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Self-employment and the gig economy

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Work and Pensions Committee

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Summary

The self-employed are a large and growing part of the UK labour force. Five million people—15% of workers—are now self-employed, and the expansion of self-employment has played a significant part in current record employment levels. New technology has facilitated the growth of the "gig economy", which has led to a large number of positive developments and opportunities, as well as continuing to alter the nature of work in many sectors. This continued growth in self-employment presents fundamental challenges for the welfare state.

Our welfare system is founded on contribution. Workers pay in through National Insurance Contributions (NICs), and receive support in return. Historically, selfemployed people received much less support than employees. Now, following the introduction of the New State Pension, entitlement to all of the services funded by National Insurance is almost equalised. Yet self-employed workers contribute far less. The incoming government must set out a roadmap for equalising self-employed and employee NICs. To fail to do so would be to weaken further a crucial pillar of the welfare social contract.

A further pillar of the social contract is basic standards of support and a safety net for those in need. To help protect them from hardship and the welfare state from costs, employees are entitled to certain minimums and rights. The self-employed have no such rights or entitlements. Increasingly, some companies are using self-employed workforces as cheap labour, excusing themselves from both responsibilities towards their workers and from substantial National Insurance liabilities, pension autoenrolment responsibilities and the Apprenticeship Levy. The ease with which companies are able to classify their workforces as self-employed both fails to protect workers from exploitation, and potentially increases strain on the welfare state. An assumption of the employment status of "worker" by default, rather than "self-employed" by default, would protect both those workers and the public purse. Companies wishing to deviate from this would need to present the case for doing so. As default, workers would have the employment rights commensurate with that status. As there is no "worker" status in tax law, tax status would be unchanged. In effect this would place the burden of proof of employment status on the company, rather than the worker as it currently stands.

Self-employment can be a positive choice. The Department for Work and Pensions must ensure that its programmes and resources reflect this, and can support low-paid and would-be self-employed people to reach their potential. This is likely to require an expansion of specialist support for the self-employed offered through Jobcentre Plus. It will also necessitate urgently revisiting and revising Universal Credit rules for self-employed claimants, which risk cutting off support to viable businesses before they have had a chance to get off the ground.

Self-employment is neither inherently good nor bad. It can represent entrepreneurial zeal and a highly desirable culture of self-reliance. It can also be deeply negative, allowing companies to evade responsibility for their workers' wellbeing and increase their profits. It is incumbent on Government to close loopholes that incentivise this behaviour.

Introduction

1. The self-employed are a large and growing part of the UK labour force. Five million people—15% of workers—are now self-employed, and the expansion of self-employment has played an important part in current record employment levels.¹ Self-employment takes many forms: from entrepreneurs and "one man band" business owners, to consultants and contractors across industries and pay scales. New technology has facilitated the growth of the "gig economy", which continues to alter the nature of work in many sectors. There is no good reason to believe the growth in self-employment will not continue.

Box 1: The gig economy

The term "gig economy" is used to refer to a wide range of different types and models of work. A common feature of many of these is a reliance on intermediary digital platforms or apps to connect self-employed workers with work. Gig economy companies often operate in industries that have historically relied on self-employed workforces. New technology, however, enables them to operate on a scale which has substantial implications for the nature of work, the sectors in which they operate and the welfare state.

For example, Uber relies on self-employed drivers using its app to provide taxi services to customers. Taxi drivers in the UK are usually self-employed. Uber's employment model is therefore not new; but the number of drivers working on its platform (currently over 40,000) means that it has a substantial opportunity to disrupt and reshape existing working practices in the industry.

2. The growth of self-employment and the gig economy poses a challenge for a welfare state established at a time when paid work was primarily carried out by men in full-time employee jobs and the self-employed were a smaller and more easily defined group. Today, those assumptions do not hold true on many counts. A string of court cases testing employment status, and with it rights to minimum basic standards of support, evidence established definitions of employment and self-employment that are straining at the leash. Welfare policies have, to some extent, adapted to the growth in self-employment. Yet flagship policies such as Universal Credit and auto-enrolment were designed primarily or wholly with employees in mind. Together, these challenges encompass the two fundamental functions of the welfare system: as a system of contribution, and as a safety net.

3. How the welfare state adapts to the changing labour market is one of the great issues of our time. Our inquiry was cut short by the dissolution of parliament in May 2017 but we felt it was important to make this abridged report. We received a large volume of evidence and documentation, including contracts used by gig economy companies and testimonies from self-employed workers. These are published on our website.

1 The contributory principle

4. The social contract between individuals and the state is central to the UK's welfare model. The welfare system was conceived as a system of social insurance. William Beveridge's plan was that individuals contributed to funding the welfare system via National Insurance contributions (NICs), and in return could expect to receive support up to subsistence levels when they were either unable to work or retired. In Beveridge's vision, these contributory benefits would largely replace means-tested benefits. Beveridge's model was never fully realised. Current benefits (including pensions) were, and remain, funded by current NICs rather than by a fully-funded insurance scheme. A widespread reliance on means-tested benefits to raise incomes to subsistence levels remains. Nonetheless, the principle of contribution remains a cornerstone of the welfare system.

5. Public support for welfare spending has been in long-term decline, though benefits for some groups (for example, pensioners) remain markedly more popular than others (for example, the unemployed).² This may reflect wider public perceptions of the importance of contribution and the social contract. Perceptions of an imbalance between contribution and reward may weaken support for the welfare system overall.

Balancing contribution and entitlement

6. Historically, self-employed people received much less support from the welfare system than employees. This applied particularly to the state pension. With the introduction of the New State Pension in 2016, however, the greatest inequality in entitlement between the self-employed and employees was removed. The IFS explained:³

Previously, the self-employed accrued rights to the basic state pension, but not to the earnings-related top-up (state second pension) [...] The new single-tier pension being rolled out from April 2016 will instead apply equally to the self-employed and all employees; but while formerly contracted-out employees must now pay the full rate of NICs in return for this entitlement, the self-employed are seeing their entitlement increase with no such increase in their NICs rate.

