-commitment-decision-on-the-use-of-a-minimum-hourly-fee-hilfr/>
- David, Angela Y. 2019. *Women, Race & Class*. London: Penguin Classics.
- De Stefano, Valerio, and Antonio Aloisi. 2019. “Fundamental labour rights, platform work and human rights protection of non-standard workers”. In *Research Handbook on Labour, Business and Human Rights Law*, edited by Janice R. Bellace and Beryl ter Haar, 359-79. Northampton: Edward Elgar Publishing.
- Doors, Niels van. 2021. “Stepping Stone or Dead End? The Ambiguities of Platform-Mediated Domestic Work under Conditions of Austerity. Comparative Landscapes of Austerity and the Gig Economy: New York and Berlin”. In *Working in the context of austerity: challenges and struggles*, edited by Donna Baines and Ian Cunningham. Bristol, England: Bristol University Press.
- Duffy, Mignon. 2007. “Doing the Dirty Work: Gender, Race, and Reproductive Labour in Historical Perspective.” *Gender & Society* 21(3): 313-336.
- Dukes, Ruth. 2020. “Regulating Gigs”. *Modern Law Review* 83(1): 217-28.
- European Commission. 2021. “Better working conditions for a stronger social Europe: harnessing the full benefits of digitalisation for the future of work”. COM(2021) 761 final.
- Ewing, K D, and Lord Hendy. 2020. “Covid-19 and the Failure of Labour Law: Part I”. *Industrial Law Journal* 49(4): 497-538.
- Federici, Silvia. 2014. *Caliban And The Witch: Women, the Body and Primitive Accumulation*. 2nd ed. New York: Autonomedia.
- Flanagan, Frances. 2019. “Theorising the Gig Economy and Home-Based Service Work”. *Journal of Industrial Relations* 61(1): 57-78.
- Fredman, Sandra, and Judy Fudge. 2016. “The Contract of Employment and Gendered Work.”. In *The Contract of Employment*, edited by Mark Freedland, 231-52. Oxford: OUP.
- Gower, Melanie. 2016. “Calls to Change Overseas Domestic Worker Visa Conditions”. House of Commons Library Briefing Paper 4768.
- Griswold, Alison. 2015. “Handy Could Be the Uber of House-Cleaning—if It Can Tidy Its Own Mess.” *Slate Magazine*. 24 July 2015. <https://slate.com/business/2015/07/handy-a-hot-startup-for-home-cleaning-has-a-big-mess-of-its-own.html>.
- Gutiérrez Rodríguez, Encarnación. 2010. *Migration, domestic work and affect: a decolonial approach on value and the feminization of labor*. New York: Routledge.
- Hauben, Harald, Karolien Lenaerts, and William Waeyart. 2020. “The Platform Economy and Precarious Work”. PE 652.734. European Parliament.
- Hobby, Catherine. 2021. “Workers’ Rights: A Public Health Issue: *R (on the application of The Independent Workers’ Union of Great Britain) v The Secretary of State for Work and Pensions*”. *Industrial Law Journal* 50(3): 467-91.
- Hunt, Abigail, and Fortunate Machingura. 2016. “A Good Gig? The Rise of on-Demand Domestic Work.” Working Paper 07. ODI.
- Hunt, Abigail, and Emma Samman. 2019. “Gender and the Gig Economy – Critical Steps for Evidence-Based Policy”. Working Paper 546. ODI.
- .2020. “Domestic Work and the Gig Economy in South Africa: Old Wine in New Bottles?” *Anti-Trafficking Review* 15: 102-21.
- Huws, Ursula. 2019. “The Hassle of Housework: Digitalisation and the Commodification of Domestic Labour”. *Feminist Review* 123(1): 8-23.
- ILO. 2010. “Report IV(1) – Decent Work for Domestic Workers – 99th Session of the International Labour Conference”.

