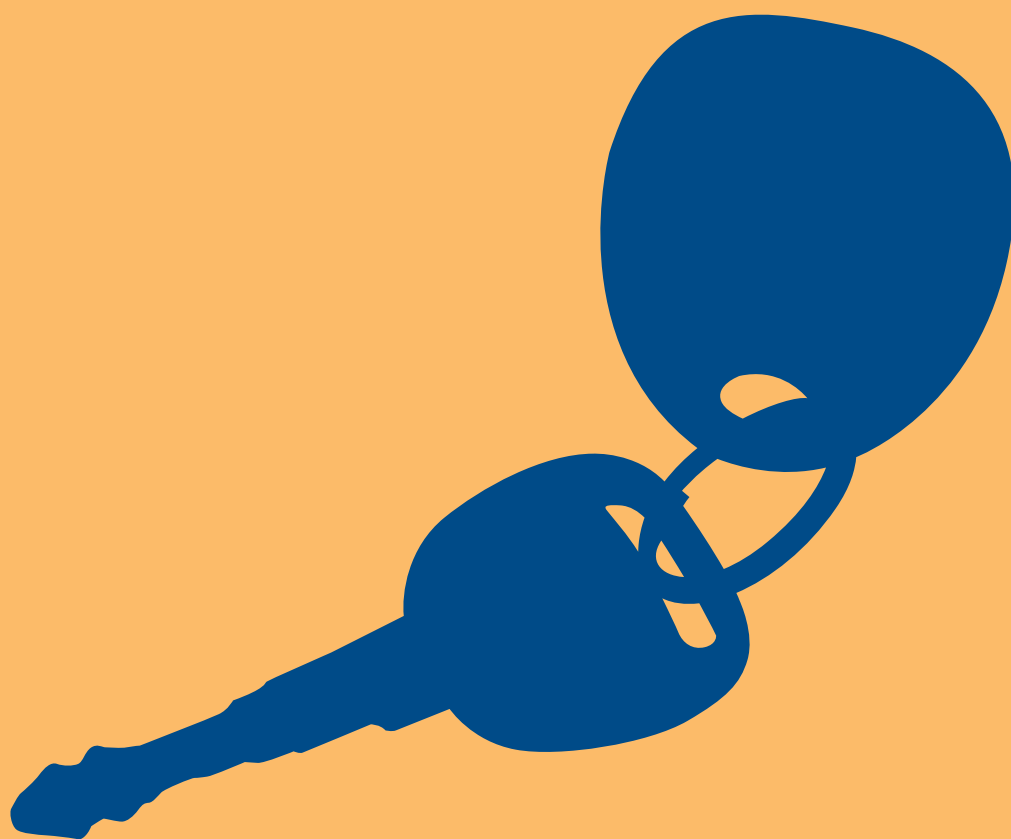


None of the freedom, all of the risk

Delivery drivers and 'bogus self-employment' in Bristol

November 2016



**citizens
advice**

Bristol

Introduction

Rapidly growing self-employment numbers accounted for nine out of ten new jobs created between March and May 2016.¹ Key to this was the rise in home deliveries, with the UK parcels industry, which is currently worth £9 billion, having grown by a third since 2011.² Yet evidence gathered by Citizens Advice shows many people working within this industry are being exploited, underpaid and denied their rights.

Some parcel delivery drivers are classed as 'self-employed contractors' whether they are paid directly or indirectly through an agency arrangement.³ These drivers do not qualify for basic employment rights such as National Minimum Wage (NMW), Statutory Sick Pay, holiday pay and National Insurance contributions (NIC).

Genuine self-employment offers freedom of choice regarding hours and workload, the opportunity to build a customer base and, if the business is a success, the profit. Evidence suggests that parcel delivery drivers enjoy few of these freedoms and prospects. Rather, they have a fixed daily rate and often finish a hard day's work having earned less than the NMW. Citizens Advice has found that one in ten self-employed workers in the UK may have been incorrectly classified as 'self-employed' and as a result are being denied their employment rights.⁴

Why are so many drivers unable to use their legal rights?

Primarily because, as illustrated below, using intermediary agencies rather than employing drivers directly creates ambiguity which is then exploited to deny employment rights.



1. TUC (20 Jul 2016), 'Job figures shows "massive" increase in self-employment, says TUC.' <http://bit.ly/2dq0GwH>

2. Financial Times (5 Jan 2016), 'Online orders boost UK parcels market.' <http://on.ft.com/2dq21Ds>

3. BBC (12 Sept 2016), 'Courier firm Hermes may face HMRC investigation over low pay.' <https://bbc.in/2cGr7eX>

4. Citizens Advice (2015), 'Neither one thing nor the other.' <https://bit.ly/2dTO6c1>

Self-employed ... or not?