7. The self-employed now have equal access to almost all of the support available through the welfare state—including parts outside the remit of the Department for Work and Pensions (DWP/the Department) such as the NHS. Matthew Taylor, leader of the Government's independent review on Modern Employment Practices, told us:

Entitlements for self-employed people have grown [and] now self-employed people get I think over 99% of public spending entitlements [\dots] and most welfare entitlements as well.⁴

HM Revenue and Customs (HMRC) estimates that the effective NICs annual subsidy to the self-employed relative to the employed exceeds the value of their reduced benefit entitlement by £5.1 billion.⁵

² P. Taylor-Gooby and E. Taylor, Welfare and benefits, British Social Attitudes 32, 2015

³ S. Adam, H. Miller and T. Pope, IFS Green Budget 2017: Tax, legal form and the gig economy, February 2017, p.228

⁴ Q361 (Matthew Taylor)

⁵ HMRC, Principal tax reliefs, January 2017

8. Some small differences remain: self-employed people cannot claim the contributory components of Jobseeker's Allowance (JSA) or Employment and Support Allowance (ESA). Nor can they claim parental benefits, though the Government has stated that it is seeking to address this, "the principal outstanding difference in benefit entitlement between employed and self-employed" as part of a wider exercise to reconsider other areas of difference in treatment.⁶

9. The Government announced in its March 2017 Budget that it intended to increase the rate of Class 4 NICs, which are paid by the self-employed, from 9% of profits to 11%.⁷ This would bring those contributions in line with those made by employed people, better reflecting near-equal access to services funded by National Insurance.⁸ The Chancellor subsequently announced a reversal of this plan but stated:⁹

It remains our judgement that the current differences in benefit entitlement no longer justify the scale of difference in the level of NICs paid in respect of employees and the self-employed.

10. Our welfare system, and public support for it, is founded on the contributory principle. The introduction of the New State Pension means the last major difference between the entitlements of employees and self-employed has been removed. It is now difficult objectively to justify the differing rates of contribution. Fairness must be the future direction of travel and, political constraints aside, the equalisation of NICs rates was right. The incoming government should set out a roadmap for equalising the National Insurance contributions made by employees and the self-employed.

⁶ Letter to the Chair of the Treasury Committee, March 2017

⁷ In 2017–18 they are paid at 9% on profits between £8,164 and £45,000 and 2% on profits over £45,000.

⁸ See Barber, L. The man leading a major review of worker's rights thinks National Insurance rise is progressive, City AM, March 2017

⁹ Letter to the Chair of the Treasury Committee

2 The welfare safety net

11. The "safety net" function of the welfare state offers means-tested benefits for those in need.¹⁰ Employers must provide basic minimums such as the National Living Wage and employees (and to a lesser extent, "workers"—see Box 2) have employment rights to protect them at work. These rights protect workers from hardship and help reduce state welfare costs. The self-employed have no such employment rights, and those paying their wages have no such obligations towards them.

Box 2: Employment status

Self-employed people are not covered by employment law. They have very few rights at work, limited to protection for health and safety purposes, and some protection against discrimination.

Workers have some employment rights. These include the right to the National Living Wage or National Minimum Wage, protection against unlawful deduction from wages, minimum levels of paid holiday and rest breaks, protection against discrimination, and the right not to be treated less favourably if they work part-time. They may be entitled to benefits such as Statutory Sick Pay and Statutory parental pay in some circumstances.

Employees have a full complement of employment rights. This includes everything that workers have, plus Statutory Sick Pay, parental pay, notice periods if their employment is ending, protection against unfair dismissal, the right to request flexible working, time off for emergencies and Statutory Redundancy Pay.

For HMRC purposes there are only two statuses: employed or self-employed. "Workers" can fall into either tax category depending on the nature of their employment. This does not affect their employment rights. For example, someone who has the employment law status "worker" but is self-employed for tax purposes would still be entitled to "worker" rights. Conversely, someone who is designated "employed" for tax purposes (for example, under IR35 legislation) but does not have an employment contract would not automatically be entitled to employee or worker rights.¹¹

Source: https://www.gov.uk/employment-status/overview

Flexibility

12. The gig economy companies we spoke to emphasised that flexibility was both an important feature of their business models and valued by people that work for them. Deliveroo, which uses couriers to deliver restaurant food, told us that the flexible work it offers is contingent on workers being self-employed. Without self-employment, Deliveroo claimed, flexibility would be much reduced. We heard similar statements from Uber, Hermes and Amazon.¹² The idea that flexibility and an employment contract are mutually

¹⁰ Whether those needs are temporary in nature, for example as a result of unemployment, or longer-term, for example as a result of disability.

¹¹ IR35 is tax legislation intended to identify individuals supplying services through an intermediary company as self-employed who should properly be considered employed for tax purposes. The legislation aims to prevent "disguised employment" being used as a means of avoiding tax.

¹² Q144 (Dan Warne, Lesley Smith, Carole Woodhead and Andrew Byrne)

exclusive was not confined to company representatives. Worker representatives put forward by Uber, Deliveroo and Hermes said they feared their flexible employment would be taken away if the companies moved to employee or worker models.¹³

13. We also heard from many contractors for whom the reality of "gig" and selfemployment did not live up to the flexible ideal (see Box 3). Rather, we heard of low pay, inflexibility in working times, long hours, instability, and difficulties in taking time off (such as for a holiday or for sick leave).

