EXPLORING THE CONCEPT OF REGULATORY SPACE: EMPLOYMENT AND WORKING TIME REGULATION IN THE GIG-ECONOMY

A thesis submitted to The University of Manchester for the degree of Doctor of Philosophy in the Faculty of Humanities

2018

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9.1 Introduction
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<th>Full Form</th>
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<tr>
<td>ACAS</td>
<td>Advisory, Conciliation and Arbitration Service</td>
</tr>
<tr>
<td>AmCham</td>
<td>American Chamber of Commerce</td>
</tr>
<tr>
<td>BEIS</td>
<td>Business, Energy and Industrial Strategy</td>
</tr>
<tr>
<td>CAC</td>
<td>Central Arbitration Committee</td>
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<tr>
<td>CBI</td>
<td>Confederation of British Industries</td>
</tr>
<tr>
<td>CEEP</td>
<td>European Centre of Employers and Enterprises providing Public Services</td>
</tr>
<tr>
<td>CEO</td>
<td>Chief Executive Officer</td>
</tr>
<tr>
<td>CIPD</td>
<td>Chartered Institute of Personnel and Development</td>
</tr>
<tr>
<td>CJEU</td>
<td>Court of Justice of the European Union</td>
</tr>
<tr>
<td>CME</td>
<td>Coordinated Market Economy</td>
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<tr>
<td>EAT</td>
<td>Employment Appeal Tribunal</td>
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<tr>
<td>ECHR</td>
<td>European Convention of Human Rights</td>
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<tr>
<td>ECtHR</td>
<td>European Court of Human Rights</td>
</tr>
<tr>
<td>ECJ</td>
<td>European Court of Justice</td>
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<tr>
<td>ET</td>
<td>Employment Tribunal</td>
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<tr>
<td>ETUC</td>
<td>European Trade Union Confederation</td>
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<tr>
<td>ETUI</td>
<td>European Trade Union Institute</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
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<tr>
<td>EUROFOUND</td>
<td>European Foundation for the Improvement of Living and Working Conditions</td>
</tr>
<tr>
<td>EWC</td>
<td>European Works Council</td>
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<tr>
<td>GMB</td>
<td>General Municipal and Boilermakers Union</td>
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<tr>
<td>H&amp;S</td>
<td>Health and Safety</td>
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<tr>
<td>HRM</td>
<td>Human Resource Management</td>
</tr>
<tr>
<td>HRMC</td>
<td>Her Majesty’s Revenue and Customs</td>
</tr>
<tr>
<td>HSE</td>
<td>Health and Safety Executive</td>
</tr>
<tr>
<td>I&amp;C</td>
<td>Information and Consultation</td>
</tr>
<tr>
<td>IER</td>
<td>The Institute of Employment Rights</td>
</tr>
<tr>
<td>ILO</td>
<td>International Labour Organisation</td>
</tr>
<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
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<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>IR</td>
<td>Industrial Relations</td>
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<tr>
<td>IWGB</td>
<td>Independent Workers Union of Great Britain</td>
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<tr>
<td>LME</td>
<td>Liberal Market Economy</td>
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<tr>
<td>MNCs</td>
<td>Multinational Companies</td>
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<tr>
<td>MP</td>
<td>Member of Parliament</td>
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<tr>
<td>NEM</td>
<td>New Economy Manchester</td>
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<tr>
<td>NEF</td>
<td>New Economics Foundation</td>
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<td>NLW</td>
<td>National Living Wage</td>
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<td>NMW</td>
<td>National Minimum Wage</td>
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<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
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<tr>
<td>ONS</td>
<td>Office for National Statistics</td>
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<tr>
<td>RQ</td>
<td>Research Question</td>
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<tr>
<td>RSA</td>
<td>Royal Society for the Encouragement of Arts, Manufactures and Commerce</td>
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<tr>
<td>SER</td>
<td>Standard Employment Relationship</td>
</tr>
<tr>
<td>TEU</td>
<td>Treaty of the European Union</td>
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<tr>
<td>TFEU</td>
<td>Treaty on the Functioning of the European Union</td>
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<tr>
<td>TR</td>
<td>The Taylor Review of Modern Working Practices</td>
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<tr>
<td>TUC</td>
<td>Trade Union Congress</td>
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<tr>
<td>UCU</td>
<td>University and College Union</td>
</tr>
<tr>
<td>UEAPME</td>
<td>European Association of Craft, Small and Medium Enterprises</td>
</tr>
<tr>
<td>UK</td>
<td>United Kingdom</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNITE</td>
<td>Unite The Union</td>
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<tr>
<td>US</td>
<td>United States (of America)</td>
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<tr>
<td>VoC</td>
<td>Varieties of Capitalism</td>
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<tr>
<td>WLBC</td>
<td>Work Life Balance Campaign</td>
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<tr>
<td>WP</td>
<td>Work and Pensions</td>
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<td>WTD</td>
<td>Working Time Directive</td>
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<td>WTR</td>
<td>Working Time Regulations</td>
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<td>ZHC</td>
<td>Zero Hours Contracts</td>
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Abstract