It's a legal grey area ...

What is 'self-employment'?

'Self-employment' can have different definitions in different areas of law, such as employment and tax, which means its legal interpretation is often highly contested. This uncertainty is particularly central to concerns about the rise of the so-called 'gig economy' where businesses hire self-employed staff for temporary and flexible arrangements, often using smartphones to manage the working relationship.

For individuals who are unsure about their employment rights or dispute their employment status, their only recourse is to take their case to an employment tribunal. Forthcoming outcomes of tribunal cases brought against a number of cycle courier and taxi driver companies are anticipated to provide new case law and clarity in the area⁵. Currently however, UK employment law is failing to protect people who are unclear about their rights. Citizens Advice believes that a single definition of 'self-employment' would make it easier for workers to understand their status and make it harder for a minority of businesses who exploit workers under 'bogus self-employment.'

Employment Tribunal

Accessing an employment tribunal for a decision on status and entitlements, or to pursue unpaid wages, is time-consuming, complex and costly. In 2013, tribunal fees were introduced. The cost of bringing a claim now ranges from £390 to £1200 which deters a high proportion of potential claimants.⁶

What is 'bogus self-employment'?

'Bogus self-employment' refers to the practice of labelling staff as 'self-employed' when they should have employee or agency worker status. Doing so allows employers to avoid paying the National Minimum Wage, Statutory Sick Pay, National Insurance contributions, holiday pay and pension contributions. As well as workers losing out on these employment rights, bogus self-employment can cost the government millions in lost tax and Nlc. Responsible employers can also be undercut by competitors making savings by incorrectly classifying staff.⁷

I like driving. I've driven 400,000 miles in this job. But when it's really busy and I'm driving thirteen hours a day, it's really bad. I get very tired. I don't take a break. I have a fuel can to pee into. I don't stop for lunch. When you're under so much pressure you can make mistakes on the road.

Peter, Delivery driver

5. CIPD (22 Apr 2016) 'Cycle courier case "could challenge concept of the gig economy."' <https://bit.ly/2eplcic>

6. Citizens Advice (2014) 'Fairer fees: Fixing the employment tribunal system' <https://bit.ly/2dq1CkA>

7. Citizens Advice (2015) op.cit.

Challenges facing delivery drivers in Bristol

In January 2016, a number of delivery drivers contacted Citizens Advice Bristol for help. These drivers were handled by one of three different agencies but all delivered parcels exclusively for the same major online store. Their reports that the issues affecting them were also affecting their colleagues revealed an emerging pattern of employment rights infringements.

What's more, an investigation by the Guardian uncovered that drivers based elsewhere, working for another parcel delivery company, were receiving below the National Minimum Wage. This suggests that the problems facing the Bristol drivers are not isolated incidents and are likely to represent common practice throughout the industry.⁸

These are the three key issues highlighted by our clients.

1. Work availability and control



The working arrangements of a genuinely self-employed driver are laid out in The Road Transport (Working Time) Regulations 2005:

'Self-employed driver' means anyone whose main occupation is to transport passengers or goods by road.... Who is entitled to work for himself and who is not tied to an employer by an employment contract or by any other type of working hierarchical relationship, who is free to organise the relevant working activities, whose income

*depends directly on the profits made and who has the freedom, individually ... to have commercial relations with several customers.*⁹

This starkly contrasts with the circumstances of our clients. Despite their apparent status as self-employed, they are required to be available for work from 7.30am, five days per week, every week, unless two-weeks' notice has been given. Drivers are given a detailed route of deliveries to make, with little scope for changing it. By meeting these requirements, they are prevented from working for other companies. However, there is no guarantee that any work will be provided for them. Often drivers have their day's work cancelled by phone at 6.30am, i.e. one hour before their shift is due to start. They neither experience the freedom and flexibility enjoyed by genuine independent contractors, nor the benefits and security of those in regular employment.

"If you cannot work on the day, they will take from you double. If you turn up for work and there is nothing, you get nothing. You lose your money on the van for the day. And I am supposed to be earning some money?!"

Vasile, Delivery driver

8. The Guardian (18 Jul 2016), 'Revealed: Delivery giant Hermes pays some couriers less than minimum wage.' <https://bit.ly/29Qzq7m>

9. Driver and Vehicle Standards Agency (2013), 'Working Time Regulations for mobile workers.' <https://bit.ly/2ebqiQw>

2. Excessive hours and financial risk



Four of the drivers interviewed by Citizens Advice Bristol reported regularly driving fourteen hours per day without rest breaks. They said that at busy times, they could be required to make up to 150 deliveries per day. This doesn't even leave them time for toilet breaks, and so for this purpose they keep plastic bottles in their vans. The pressure to complete delivery schedules is enforced by financial penalties.