Box 3: Experiences of self-employed workers

- "It has got to the stage now that it is very expensive for me to work. The number of drivers now is restricting what you can earn. A year ago there were a lot fewer drivers and there was a lot more work on the road and your wheels kept turning quite a lot. Now it is much slower. There are more drivers out there and you have to work longer hours to be able to earn what you earned before." David Dunn, Uber driver, Q55
 - "I had no control over anything that I ever did. A prime example was that one Saturday I had somewhere to go in the afternoon and when my parcels arrived about lunchtime I delivered all the parcels that were 24-hour delivery. The ones that were standard, which is three to five days, I carried over to the next day. They were not too impressed with that, and I had to be retrained, I was threatened with service removal if I ever did it again, and so on." Marc Ramsden, former Hermes courier, <u>Q62</u>
 - "I work under someone who owns various routes in the courier industry, they are registered as a business but employ us drivers, however we have all been told to register as self-employed, we work 12 hours a day from 6:30am-6:30pm some days with no breaks [...] They refer to us drivers as employees yet, we do not receive by law what employees should receive, ie. workplace pension, reasonable required breaks, holiday pay, or even an increase in pay. The time and hours we work drain you physically and mentally." Courier, name withheld (SGE0068)
 - "I too have worked for Parcelforce for many years ie. since [redacted], and became self-employed in [redacted]. At first it appeared to offer a good package but it slowly dawned on me that I wasn't truly self-employed as I have no flexibility or choice over my working hours/times. I have to complete the route regardless of how many parcels I have to deliver. I regularly work from 6am to 5pm 5 days a week and even more at Christmas when I also have to employ an approved driver and provide an additional van all at my own cost." Parcelforce courier, name withheld (SGE0057)

• "We as drivers are not self-employed if we are given times to work, provided with equipment that we don't actually own and are constantly monitored in our own vehicles. We do not get sick pay, we are often hassled by Field Managers to provide work, or lose it with no pay. We do not get granted holidays and if we decide to take one, we may not get our rounds back and that'll be us out of work. The rate Hermes pay for parcels is below the hourly minimum wage, even for someone of my age it is below minimum once vehicle and insurance expenses are calculated." Hermes courier, name withheld (SGE0045)

Loopholes

14. The different entitlements of employees, workers and the self-employed are clear. We heard much to indicate, however, that the boundaries between the categories are not. A wide range of practices that seemed to blur the line between "employment" and "self-employment" were brought to our attention. These included:¹⁴

- a) Aspects of control by the contracting company over working patterns: for example, being assigned shifts or rounds, with the risk of work being permanently withdrawn or charges levied if workers failed to fulfil them;
- b) Workers who carried out regular working hours over substantial periods of time, up to periods of years for one company;
- c) An inability on the part of workers to negotiate or set pay;
- d) Workers experiencing difficulties in having "substitute" workers accepted by the contracting company, if they were unable to work their scheduled shifts; and
- e) Guidance given to salaried staff on how to avoid referring to their workers in terms that might imply an employer-employee relationship, in light of their employment model (see Figure 1).

DOs		DON'Ts	
Riders	Collective term for riders who perform services for Deliveroo on bicycles and motorcycles	Drivers / (driver) fleet / (driver) team	
Cyclists	Riders who perform services for Deliveroo on bicycles	Drivers / (driver) fleet / (driver) team	
Scooter drivers	Riders who perform services for Deliveroo on motorcycles	Drivers / (driver) fleet / (driver) team	
Independent supplier	Riders' legal status in relation to Deliveroo	Employee / worker / staff member / team member	
 Eg: Riders engage with Deliveroo as independent suppliers to perform services Under the hourly fees system we offer riders hours of work and they choose how many to accept based on their availability and the area(s) they want to work in 		 Drivers are employed by Deliveroo to complete deliveries Under the hourly pay system we assign drivers set shifts in the zone(s) where we need them 	

Figure 1: Extract from Deliveroo language guide for staff

Source: IWGB Union

15. The blurring of employment status is not confined to the lower-end of the pay-scale. There are also numerous examples of highly-paid consultants working as self-employed with working arrangements very similar to those of the employees they work alongside. This provides substantial tax benefits to both workers and organisations, to the detriment of the public purse. Yet in all cases, companies rely on these individuals attending work regularly and carrying out tasks that are often agreed and planned in advance: much like other companies might rely on employees.

16. Questions of employment status are often only finally resolved in court, with reference to swathes of case law. In a number of recent court cases self-employed contractors have successfully challenged their self-employed status (see Box 4). Yet the outcomes of these cases generally only apply to the particular company and group of workers under consideration: what applies to one company does not necessarily have any implications for those working for other organisations with, potentially, very similar business models. There is, therefore, a substantial burden on workers if they wish to challenge their status: one that those in vulnerable or isolated positions may be very hesitant to bear.

Box 4: Examples of court cases and outcomes

• In October 2016, a tribunal ruled that two "test claimant" Uber drivers should be considered "workers", not self-employed. The judgement referred to the "absurdity" of Uber's proposition that the company's role was limited to providing a platform for drivers to connect with customers. It stated this was "a pure fiction which bears no relation to the real dealings and relationships between the parties". Accordingly, the judgement continued, "it is not real to regard Uber as working 'for' the drivers [...] the only sensible interpretation is that the relationship is the other way around".

- In January 2016, courts found in favour of Margaret Dewhurst, a self-employed courier for CitySprint, whose case centred on whether she could be considered a worker. The judge criticised CitySprint's description of their self-employed courier model as "window dressing". She found Ms. Dewhurst's description of her working conditions more accurate than that provided by the company, concluding that she was "one courier working personally for one organisation at any one time and that any concept of her operating as a [self-employed] business is a sham".
 - In February 2017, courts ruled that a plumber engaged on a self-employed basis by Pimlico Plumbers should be entitled to worker status. The plumber was not an employee because he was neither guaranteed work, nor obliged to accept it, and he also had some control over how he carried work out: for example, he could charge a mark-up on materials that he obtained and used on a job. He was, however, subject to a range of controls through the company: he had to wear a uniform, be available for work full-time, and conform to rules and standards. This was judged to be consistent with worker status.