The present doctoral thesis focuses on the complex topic of regulation, looking in particular at that fragment of economic regulation which is the employment relationship. The research discusses regulatory theory and, as a starting point, elaborates on the concept of ‘regulatory space’, identifying ‘arenas’, sources and agency where regulatory phenomena can be investigated. In particular, deepening in the investigation, the research is focused on the contested terrain of working time, in a peculiar sector of the emerging labour market, which is the gig-economy.

Combining legal, industrial relations, managerial and sociological discussions, the present work has the precise purpose to address the question of ‘how do employment relations’ actors influence the regulation of working time, both in general and in relation to the gig-economy context?’.

Agency and sources of regulation are investigated through analytical lenses, by adopting a theoretical and analytical framework able to take account of the multi-dimensional and multi-level aspects of the matter. The framework allows for a holistic look at regulation that encompasses the dimensions of legal regulation, negotiation (mandated and voluntary) and unilateralism. By focussing on the topic of working time in the gig-economy, the research addresses both a legal discussion on regulations, legal disputes and contracts; at the same time, it undertakes a qualitative empirical investigation conducted with key informants (at international, national and workplace level).

The thesis contributes to the debate on regulation, as well as provides insights on the recent phenomena of the gig-economy. The results show how the contested terrain of working time regulation is fragmented in its agencies, sources and processes. The distribution of regulatory agency is of particular relevance because it reveals patterns of employers’ domination and managerial ‘manufactured ambiguity’, which are tentatively counterbalanced by workers’ resistance and organization.
Dedication

A Mamma, Papà e Chicco,
   Ai Nonni,
   A Zia Fede,

Per questi anni di lontananza,
   Eppure sempre vicini.

To Mum, Dad and Chicco
   To my Grandparents,
   To Aunt Fede,

For these years spent far away,
   But still so close.
(Blank Page)
Ho pensato e ripensato spesso ‘al tempo’ in questi anni di vita all’estero e di dottorato. Ci ho pensato talmente tanto da volerne fare, ad un certo punto, il mio argomento di ricerca. Il mio primo incontro con il tema del tempo di vita e lavoro, però, è avvenuto in un momento che a me ora sembra molto precoce. Probabilmente era la prima media, il manuale di letteratura riportava un brano di Italo Calvino, L’avventura di due sposi. Il brano raccontava della vita difficile di una giovane coppia che, operai entrambi, lavoravano a turni alternati in fabbrica, passando insieme solo rari e fugaci momenti, in una routine domestica sempre uguale.

“Alle volte invece era lui che entrava in camera a destarla, con la tazzina del caffè, un minuto prima che la sveglia suonasse; allora tutto era più naturale, la smorfia per uscire dal sonno prendeva una specie di dolcezza pigra, le braccia che s’alzavano per stirarsi, nude, finivano per cingere il collo di lui. S’abbracciavano. Arturo aveva indosso il giaccone impermeabile; a sentirselo vicino lei capiva il tempo che faceva: se pioveva o faceva nebbia o c’era neve, a secondo di com’era umido e freddo. Ma gli diceva lo stesso: – Che tempo fa? – e lui attaccava il suo solito brontolamento mezzo ironico, passando in rassegna gli inconvenienti che gli erano occorsi, cominciando dalla fine: il percorso in bici, il tempo trovato uscendo di fabbrica, diverso da quello di quando c’era entrato la sera prima, e le grane sul lavoro, le voci che correvano nel reparto, e così via” (Calvino, I. (1958) I Racconti, Einaudi).

