

## Insights

# UK SUPREME COURT DELIVERS VERDICT IN LANDMARK UBER CASE

Feb 24, 2021

## Overview

The Supreme Court has unanimously concluded that the Uber drivers who brought claims against Uber in 2015 are workers within employment legislation, giving them the range of rights attached to that status, such as the national minimum wage, the right to paid leave and whistleblowing protection.

## Facts and Employment Tribunal decision in 2016

As many of you will be aware, Uber is a ride-hailing service which operates through an app downloaded to a user's smartphone. The app enables a user to request a ride and be picked up from a pre-selected location. 25 Uber drivers brought a case against the company, which reached the Employment Tribunal (ET) in 2016. The drivers sought to be categorised as workers as opposed to self-employed contractors. Uber's position was that it simply provided a technology platform which facilitated the provision of private hire vehicles to customers. Uber argued that it served as an agent, with the driver and passenger entering into a direct contract for each journey.

The ET concluded that the drivers were workers. In reaching this decision, the ET considered the following factors:

- Uber mandated drivers to accept bookings and drivers who repeatedly cancelled would face sanctions
- Uber imposed conditions on drivers and instructed them on how to carry out their roles
- Uber controlled fares, disputes and refunds

The ET concluded that it was entitled to look at the reality of the situation, rather than what the contracts between the drivers and Uber stated.

## Supreme Court verdict

Uber unsuccessfully appealed against the ET decision in the Employment Appeal Tribunal and the Court of Appeal before it exercised its final right of appeal to the Supreme Court.

In a unanimous decision, the court explained that the rights asserted by the Uber drivers in their claims were not contractual rights, but statutory rights. The court therefore decided the task before it was one of statutory interpretation, and this interpretation should reflect the purpose of the legislation, which the court said was to protect vulnerable individuals who have little or no say over their pay and working conditions as they are in a subordinate position.

Based on this analysis, the court stated that *“it would be inconsistent with the purpose of this legislation”* if they treated the terms of the written contracts as the starting point when determining whether an individual falls within the definition of a worker. The court then went on to consider 5 factors which led to the conclusion that the Uber drivers were workers:

- Uber set the fares for each booking, not the driver. It was therefore Uber who decided how much drivers received for the work they do
- The contractual terms on which the drivers provided their services were imposed by Uber, with the drivers having no say in those terms
- Once the driver was logged into the app, Uber controlled whether the driver accepted rides, with enforcement action taken if they cancelled or rejected trips repeatedly
- Uber’s rating system implemented a significant degree of control over how the drivers performed the service
- Uber took steps to prevent the relationship between the driver and customer developing beyond an individual ride by restricting communications

The court stated that by *“taking these factors together, it can be seen that the transportation service performed by drivers and offered to passengers through the Uber app is very tightly defined and controlled by Uber”*. The court therefore reached the conclusion that these conditions placed the drivers in a position of subordination and that the drivers *“have little or no ability to improve their economic position through professional or entrepreneurial skill”*.

Therefore, the court upheld the verdict that Uber drivers are workers, meaning they could claim 5.6 weeks paid annual leave each year, and acquired whistleblowing and other statutory rights.

The court also considered the national minimum wage question, and reached the conclusion that the drivers constituted workers from the moment they turned on the Uber app and were available for work in their area, and should therefore have been paid the national minimum wage from that moment until they subsequently switched off.

## **Key takeaway**

The key takeaway is that the question of whether an individual is a worker is a question of statutory interpretation and not simply a contractual exercise. The contract between the parties is something that the court can consider, but the correct approach is to consider all the relevant circumstances, including also the relationship between the parties in practice and also the general purpose of the legislation in question.

## **Comment**

The question of employment status – whether an employee, a worker or an independent contractor – remains an area of debate. Determining status, whether it is for tax reasons or for employment rights, involves considering a range of factors. The Supreme Court has not changed that. Indeed it places emphasis on the importance of considering the facts rather than the contract. However, the importance of considering all the facts means that the Uber case is not binding in the sense that it does not mean that individuals engaged with other service platforms must also be workers. Different arrangements could mean a different status. Perhaps not surprisingly, Uber has referred to the case as being about “*a small number of drivers who used the Uber app in 2016*” and is claiming to have made significant changes since then. Implicit in that is that the 2021 arrangements may not lead to the same outcome.

In 2016 and 2017, the government-commissioned Independent Review of Employment Practices in the Modern Economy (known as the Taylor Review after Matthew Taylor who led it) examined employment status as part of its review of the UK labour market. Its report in 2017 led to a government response in 2018 and then a policy paper later that year. However, it lacked clarity on how to reform employment status and there is currently no sign of any changes in the pipeline.

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## MEET THE TEAM



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