Sources: Aslam, Farrar and Others v. Uber; Dewhurst v. CitySprint; Smith v. Pimlico Plumbers

17. This issue is by compounded by clauses in contracts issued to many thousands of gig economy workers which deny them the right to challenge their employment status in court (see Figures 2 and 3). We heard from the companies concerned that these clauses were unlikely to be legally enforceable;¹⁵ but to an average worker with little or no understanding of employment law, the intended deterrent effect is clear.

Figure 2: Extract from Deliveroo contract

2 STATUS

- 2.1 You are a self-employed supplier and therefore acknowledge that you are neither an employee of Deliveroo, nor a worker within the meaning of any employment rights legislation. For the avoidance of doubt, throughout the term of this Agreement you are free to work for such third parties as you choose provided always this does not prevent you from performing the Services in accordance with the Service Delivery Standards.
- 2.2 You further warrant that neither you nor anyone acting on your behalf will present any claim in the Employment Tribunal or any civil court in which it is contended that you are either an employee or a worker.

Figure 3: Extract from Uber contract

13. Relationship of the Parties

- 13.1. Except as otherwise expressly provided herein with respect to Uber acting as the limited payment collection agent solely for the purpose of collecting payment from Users on behalf of Customer, the relationship between the parties under this Agreement is solely that of independent contractors. The parties expressly agree that: (a) this Agreement is not an employment agreement, nor does it create an employment relationship (including from a labor law, tax law or social security law perspective), between Uber (or any of its Affiliates in the Territory) and a Customer or any Driver; and (b) no joint venture, partnership, or agency relationship exists between Uber and Customer or Uber and any Driver.
- 13.2. Customer has no authority to bind Uber and undertakes not to hold itself out, and to ensure that each Driver does not hold himself or herself out, as an employee, agent or authorized representative of Uber or its Affiliates. Where, by implication of mandatory law or otherwise, Customer or any Driver may be deemed an employee, agent or representative of Uber, Customer undertakes and agrees to indemnify, defend (at Uber's option) and hold Uber and its Affiliates harmless from and against any claims by any person, entity, regulators or governmental authorities based on such implied employment, agency or representative relationship.

18. We also gained an insight into the processes through which companies demonstrate to the relevant authorities (for example, HMRC) that their workers are self-employed. This hinged on showing that workers are denied anything that might afford them the status of employees (see Figure 4 below). Dan Warne, of Deliveroo, told us that his company did not offer its workers certain benefits because this would jeopardise their self-employed status—and Deliveroo's existing business model.¹⁶ When pushed, however, Deliveroo, along with Amazon and Uber, conceded that their business models would still be viable if they took on couriers and drivers as employees.¹⁷ They might simply be less profitable. The contracts that we saw from several companies also explained in great detail why workers were not employed, and the benefits that they would not receive. Beyond this there seemed to be little that would constitute a substantive reason or case for taking on workers on a self-employed basis. Flexibility is not the preserve of the self-employed. Indeed, it is a growing feature of work on regular employment contracts.

Figure 4: How HMRC decides employment status

Annex A

How we decide employment status

A person's tax and National Insurance contributions liabilities are determined in accordance with the person's employment status. An employee is a person who works under a contract of service, also referred to sometimes as a contract of employment. A person who works under a contract for services is self-employed.

HMRC legislation does not define 'contract of service' and we have to seek guidance from the employment status case law handed down by the Courts over the years. The Courts have identified factors that help to determine if a particular contract amounts to employment or self-employment. A contract does not have to be in writing. It can be written, oral, implied or a combination of all three.

Relevant factors include

- Whether there is an ultimate right of control on the part of the engager over what tasks have to be done, where the services have to be performed, when they have to be performed and how they have to be performed.
- · whether personal service is required
- · whether the worker has the right to provide a substitute or engage helpers
- · who has to provide the equipment and/or materials
- whether the worker has a real risk of financial loss
- whether the worker has the opportunity to profit from sound management for example, by reducing overheads and organising work effectively
- the basis of payment
- Whether there are 'employee type' benefits for example, sick pay, pensions, holiday pay, etc.
- whether the worker works exclusively for the engager
- whether the worker is part and parcel of the engager's business or organisation
- whether there is a right of dismissal by giving notice of a specific length
- factors personal to the worker for example, number of engagements and business organisation
- The intention of the engager and worker as regards employment status.

When all the facts have been established the approach endorsed by the Courts is to stand back and look at the picture as a whole. It can then be seen whether the overall effect is that of a person in business on his/her own account or a person working as an employee in somebody else's business.

19. Companies relying on self-employed workforces frequently promote the idea that flexible employment is contingent on self-employed status. But this is a fiction. Selfemployment is genuinely flexible and rewarding for many, but people on employment contracts can and do work flexibly; flexibility is not the preserve of poorly paid, unstable contractors. Profit, not flexibility, is the motive for using self-employed labour in these cases. Businesses should of course be expected to seek out opportunities and exploit them. It is incumbent on government to close loopholes that incentivise exploitative behaviour by a minority of companies, not least because bogus self-employment passes the burden of safety net support to the welfare state at the same time as reducing tax revenue. 20. Designating workers as self-employed because their contract offers none of the benefits of employment puts cart before horse. It is clear, though, that this logic has taken hold, enabling companies to propagate a myth of self-employment. This myth frequently fails to stand up in court, but individuals face huge risks in challenging their employment status in that way. Conversely, where there are tax advantages to both workers and businesses in opting for a self-employed contractor arrangement, there is little to stand in the way. It is clear that current ways of categorising workers are creaking under the weight of the changing economy.

21. The apparent freedom companies enjoy to deny workers the rights that come with employee or worker status fails to protect workers from exploitation and poor working conditions. It also leads to substantial tax losses to the public purse, and potentially increases the strain on the welfare state. An assumption of the employment status of "worker" by default, rather than "self-employed" by default, would protect both those workers and the public purse and would put the onus on companies to provide basic safety net standards of rights and benefits to their workers. This assumption would entitle workers to employment rights commensurate with "worker" status. As there is no "worker" status in tax law, tax status would be unaffected. Companies wishing to deviate from this model would need to present the case for doing so, in effect placing the burden of proof of employment status on the company.