- . 2016. *Labour Inspection and Other Compliance Mechanisms in the Domestic Work Sector: Introductory Guide*.
- . 2021a. “Making decent work a reality for domestic workers - progress and prospects ten years after the adoption of the Domestic Workers Convention, 2011 (No. 189)”.
- . 2021b. “World Employment and Social Outlook – the Role of Digital Labour Platforms in Transforming the World of Work”.
- Jesnes, Kristin, and Sigurd M. Nordli Oppegaard. 2020. *Platform Work in the Nordic Models: Issues, cases and Responses*. Nordic Council of Ministers.
- Jiang, Zhe, and Marek Korczynski. 2016. “When the ‘Unorganizable’ Organize. The Collective Mobilization of Migrant Domestic Workers in London”. *Human Relations* 69(3): 813-38.
- Kilhoffer, Zachary, Willem Pieter De Groen, Willem Waeyart, Elisa Giacumacatos, Jean-Philippe Lhernould, and Sophie Robin-Olivier. 2019. “Study to gather evidence on the working conditions of platform workers”. VT/2018/032 European Commission.
- Low Pay Commission. 2021. “2021 Report – Summary of Findings”. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1028738/LPC_summary_of_findings_2021_A.pdf.
- Mantouvalou, Virginia. 2012. “Human Rights for Precarious Workers: The Legislative Precariousness of Domestic Labor”. *Comparative Labor Law & Policy Journal* 34(1): 133-64.
- . “‘Am I Free Now?’ Overseas Domestic Workers in Slavery”. *Journal of Law and Society* 42(3): 329-57.
- Mateescu, Alexandra, and Julia Ticona. 2020. “Invisible Work, Visible Workers - Visibility Regimes in Online Platforms for Domestic Work”. In *Beyond the Algorithm: Qualitative Insights for Gig Work Regulation*, edited by Deepa Das Acevedo. Cambridge: CUP.
- . 2021. “US Domestic Work Platforms in the Covid Crisis – Workers, Platforms and the State”. Presented at the PLUS TALKS, Gender and Platform Labour 2: The Platformisation of Paid Care, Cleaning and Domestic Work, Webinar, February 2021. <https://project-plus.eu/platformisation-of-paid-care-cleaning-and-domestic-work/>.
- McGaughey, Ewan. 2021. “Competition and labour law in the United Kingdom: history, theory and practice”. SSRN Scholarly Paper ID 3926801. Rochester: SSRN. <https://papers.ssrn.com/abstract=3926801>.
- Mullally, Siobhán, and Cliodhna Murphy. 2014. “Migrant Domestic Workers in the UK: Enacting Exclusions, Exemptions, and Rights”. *Human Rights Quarterly* 36(2): 397-427.
- Novitz, Tonia. 2021. “Gig work as a manifestation of short-termism: crafting a sustainable regulatory agenda”. *Industrial Law Journal* 50(4) 636-61.
- Okin, Susan Moller. 1998. “Gender, the Public, and the Private”. In *Feminism and Politics*, edited by Anne Phillips 116-41. Oxford: OUP.
- Poo, Ai-jen, and Dawn Gearhart. 2021. “Opinion: Domestic workers have long been underpaid and unappreciated. It's time we give them what they deserve”. CNN. 17 June 2021. <https://edition.cnn.com/2021/06/17/perspectives/domestic-workers-benefits-protections/index.html>.
- Prassl, Jeremias. 2018. *Humans as a Service: The Promise and Perils of Work in the Gig Economy*. Oxford: OUP.
- Rahman, K. Sabeel. 2017. *Democracy against Domination*. New York: OUP.
- Rampton, Mike. 2019. “Are Babysitting Apps A Lifesaver Or A Worry For Parents?”. HuffPost UK. 22 February 2019. https://www.huffingtonpost.co.uk/entry/babysitting-apps-for-parents-kids_uk_5c6d4722e4b0e37a1ed35818.

- Rodgers, Lisa. 2016. *Labour Law, Vulnerability and the Regulation of Precarious Work*. Cheltenham, UK: Edward Elgar Publishing.
- Sedacca, Natalie. 2021a. “A crucial and long-needed step against the devaluation of domestic work: ‘family worker’ exemption dis-applied in Puthenveetil v Alexander & ors”. *UK Labour Law* (blog). 1 March 2021. <https://uklabourlawblog.com/2021/03/01/a-crucial-and-long-needed-step-against-the-devaluation-of-domestic-work-family-worker-exemption-dis-applied-in-puthenveetil-v-alexander-ors-by-natalie-sedacca/>.
- .2021b. “Domestic Labour and Human Rights: Challenging the Exclusion of Domestic Workers”. PhD Thesis. University College London.
- Stylogiannis, Charalampos. 2021. “Freedom of association and collective bargaining in the platform economy: A human rights-based approach and an over increasing mobilization of workers”. *International Labour Review*. <https://onlinelibrary.wiley.com/doi/10.1111/ilr.12340>.
- Ticona, Julia. 2020. “Essential and Untrusted”. *Dissent Magazine* (blog). Fall 2020. <https://www.dissentmagazine.org/article/essential-and-untrusted>.
- Yeo, Colin. 2019. “What is the no recourse to public funds condition?”. *Free Movement* (blog). 5 August 2019. <https://www.freemovement.org.uk/what-is-the-no-recourse-to-public-funds-condition/>.

ⁱ This is a draft chapter, i.e. before any editing by or on behalf of Edward Elgar Publishing. The final version will be available in “A Research Agenda for the Gig-Economy and Society”, edited by V. De Stefano, I. Durri, C. Stylogiannis, and M. Wouters (Edward Elgar).

ⁱⁱ Lecturer in Law, University of Exeter, email n.sedacca@exeter.ac.uk. ORCID ID 0000-0003-1694-528X. I am very grateful to Valerio De Stefano, Ilda Durri, Charalampos Stylogiannis and Mathias Wouters for written feedback on the first draft chapter, and to participants of the SLS Labour Law section 2021, the online seminar ‘A Research Agenda on the Gig Economy’, and the Exeter Human Rights and Democracy Forum for comments on my related presentation. My doctoral research on which this chapter partly draws was funded by the London Arts & Humanities Partnership and UCL Faculty of Laws.

ⁱⁱⁱ It does not discuss services such as food delivery. Although these contribute to domestic life and social reproduction, their performance outside the home and the greater attention they have received in the literature on the gig economy puts them outside the chapter’s core focus.

^{iv} The PLUS project (<https://project-plus.eu/>) addresses four platforms including one cleaning platform across London and six other European cities, but as an ongoing project, limited data is currently available.

^v This was more common for the cleaning sites than childcare providers, and given the small number of reviews considered for each, they simply provide an initial snapshot and highlight themes for further investigation. Information was initially taken from websites in 2021 and checked in January 2022, at which point the information on company websites was correct, although some indeed.com reviews referred to were no longer freely available to view.

^{vi} Guidance on the definition is found at <https://www.hse.gov.uk/enforce/enforcementguide/investigation/status-specific.htm#domestic>.

^{vii} *R (IWGB) v Secretary of State for Work and Pensions* [2020] EWHC 2050 (Admin).

^{viii} *Puthenveetil v Alexander & ors* – Case Number 2361118/2013 – Employment Tribunal judgment of 15 December 2020.

^{ix} *Demir & Baykara v Turkey* (2009) 48 EHRR 54.

^x *IWGB v The Central Arbitration Committee v Rooffoods Ltd t/a Deliveroo* [2021] EWCA Civ 1746.