These working hours are in clear breach of the British Domestic Rules which state that drivers should not exceed ten hours driving per day, with "adequate rest breaks... [which] means that workers should have regular rest periods... [which] should be sufficiently long and continuous to ensure that workers do not harm themselves, fellow workers or others and that they do not damage their health in the short or long term." These long hours without breaks clearly leave drivers at increased risk of accidents, possible injuries and damage to their vehicles.

I had three days training. Nobody ever told me how many hours you're allowed to drive in a day. If you say you're too tired to drive or have driven too many hours that day, what would they say? They wouldn't care. You sure wouldn't get any bonus.

Ivan, Delivery driver

Drivers are required to own or rent their delivery vans with many hiring directly from their agency. Some of our clients said that hiring directly is encouraged and can lead to preferential allocation of work and routes. However, hiring directly also involves purchasing the agency's insurance with one such policy reportedly priced as high as £100 per week.

This particular policy came with a £5,000 excess, leaving the drivers liable for any damage costing less than that amount.

Our clients reported that they often arrive at the depot for a day's work, as per rota requirements, only to discover that their services are no longer required. They are then left not only with the loss of a day's pay, but also with the irretrievable cost of the van hire. Drivers face significant financial risk through this arrangement.

If you have your own van or rent from elsewhere, the agency put you at the back of the queue for routes. They first give work to people who are renting a van from them, as they make money from this.

Steve, Delivery driver

Challenges facing delivery drivers in Bristol

3. Deductions and non-payment of wages



Six of our clients claimed that their respective agencies owed them money, with amounts ranging from £600 to £3000. Monies were owed for unauthorised deductions during employment and for non-payment of wages when their contracts had come to an end. One particular agency appeared to display a worrying pattern of withholding the final two weeks of its workers' wages. Four drivers, three of whom were in the process of trying to recover their unpaid earnings, reported that this was standard practice. All four stated that this had happened to numerous others and that the agency ignored all requests for payment once drivers had left their employ.

Deductions are made during employment for various reasons. Some of these are laid out in the contracts, while others are apparently random. Our clients received financial penalties if they did not comply with the rota or give adequate notice to book days off. Weekly deductions for provision of itemised 'self-billing' payslips of £12, and for 'vehicle insurance deposits' of £12, are often charged at double if drivers are deemed not to have met their agency's requirements. Monies taken as deposits are not returned. One of the drivers told us that he had difficulty establishing whether he had been paid correctly as he did not receive a single payslip for three months' work.

When Sarah resigned from her job as a delivery driver, her final two payslips each showed deductions of £250. Her employer said that they were made because of damage to the vehicle she'd hired from them, and that she'd been involved in five accidents. She disputes this claim. She also states that she's not received her bonuses. She was helped by Citizens Advice Bristol to take her case to an employment tribunal, as despite her contract categorising her as self-employed, her terms of employment were those of an employee.

Vlad worked on a self-employed basis as a delivery driver for an agency, from December 2015 to April 2016. He's still owed over £2,000 for his first five weeks of work. In April, Vlad returned the agency's van in immaculate condition, having paid for repairs to remove all scratches himself. The agency then claimed they knew nothing about wages owed. Vlad sent repeated emails and texts requesting payment, to which the agency replied with a claim that their vehicle was returned with £1,300 worth of damage, and that this would be taken from his wages. Citizens Advice Bristol have advised Vlad to make a small claim for unpaid earnings and to dispute the agency's counter claim.

They gave me the worst van of the whole lot. For three months I was putting up with it. It was in a bad state, the interior door kept falling down. It was dangerous. And now I have left, they won't pay me, and now they say it's because of some damage. What damage? What crash? The damage was already done.

Peter, Delivery driver

Ivan's story

A self-employed delivery driver describes his experiences at work

The longest day I would do is 13 hours. I did that last week.



Today I arrived at the depot at 8am. I left loaded at 9am. I was back at the depot just after 7pm. This was fairly quick because I know the route. I had 130 parcels to deliver. Often the day is longer. They give you so many parcels you can't fit them all in the van – 300 parcels or so at Christmas time. The longest day I would do is arriving at the depot at 8am and returning at 10pm – so driving for thirteen hours. I did that last week.

When you're under so much pressure you can make mistakes on the road.



