

Uber drivers entitled to workers rights

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19 February 2021

This note briefly analyses the Supreme Court's decision on Uber v Aslam on 19 February 2021.

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The immediate impact of the decision is that Uber drivers are entitled to claim the national minimum wage, paid annual leave and protection from unlawful deductions from wages. The financial impact on Uber will be huge as nearly 40,000 drivers in the UK will be able to claim entitlement to worker rights against their full working time. According to the Supreme Court, the drivers' working time includes any period when a driver is logged into the Uber app and is not limited to the time spent on accepted drives as Uber had argued.

The judgment, which will surprise few, emphasised the following approach and factors as being relevant to the decision:

- The reality of the relationship between Uber and the drivers: written contracts should be disregarded especially when one party is in a position to dictate the terms to the other. The Supreme Court referred to the purpose of the current employment legislation which is to give protection to vulnerable individuals in their relationship to organisations who exercise control over their working conditions.
- The significant degree of control Uber exercise over the drivers through five key factors:
 - Uber sets the fare calculated through the Uber app
 - The non-negotiable and contractual terms Uber impose on drivers
 - The driver's choice whether to accept requests for rides, once they have logged onto the app, is constrained by Uber
 - The control Uber exercise over the way the service is delivered by the driver to the customer which includes warnings, penalties e.g. automatically logging a driver off the app for 10 minutes and termination
 - the limited ability available to a driver to establish a relationship with a passenger beyond a ride.

Beyond the financial impact for Uber, this decision will force some major businesses in the gig economy to reassess their model against the reality of the relationship with the individuals providing the services offered.

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