Il racconto scosse nel profondo il mio essere una ragazzina privilegiata, che non sapeva ancora niente della vita e del lavoro. Iniziai a farmi molte domande. L’inquietudine mi prese perché sapevo che i nonni erano stati operai; perché nonno mi raccontava sempre di quanto fosse dura la vita in fabbrica, e che spesso aveva lavorato di notte. Dal basso dei miei undici anni, quel ritmo di vita mi sembrava qualcosa che potesse solo appartenere al passato. O era ancora così? D’altronde mamma e papà avevano sempre detto che lavorare in FIAT era terribile, per di più aveva fatto diventare il nonno sordo. Però qualcuno doveva pur farlo, ancora. Davvero esistono coppie che possono vivere incrociandosi assonatamente solo poche ore al giorno? E se sì, come fanno a resistere? Arturo ed Elide non dormivano quasi mai insieme, almeno

---

1 Translation available in Appendix 5.
non nella storia. La loro vita non era sincronizzata. Forse per i nonni era stato anche così. E oggi cos’è cambiato? Perché i nonni erano operai? Perché i miei genitori invece hanno insofferenza per i capi, e vogliono lavorare da soli?

Crescendo poi il pensiero si è fatto ovviamente più elaborato, così come la comprensione del mondo. Ho studiato giurisprudenza, ho iniziato a lavorare a mia volta, ho scritto una tesi, ho viaggiato. Ma la mia comprensione dei tempi di vita e lavoro attuale non è solo il frutto di quanto scritto qui dentro, di tutti i libri e articoli letti; e nemmeno è il solo frutto di quanto fatto per arrivare a mettere tutte queste lettere nero su bianco. Il vero traguardo di questo percorso è la scoperta di un ritmo di vita, l’esplorazione del mio tempo e del mio lavoro. Un tempo sicuramente privilegiato, ma che è costato anche tanta fatica, soprattutto psicologica, mia e di chi mi è stato accanto.


È a Tony Dundon, dunque, che va il primo e fondamentale ringraziamento, per esser stato il migliore maestro che avessi potuto sperare di incontrare nella mia (forse un po’ inconsapevole e avventata) decisione di intraprendere un dottorato in Irlanda, a Galway, poi continuato a Manchester. Senza i suoi suggerimenti e consigli, il suo interesse per gli aspetti professionali e umani del PhD, la sua attenzione verso il mio futuro come accademica, non avrei mai raggiunto tanti traguardi.
Un ringraziamento speciale va anche alle mie co-supervisors Lucy-Ann Buckley e Aristea Koukiadaki per il continuo supporto, l’attenta supervisione e le esperienze condivise.

Il secondo ringraziamento fondamentale va alla mia famiglia, Mamma, Papà, Chicco ed i Nonni, per esser stata presente in tutti i momenti difficili (ma anche in quelli di gioia e soddisfazione), per aver capito le mie scelte, sopportato la distanza, ed aver creduto in me, sempre più di me.

Al mio compagno di viaggio di questi anni va il ringraziamento più importante, perché solo lui davvero sa quanto e cosa questi quattro anni abbiano significato per me, per le nostre vite, tra Galway e Manchester, nella nostra routine quotidiana. Grazie Yohann per avermi supportato (e sopportato) con grande amore, nonostante la tempesta. Senza di te, non sarei qui a scrivere queste parole ora.

Il ringraziamento più complicato va invece agli amici, perché sono tanti e invece lo spazio è sempre troppo poco.

Grazie a Vale, per aver condiviso la vita qui per un anno fantastico, e perché mentre passeggiando per il Northern Quarter una domenica pomeriggio (dopo una pizza da Rudy’s) mi dissi: ‘Guarda che bella bici che ha quel rider di Deliveroo, che bel lavoro che fanno!’ Una rivelazione.

Grazie a Sara e Liv, per esserci sempre e per essere due grandi amiche, e per sapermi consolare (e sgridare) sempre nella giusta misura.

Grazie agli amici Mancuniani e Galwagian, per avermi dato una seconda famiglia lontano da casa: Stefano, Matteo, Laura, Olimpia, Maria, Federico, Chiara, Miguel, Thomas, Jon, Eva, Youen, Barbara, Peppe Zu, Stefano, Marie, Stewart, Aengus, Rob; e grazie a Giorgia, per il rock’n’roll. Grazie a Fabio e Giuseppe, perché io ero troppo giurista, e loro avevano semplicemente troppo da trasmettermi e insegnarmi.
Grazie agli amici Modenesi, in particolare Viola, Gianlu e Nazza, perché il mio mondo è decisamente più colorato con voi dentro. Agli amici sparsi per il mondo, e a quelli di casa, perché adesso posso chiamare casa molti posti: Marta, Viola, Dario, Marti, Elena (e la piccola Ludo), Giulia, Michal, Ale, Cice, Ele, Bob, Allegra, Ste, Sara, Albi e Fra.

Grazie al mio Team del Northern, per tutte le volte che il tennis mi ha fatto evadere e sfogare tutta la frustrazione del lavoro di ricerca (si, anche quando sbuffavo perché dovevamo giocare la sera al freddo sotto la pioggia).