I like driving. I've driven 400,000 miles in this job. But when it's really busy and I'm driving thirteen hours a day, it's really bad. I get very tired. I don't take a break. I have a fuel can to pee into. I don't stop for lunch. When you're under so much pressure you can make mistakes on the road. The guys at the depot are always texting to see if you've finished. I've never had an accident, but I'm a good driver. It's dangerous, if you are under pressure you have to drive faster – it's easy to have an accident.

Some people get fired for no reason.



The agency is not good to work for. They don't pay me right. The guys at the depot say if you don't finish the route, you don't get paid at all. Some people get fired for no reason. They always owe you two weeks' wages, and they never pay it once you've left. My cousin left. He started in December and left in February. He didn't get the money. My housemate left in March. He still doesn't have the money. They're both owed about £400. Plus, the deposit they paid for the van, et cetera. But people don't even hope to get that back anymore.

Employment status and rights

As 'self-employed' drivers, our clients don't have access to the basic employment rights afforded to those with agency worker or employee status. These rights include the NMW, holiday pay, Statutory Sick Pay, and protection from wrongful or unfair dismissal.

The National Minimum Wage is £7.20 per hour for workers over the age of 25. Based on the same weekly working hours as a delivery driver, a regular employee earning the NMW would receive £345.60. Add to that pro rata holiday pay of £41.71 and it rises to £387.31.

The self-employed driver is paid £71.31 less than an employee earning the NMW.

Our clients reported that although a shorter

working day could lead to a higher rate of pay, the opportunity for this is rare due to consistently large parcel consignments. The agencies also place restrictions on how early the drivers can return to the depot and finish, effectively enforcing a minimum nine-hour day.

Although our clients are described as self-employed, their terms of employment are characteristic of agency workers, and as such they should benefit from employment rights. Issues of employment status can only be decided by an employment tribunal. However, the marginal status of our clients, combined with a pay rate often falling below the NMW, raises the question of whether theirs is genuine or bogus self-employment.

The typical weekly wages of a parcel delivery driver:

4 x 12-hour days: £440.00

Bonus: £10 per completed daily route

Total weekly earnings: £480.00

Deductions:

Van hire: £40

Van insurance: £100

Van deposit: £12

Admin costs: £12

Total deductions: £164

Remaining weekly earnings: £316

That's £6.58 per hour, and £5.75 per hour if the bonus is lost.

Additional deductions (e.g. minor vehicle damage or failed route completion): £110

Remaining weekly earnings: £166

That's just £3.45 per hour.

Bogus self-employment and 'marginal' employment status

Choosing to be self-employed is choosing to sacrifice employment rights and guaranteed income, for the chance to be your own boss, not have set working hours and have the opportunity to profit.

These drivers, however, seem to shoulder the sacrifices of self-employment, but none of the positives; they appear to be bogusly self-employed.

Such bogus self-employment is possible due to a lack of clarity in UK employment law. The definitions of employment status are inconsistent. Contracts of bogus self-employment play on this lack of clarity.

Typical characteristics of these carefully constructed roles are outlined in the table below:

Characteristic	Driver-Based Example seen by Citizens Advice	Explanation
1. Written contract with unclear employment status clauses	Contracts are open-ended.	Genuinely self-employed contractors would normally have negotiated a set price and timescale. Employee contracts are normally ongoing, but with a notice period for termination.
	The individual is obliged to be regularly available for work, but is not guaranteed any work.	Self-employed contractors are not obligated to be available for work, and are not guaranteed work. Employees are generally obliged to be regularly available for work, and in return are guaranteed work.
2. Working practices similar to employee – employer relationship but written contract includes sham self-employment clauses	Contracts contain a clause that states workers can send a substitute to do the work, when in reality it is not allowed, or is not practicable.	Self-employed people should be able to appoint another person to carry out the agreed work (a sub-contractor, or someone that works for them, for instance). Employee contracts normally have the requirement that the employee must carry out the work.
3. Written contract includes employee-type clauses but worker told they are self-employed	The contract imposes limits on the person regarding where else they can work (for example, prohibiting the individual working for a competitor).	Self-employed contractors can have multiple customers.