3 Self-employment, entrepreneurship and self-reliance

22. Self-employment can be a very positive choice, allowing people to use entrepreneurial skills to grow businesses that add great value to society. The greater autonomy associated with self-employment can also have particular advantages for people for whom employee work may be less suitable: for example, people with health conditions, or with caring responsibilities. Entrepreneurship and self-reliance should be supported and encouraged wherever possible. The DWP has an important role to play in providing this support.

Specialist support and the New Enterprise Allowance

23. Self-employed people's access to Universal Credit (UC) is subject to them being "gainfully self-employed". To assess gainful self-employment, all self-employed would-be UC claimants have a "Gateway Interview" to establish that the work is regular, organised, developed and making a profit as the claimant's main job. The interviews are carried out by Jobcentre Plus (JCP) Work Coaches who have mixed caseloads of many different categories of claimant. The DWP argued this generalist model allows Work Coaches to develop a broad range of skills and knowledge.¹⁸ We heard evidence, however, that assessing small business plans and activity for viability at the outset of a claim required specialist skills.¹⁹

24. Understanding whether an individual is gainfully self-employed requires specialist knowledge and understanding of business development that is beyond the remit of Work Coach training. This stage is vital in ensuring the Department supports potentially successful businesses while not squandering resources on those that have little chance of becoming sustainable. We recommend responsibility for conducting Gateway Interviews is transferred to New Enterprise Advisers, who are specialists in supporting the self-employed.

25. The New Enterprise Allowance was introduced in 2011 to offer specialist support to unemployed claimants who want to start their own business. It is delivered by external providers. Participants receive specialist mentoring, a weekly allowance, and access to business loans through a Start-Up Loan scheme. The Department has expanded the NEA since its introduction; while 1,820 people per month came through the programme in 2015–16, there will be capacity for 4,000 to 5,000 people per month in 2016–17.²⁰ It has also extended the mentoring and advice that is on offer, including introducing a new stream offering support to self-employed people with established businesses who are low-paid.

26. Witnesses welcomed the expansion and reform of the NEA programme which will allow it to support a larger and broader cohort of self-employed people. We heard, however, that even the expanded programme will not satisfy demand for specialist self-employment support.²¹ JCP currently supports a caseload of 760,000 claimants who are looking for work. Only 7% of claimants will be able to access the NEA.

¹⁸ Q387 (Damian Hinds)

¹⁹ The RSA and Crunch (SGE0062), Q305 (Matt Dooley), Q307 (Sam Windett), Social Market Foundation (SGE0026)

²⁰ Q393 (Pauline Crellin)

²¹ Q312 (Andy Chamberlain, Sam Windett), PeoplePlus (SGE0077), ERSA (SGE0018)

27. The expansion of the NEA is welcome. Nevertheless, Jobcentre Plus remains heavily focused on getting the unemployed into employee jobs. For many, this will be the right pathway. But the Department must ensure that there is adequate specialist support on offer to help those who could become gainfully self-employed fulfil their potential as self-reliant business owners. Even the expanded NEA can only cater for 7% of JCP's caseload. This falls a long way short of the level of provision that we would expect to be allocated to supporting self-employment in a modern labour market.

28. The Department should commission research on the extent of unmet need for specialist self-employment support among the JCP caseload. This should consider both unemployed people and those who are currently in low-paid self-employment who might benefit from support in growing their businesses. If the Department can identify significant unmet need then it should expand the NEA, considering a separate specialist self-employment programme and payment structure for the long-term unemployed and for those who experience additional barriers to work, such as disabled people.

The Minimum Income Floor

29. Self-employed UC claimants are subject to a "Minimum Income Floor" (MIF). This assumes that they are making a certain, minimum amount of income each month. Their UC award is calculated on this basis, regardless of whether they have actually earned that amount. For most claimants the MIF is the equivalent of a full-time worker (35 hours) on National Living Wage. New self-employed claimants are exempt from the MIF for their first year of business, known as the "Start-up Period". The MIF is intended to "encourage individuals to increase their earnings through developing their self-employment", and to "[address] flaws in legacy benefits which allowed self-employed claimants to receive state support while declaring low or zero earnings".²² It is structured in such a way as to incentivise claimants to earn as much as possible, and discourage under-reporting.

30. The Resolution Foundation, a think tank, expressed concern about the effects of the MIF on the relative treatment of employees and self-employed people in UC:²³

Applying the MIF on a monthly basis could leave self-employed workers much worse off than employees, despite having identical annual incomes. This situation would arise as a result of a self-employed person's UC award being capped by the MIF when their income is low, without then being recovered in months when they earn more.

We heard that this is a particular problem for self-employed people because their incomes are often volatile. This is not necessarily due to any fault on their part. The nature of self-employment means that income may be inevitably irregular: for example, reflecting large orders or payments received for ongoing work in one month, or as a result of seasonal variations.²⁴ We also heard that the current Start-up Period of one year does not accurately reflect the length of time that it takes for a new business to become profitable.²⁵ As a result, the MIF might harm potentially viable new businesses.

²² DWP (SGE0038)

²³ Resolution Foundation, <u>Making the most of Universal Credit</u>, June 2015, p.20. See also Q333 (Victoria Todd), Low Incomes Tax Reform Group (SGE0020), Joseph Rowntree Foundation (SGE0030)

²⁴ Low Incomes Tax Reform Group (SGE0020), Advice NI (SGE0004)

²⁵ Q336 (Benedict Dellot), IPSE (SGE0033), Joseph Rowntree Foundation (SGE0030), PeoplePlus (SGE0077 and SGE0019)

31. Witnesses suggested a number of ways that the MIF might be reformed to address these problems:²⁶

- Extending the Start-up Period, or tapering the MIF up over a longer period than one year to avoid producing a cliff-edge at the end of year one;
- Applying the MIF on an annual or quarterly basis to help avoid penalising claimants with volatile incomes;
- Basing the MIF on turnover and evidence of future profit, rather than income; and
- Removing the MIF altogether. The requirements of claiming UC as a selfemployed person may be sufficiently onerous to put off people who might view self-employment as an easy way of avoiding UC conditionality. This would imply that a key purpose of the MIF—discouraging unprofitable self-employment—is redundant.

