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Creating new employment law for Deliveroo and Uber workers won't be easy, but someone's got to do it

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Deliveroo workers have complained about the company's employment practices (Source: Getty)

The Deliveroo and UberEats protesters, who were making a stand over their pay packets, must feel vindicated.

Theresa May has now appointed Matthew Taylor, an ex-head of the Number 10 Policy Unit, to review legal rights for those people working in the gig economy. While all this sounds promising, it's going to be a titanic task to draw up a new framework on top of the existing regime. Here's why.

Currently, employment law differentiates between workers, employees and the self-employed. The distinctions are important because workers and employees have certain rights, such as entitlement to the national minimum wage and paid annual leave.

Employees also have additional rights, such as the right to statutory sick pay and protection from unfair dismissal (normally subject to two years' service). Self-employed contractors have no such rights.

There needs to be "mutual obligation" for a contract to actually exist, whatever the type of status. This means that each party must have an obligation to fulfil their side of the bargain. One simple example could be a landscaper agreeing to lay a patio for a set fee. The parties would have an obligation to perform their side of the deal.

To be deemed a worker, the individual must also be obliged to provide work or services personally, rather than sending another person in their place, and they must not be providing the work or services as a business.

To be considered an employee, again the work or service must be done by the person under contract, but there also needs to be an element of control by the employer over the employee. Control in this context could mean, for example, whether or not the individual is bound by a disciplinary policy. Other factors for determining status could be considered, too.

One of the major problems for people currently working in the gig economy is that shifts are common – and there may not always be "mutual obligation" for the periods in between the shifts. While the obligation on either side would usually exist once a shift is offered and accepted, it may not arise in between the shifts where there is no duty to offer a shift or agree to one. Without a contractual tie there couldn't be worker or employee status for the intervening periods and there couldn't be accompanying rights and protection.

Following this through, if "mutual obligation" is an integral contractual requirement, getting around it will be difficult.

One option might be in certain situations to compel businesses to offer worker or employee arrangements with "mutual obligation" factored in. But what about wriggling out of obligations by serving notice? Would notice laws have to change as well?

So it's really hard to see how a new framework could be introduced or the current law tweaked. Let the brainstorming begin.

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