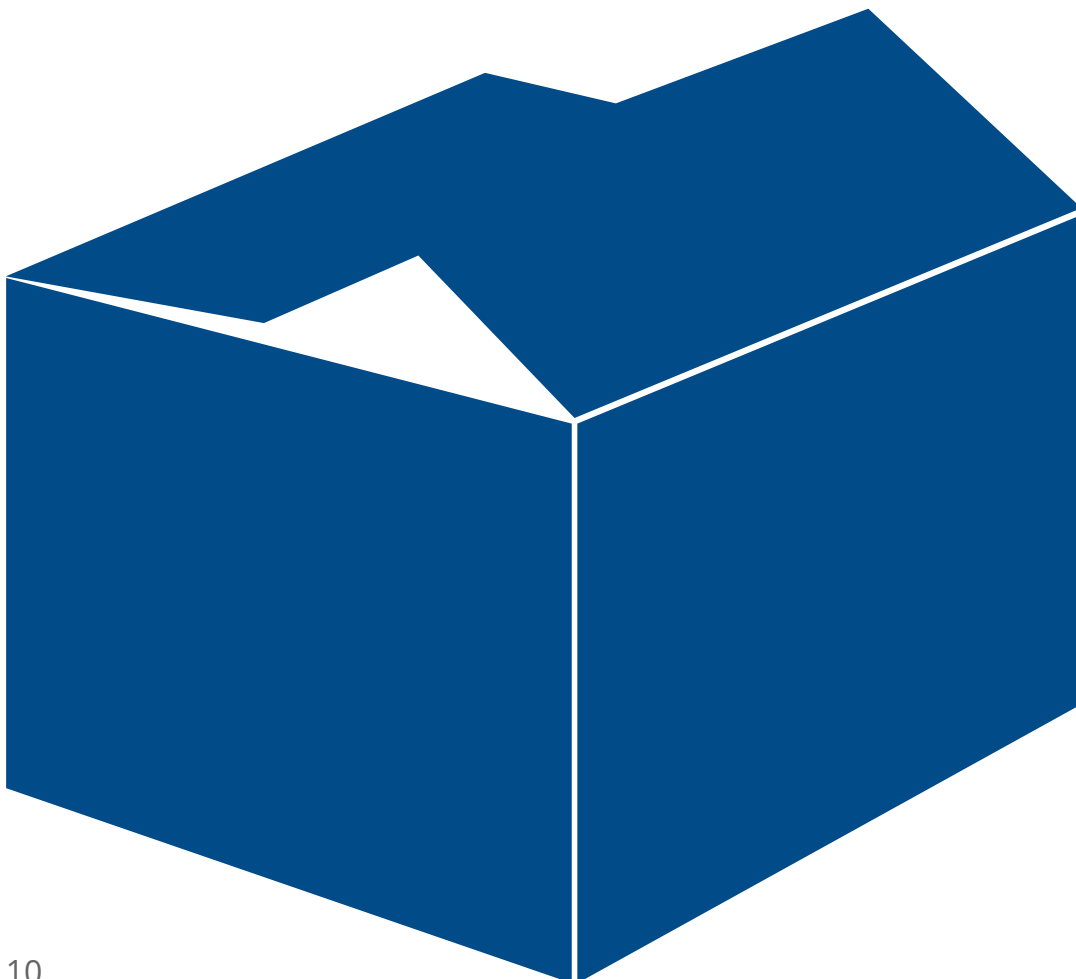
Bogus self-employment and 'marginal' employment status

Such contracts/roles, playing on the grey and complex area of employment status definitions, create a scenario in which the employer has the control, without the legal obligations.

Citizens Advice have presented drivers' contracts, displaying such characteristics, to various employment experts, solicitors and trade unions, asking the likely employment status of the drivers. The response included

widely varying and opposing opinions, with most suggesting it would be a finely balanced decision at an employment tribunal, with the potential to go either way.

This shows the complexity of the situation. In the context of the serious problems faced by workers with this kind of marginal status, this complexity is denying workers basic employment protection.



Where do we go from here?

With rapidly rising self-employment figures across the UK, the difficulties facing our clients need to be taken seriously. The problems reported in Bristol such as wage rip-offs, excessive driving hours and charges for effectively useless insurance policies, reflect those faced by other self-employed people, particularly within the parcels sector. The government has recently signaled an intention to tackle bogus self-employment. This is a positive start, but without clearer rules around employment many people will still struggle to get fair treatment at work. We believe that these actionable steps are needed to truly tackle bogus self-employment:

- 1** The government should introduce a simple statutory self-employment test to help workers identify their status.
- 2** Access to justice should be ensured by the abolition or a substantial reduction of fees for Employment Tribunal applications.
- 3** There should be a fair balance of rights and responsibilities between individuals and their employer.
- 4** Major employers and companies ultimately responsible for services must set high standards for those they contract with.

It will take public pressure to demand these changes. The current reforms at Sports Direct, following exposure of their poor employment practices, is a great example of how change can be driven.

10. Brooks, Thomas (19 Aug 2016), 'People are entitled to maternity rights. They're having problems getting them.' <https://bit.ly/2dhPP4A>



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We are a local charity and have been offering free advice to the people of Bristol since 1977. Last year we dealt with 35,000 enquiries.

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