32. We also heard that there is uncertainty about how individuals in the middle employment category of "workers" are treated within UC. Like employees, they are largely dependent on one organisation for work but many have very flexible contracts and, like many self-employed are vulnerable to volatility in incomes, whether as employees, or as self-employed. While this is an active area of case law we heard there is a need for clarity and guidance from the Department on how different groups should be treated in UC.²⁷

33. There are three different categories of employment status in the UK. Universal Credit (UC) takes into account two, but focuses on one—employees. The self-employed are a large and growing component of the UK workforce. Taking urgent action to ensure that UC is appropriate to support them should be a priority for the incoming government.

34. The Department is seeking to support entrepreneurship without subsidising unprofitable self-employment. The existing Minimum Income Floor in UC does not get this balance right and risks stifling viable new businesses. The incoming government should commission an independent review of the MIF with a view to improving its sensitivity to the realities of self-employment. Until this is complete, the MIF should not apply to self-employed UC claimants.

Auto-enrolment

35. There are stark differences between the pension arrangements of self-employed people and employees. The self-employed are much less likely than employees to contribute to a personal pension at all and when they do so they tend to contribute less. Many of the reasons for differences in pension savings predate the rise of the gig economy, but may be exacerbated if low-paid, insecure work predominates:²⁸

²⁶ IPSE (SGE0033), The RSA and Crunch (SGE0062), Low Incomes Tax Reform Group (SGE0020), PeoplePlus (SGE0077 and SGE0019), Equity (SGE0036), ERSA (SGE0018), learndirect Ltd. (SGE0015), Advice NI (SGE0004), Joseph Rowntree Foundation (SGE0030), Social Market Foundation (SGE0026)

²⁷ Q303 (Andy Chamberlain), The RSA and Crunch (SGE0062)

²⁸ Association of Consulting Actuaries (SGE0022), Association of British Insurers (SGE0028), Smart Pension (SGE0014), Q292–293 (Michael Mealing)

- Inertia and a lack of understanding of both private and state pensions may discourage self-employed people from setting up a pension scheme;
- The earnings levels of self-employed people, and their often volatile incomes, may make contributing to a pension unviable; and
- The self-employed may prioritise investing savings and capital in building their business over saving for retirement.

36. Automatic enrolment of employees into a workplace pension was introduced under the Pensions Act 2008 to address widespread under-saving for retirement. Auto-enrolment does not apply to self-employed people, although they may use the platforms that the Government and other providers have built for auto-enrolment.²⁹ The Department stated that this is because in the case of self-employed people, the "employer" and "worker" are the same person. It "would not make sense to require a person to enrol themselves only then to opt-out if they don't want to participate in pension saving". The Department did, however, tell us it was considering the issue of self-employed pension savings in its independent review of auto-enrolment.³⁰

37. Many witnesses told us that the Government should look to extend a form of autoenrolment to the self-employed. We heard varying suggestions of models that might achieve this.³¹ We also heard differing opinions on whether enrolment in a pension should be compulsory for the self-employed. Some witnesses favoured "nudging" self-employed people towards contribution to a scheme, for example by requiring them to tick an "opt out" box on their tax returns if they did not want to contribute.³² Others felt compulsion was necessary to boost the numbers of self-employed saving for retirement to sustainable levels.³³

38. Low levels of retirement saving amongst the self-employed risk storing up grave problems of potential hardship and reliance on the welfare state in later life. While auto-enrolment for employees has been a great success, current structures are not encouraging sufficient pension saving by the self-employed. The idea of using an opt-out system on tax returns to encourage greater contribution to pensions is an interesting one that merits further consideration.

²⁹ Such as NEST, the National Employment Savings Trust

³⁰ DWP (SGE0038)

³¹ Q277 (Joe Lane), Q280 (Yvonne Braun), Q282 (David Fairs), Citizens Advice (SGE0039), Association of Consulting Actuaries (SGE0022), Association of British Insurers (SGE0028), Smart Pension (SGE0014), IPSE (SGE0033) Zurich (SGE0029), Freelancer Contractor Services Association (SGE0031)

³² Q260 (Chris Curry), Q294 (Joe Lane), The RSA and Crunch (SGE0062), Freelancer Contractor Services Association (SGE0031)

³³ Smart Pension (SGE0014)

Conclusions and recommendations

- 1. Our welfare system, and public support for it, is founded on the contributory principle. The introduction of the New State Pension means the last major difference between the entitlements of employees and self-employed has been removed. It is now difficult objectively to justify the differing rates of contribution. Fairness must be the future direction of travel and, political constraints aside, the equalisation of NICs rates was right. *The incoming government should set out a roadmap for equalising the National Insurance contributions made by employees and the self-employed*. (Paragraph 10)
- 2. Companies relying on self-employed workforces frequently promote the idea that flexible employment is contingent on self-employed status. But this is a fiction. Self-employment is genuinely flexible and rewarding for many, but people on employment contracts can and do work flexibly; flexibility is not the preserve of poorly paid, unstable contractors. Profit, not flexibility, is the motive for using self-employed labour in these cases. Businesses should of course be expected to seek out opportunities and exploit them. It is incumbent on government to close loopholes that incentivise exploitative behaviour by a minority of companies, not least because bogus self-employment passes the burden of safety net support to the welfare state at the same time as reducing tax revenue. (Paragraph 19)
- 3. Designating workers as self-employed because their contract offers none of the benefits of employment puts cart before horse. It is clear, though, that this logic has taken hold, enabling companies to propagate a myth of self-employment. This myth frequently fails to stand up in court, but individuals face huge risks in challenging their employment status in that way. Conversely, where there are tax advantages to both workers and businesses in opting for a self-employed contractor arrangement, there is little to stand in the way. It is clear that current ways of categorising workers are creaking under the weight of the changing economy. (Paragraph 20)
- 4. The apparent freedom companies enjoy to deny workers the rights that come with employee or worker status fails to protect workers from exploitation and poor working conditions. It also leads to substantial tax losses to the public purse, and potentially increases the strain on the welfare state *An assumption of the employment status of* "worker" by default, rather than "self-employed" by default, would protect both those workers and the public purse and would put the onus on companies to provide basic safety net standards of rights and benefits to their workers. This assumption would entitle workers to employment rights commensurate with "worker" status. As there is no "worker" status in tax law, tax status would be unaffected. Companies wishing to deviate from this model would need to present the case for doing so, in effect placing the burden of proof of employment status on the company. (Paragraph 21)
- 5. Understanding whether an individual is gainfully self-employed requires specialist knowledge and understanding of business development that is beyond the remit of Work Coach training. This stage is vital in ensuring the Department supports potentially successful businesses while not squandering resources on those that have little chance of becoming sustainable. *We recommend responsibility for conducting Gateway Interviews is transferred to New Enterprise Advisers, who are specialists in supporting the self-employed.* (Paragraph 24)

- 6. The expansion of the NEA is welcome. Nevertheless, Jobcentre Plus remains heavily focused on getting the unemployed into employee jobs. For many, this will be the right pathway. But the Department must ensure that there is adequate specialist support on offer to help those who could become gainfully self-employed fulfil their potential as self-reliant business owners. Even the expanded NEA can only cater for 7% of JCP's caseload. This falls a long way short of the level of provision that we would expect to be allocated to supporting self-employment in a modern labour market. (Paragraph 27)
- 7. The Department should commission research on the extent of unmet need for specialist self-employment support among the JCP caseload. This should consider both unemployed people and those who are currently in low-paid self-employment who might benefit from support in growing their businesses. If the Department can identify significant unmet need then it should expand the NEA, considering a separate specialist self-employment programme and payment structure for the long-term unemployed and for those who experience additional barriers to work, such as disabled people. (Paragraph 28)
- 8. There are three different categories of employment status in the UK. Universal Credit (UC) takes into account two, but focuses on one—employees. The self-employed are a large and growing component of the UK workforce. Taking urgent action to ensure that UC is appropriate to support them should be a priority for the incoming government. (Paragraph 33)
- 9. The Department is seeking to support entrepreneurship without subsidising unprofitable self-employment. The existing Minimum Income Floor in UC does not get this balance right and risks stifling viable new businesses. *The incoming government should commission an independent review of the MIF with a view to improving its sensitivity to the realities of self-employment. Until this is complete, the MIF should not apply to self-employed UC claimants.* (Paragraph 34)
- 10. Low levels of retirement saving amongst the self-employed risk storing up grave problems of potential hardship and reliance on the welfare state in later life. While auto-enrolment for employees has been a great success, current structures are not encouraging sufficient pension saving by the self-employed. The idea of using an opt-out system on tax returns to encourage greater contribution to pensions is an interesting one that merits further consideration. (Paragraph 38)

Formal Minutes

Wednesday 26 April 2017

Members present:

Rt Hon Frank Field, in the Chair

Heidi AllenJames CartlidgeMhairi BlackRichard GrahamMs Karen BuckCraig Mackinlay

Draft report (*Self-employment and the gig economy*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 38 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Thirteenth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the <u>inquiry publications</u> page of the Committee's website.

Monday 6 February 2017	Question number
Graham Baines, Courier, Hermes, Steven Rowe, Partner, Uber, and Cain Jones, Rider, Deliveroo	<u>Q1–51</u>
David Dunn, Partner, Uber, Syed Khali, Partner, Uber, and Marc Ramsden, former Courier, Hermes	<u>Q52–122</u>
Jane Cordell, Director, Result CIC, Sara McKee, Founder and Market Innovation Director, Evermore Wellbeing, and Robert Winstanley, Entrepreneur	<u>Q123–141</u>
Wednesday 22 February 2017	
Andrew Byrne, Head of Public Policy, Uber UK, Lesley Smith, Director of Public Policy UK and Ireland, Amazon, Dan Warne, Managing Director UK and Ireland, Deliveroo, and Carole Woodhead, CEO, Hermes UK Ltd	<u>Q142–254</u>
Wednesday 1 March 2017	
Chris Curry, Director, Pensions Policy Institute	Q255-273
Yvonne Braun , Director of Long-term Savings Policy, Association of British Insurers, David Fairs , Immediate Past Chairman, Association of Consulting Actuaries, Joe Lane , Senior Policy Researcher, Citizens Advice, and Michael Mealing , Policy Chair for Employment and Pensions, Federation of Small Businesses	<u>Q274–300</u>
Wednesday 22 March 2017	
Andy Chamberlain, Deputy Director of Policy and External Affairs, IPSE, Matt Dooley, Enterprise Director, Peopleplus, and Sam Windett, Head of Policy and Communications, Employment Related Services Association	<u>Q301–321</u>
Stuart Adam, Senior Research Economist, Institute for Fiscal Studies, Benedict Dellot, Associate Director (Economy, Enterprise and Manufacturing), the RSA, Nigel Keohane, Research Director, Social Market Foundation, and Victoria Todd, Senior Technical Manager, Low Incomes Tax Reform Group	<u>Q322–350</u>
Wednesday 29 March 2017	
Matthew Taylor, Chief Executive of the of the RSA and leader of the Department of Business, Energy and Industrial Strategy's independent review on Modern Employment Practices	Q351–371
Damian Hinds MP , Minister for Employment, Department for Work and Pensions, and Pauline Crellin, Deputy Director, Labour Market, Department for Work and Pensions	

Published written evidence

The following written evidence was received and can be viewed on the <u>inquiry publications</u> page of the Committee's website.

SGE numbers are generated by the evidence processing system and so may not be complete.

- 1 Advice NI (SGE0004)
- 2 Aegon UK (SGE0023)
- 3 Alex Prezanti (SGE0009)
- 4 Association of Accounting Technicians (SGE0051)
- 5 Association of British Insurers (SGE0028)
- 6 Association of Consulting Actuaries (SGE0022)
- 7 Broadcasting Entertainment Communications and Theatre Union (SGE0024)
- 8 Citizen's Advice (SGE0039)
- 9 Department for Work and Pensions (SGE0038)
- 10 Employment Related Services Association (ERSA) (SGE0018)
- 11 Equity (SGE0036)
- 12 Freelancer & Contractor Services Association (SGE0031)
- 13 Harry Shutt (SGE0012)
- 14 Hermes (SGE0042)
- 15 IPSE (SGE0033)
- 16 Jacqueline Winstanley (SGE0041)
- 17 Joseph Rowntree Foundation (SGE0030)
- 18 Kathryn Harrison (SGE0064)
- 19 Law Centre NI (SGE0035)
- 20 learndirect Ltd (SGE0015)
- 21 Magenta Security Services Ltd (SGE0040)
- 22 Marc Ramsden (SGE0065)
- 23 Name withheld (SGE0054)
- 24 Name withheld (SGE0044)
- 25 Name withheld (SGE0045)
- 26 Name withheld (SGE0046)
- 27 Name withheld (SGE0048)
- 28 Name withheld (SGE0053)
- 29 Name withheld (SGE0055)
- 30 Name withheld (SGE0056)
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- 39 Name withheld (SGE0068)
- 40 Name withheld (SGE0071)
- 41 Name withheld (SGE0050)
- 42 Name withheld (SGE0052)
- 43 Office of Tax Simplification (SGE0010)
- 44 Paul Jones (SGE0069)
- 45 PeoplePlus (SGE0019)
- 46 Professor Melanie Jones (SGE0021)
- 47 RSA and Crunch (SGE0062)
- 48 Smart Pension (SGE0014)
- 49 Social Market Foundation & Trust for London (SGE0026)
- 50 The Low Incomes Tax Reform Group (SGE0020)
- 51 Time etc Limited (SGE0005)
- 52 TUC (SGE0037)
- 53 Uber (<u>SGE0032</u>)
- 54 University of Hertfordshire (SGE0016)
- 55 UPHD (SGE0043)
- 56 VocaLink (SGE0027)
- 57 Young Women's Trust (SGE0017)
- 58 Zurich (SGE0029)

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the <u>publications page</u> of the Committee's website.

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2015–16

First Report	Pension freedom guidance and advice	HC 371 (Cm 9183)
Second Report	Welfare to work	HC 363 (HC 720)
Third Report	A reconsideration of tax credit cuts	HC 548
Fourth Report	Benefit delivery	HC 372 (HC 522)
Fifth Report	The local welfare safety net	HC 373 (HC 924)
Sixth Report	Understanding the new state pension – interim report on pension statements	HC 550
Seventh Report	Communication of state pension age changes –interim report	HC 899
Eighth Report	Communication of the new state pension	HC 926 (HC 229)
Ninth Report	Support for the bereaved	HC 551 (HC 230)
Tenth Report	In-work progression in Universal Credit	HC 549 (HC 585)
Eleventh Report	Automatic enrolment	HC 579 (HC 610)
First Special Report	Progress with automatic enrolment and pension reforms: Government and Financial Conduct Authority responses to the Committee's Fourth Report of Session 2014–15	HC 375
Second Special Report	Improving Access to Work for disabled people: Government response to the Committee's Second Report of Session 2014–15	HC 386
Third Special Report	Benefit Sanctions: Beyond the Oakley Review: Government Response to the Committee's Fifth Report of Session 2014–15	HC 557
Fourth Special Report	Pension freedom guidance and advice: Financial Conduct Authority Response to the Committee's First Report of Session 2015–16	HC 719
Fifth Special Report	Welfare-to-work: Government Response to the Committee's Second Report of Session 2015–16	HC 720
Sixth Special Report	The local welfare safety net: Government Response to the Committee's Fifth Report of Session 2015–16	HC 924

Session 2016–17

First Report	BHS	HC 54
Second Report	The future of Jobcentre Plus	HC 57 (HC 965)
Third Report	Intergenerational fairness	HC 59 (HC 964)
Fourth Report	Concentrix	HC 720 (HC 1006)
Fifth Report	Support for ex-offenders	HC 58 (HC 1044)
Sixth Report	Defined benefit pension schemes	HC 55
Seventh Report	Disability employment gap	HC 56
Eighth Report	Response to the Government's consultation on corporate governance reform	HC 995
Ninth Report	Employment opportunities for young people	HC 586
Eleventh Report	Citizen's income	HC 793
Twelfth Report	Victims of modern slavery	HC 803
First Special Report	Communication of the new state pension: Government Response to the Committee's Eighth Report of Session 2015–16	HC 229
Second Special Report	Support for the bereaved: Government Response to the Committee's Ninth Report of Session 2015–16	HC 230
Third Special Report	Benefit delivery: Government Response to the Committee's Fourth Report of Session 2015–16	HC 522
Fourth Special Report	In-work progression in Universal Credit: Government Response to the Committee's Tenth Report of Session 2015–16	HC 585
Fifth Special Report	Automatic enrolment: Government Response to the Committee's Eleventh Report of Session 2015–16	HC 610
Sixth Special Report	Intergenerational fairness: Government Response to the Committee's Third Report of Session 2016–17	HC 964
Seventh Special Report	The future of Jobcentre Plus: Government Response to the Committee's Second Report of Session 2016–17	HC 965
Eighth Special Report	Concentrix: Government Response to the Committee's Fourth Report of Session 2016–17	HC 1006
Ninth Special Report	Support for ex-offenders: Government Response to the Committee's Fifth Report of Session 2016–17	HC 1044