Grazie a chi ha condiviso con me gioie e dolori del dottorato, ufficio, pause pranzo e caffè. In particolare Chanaka ed il suo essermi amico dal giorno 1 alla AMBS, Wojciech per essere il migliore ‘bad cop’, Kara e Daina per le chiacchierate, Harald per i pranzi, il perdere a squash e l’arrampicata. Grazie a tutti gli altri colleghi della C1 e alla ‘Galway PhD Gang’, in particolare Eva e Orlagh.


Grazie i miei colleghi dell’AMBS, per tutte le volte che mi hanno ascoltato e supportato moralmente in questo calvario che loro hanno affrontato prima di me. Grazie per avermi calorosamente accolto nella PMO Division. Un grazie particolare a Stefania, per essere collega e amica, ed avermi aiutato sin dal mio arrivo nella realtà Mancuniana.

Infine, un ringraziamento sincero e sentito a Michele Tiraboschi, Flavia Pasquini e Daniela Izzi, per avermi incoraggiato ad intraprendere il PhD, ed aver vegliato su di me a distanza in tutti questi anni.
Chapter 1

Introduction

1.1 Introduction

In 2013 William Shu, an American investment banker working in the City of London, had an idea, or better a desire, to improve the quality and the variety of its very short lunch breaks. When previously working in the financial district in New York he enjoyed having lunch at the office delivered from local restaurants and bistros; moving to Europe, he suddenly realised that the same service of food delivery did not exist in London. Here came the idea of creating Deliveroo, an online web-based application that aims to connect delivery riders with costumers and restaurants, offering, in principle, a *media* between demand and offer of services. This business is (with others like Uber, Foodora, Lyft, etc.) one of the most prominent examples of what represents the emerging ‘gig-economy’.

The need of having quick lunches at work in a very highly paced sector of the labour market gave the basis for a business idea that offers a very desirable service in the modern world. As it will be further illustrated later, operationally Deliveroo food service has been organised and managed through self-employed riders with very flexible schedules. Workers are subject to hours’ famine (or long hours, as an effect of time polarisation), high rhythms of work, safety risks and a blurred employment status, which is contested within the ‘regulatory arena’. New patterns and time structures are created by the need of an accelerated society, which is more and more ‘pressed for time’ (Wajcman 2015; Schor 1992).

Hence, the geography of social acceleration moves within districts and workplaces, from high-paced long-hours jobs in offices, to high-paced low-hours jobs for those people that deliver food to workers in offices. And
suddenly becomes a problem of co-ordination of consumption, and eventually, workers’ voice (Dundon et al. 2017). Such problems would traditionally need to be addressed by social actors, and by the State itself.

In fact, the regulation of working and social times, the need for protection from exploitation at work, the safeguard of decent working conditions, and equitable living standards are at the core of employment regulation spaces shaped, in part, by the State’s duties, and in other spheres by private capital. However, the degree and the instruments of intervention in regulating these areas can vary, according to institutional traditions, forms of State, contingent market factors, and historical legacies and community working class contexts.

This doctoral thesis explains and unveil regulatory dynamics affecting modern changes in the way working time is organised and structured, along with the challenges these bring for legal, institutional and social systems in emerging realities of a part of the gig-economy, namely food delivery organised via a technological intermediary application, and where the work task is executed in a specific local context and space.

This introductory chapter set the scene for the thesis, outlining the scope and objective of the research. It first outlines the rationale and research gap it seeks to address. Next, it explains the research questions and an outline of the thesis, by summarizing the content of each chapter and indicating the structuring of answers. Finally, the fourth section presents a summary of the contributions that the thesis presents to knowledge, theory and practice.

1.2 Rationale and gap in knowledge

The main rationale for the research has been inspired by an analysis of extant literatures about contemporary labour law debates concerning employment rights in those areas of newer business models, referred to as the gig-economy. This analysis sparked an interest in multidisciplinary approaches to explain and understand the field of regulation, and in particular that of employment, as a subject able to embrace legal, economic and sociological theories. On the one
hand, labour law has provided detailed description and comparative work; however, there has been a tendency for such legal approaches to focus on ‘black letter’ or traditional doctrinal analysis. As a researcher, a more eclectic social science approach to employment regulation than that of traditional legal studies was preferred, trying to combine theories, definitions and methods from other disciplines to explore regulatory issues, while at the same time maintaining a focus on legal issues. The rationale for adopting this approach was driven by the acknowledgment of a particular gap in research and programmes on employment regulation.

Indeed, the research first acknowledges a particular gap in the literature for what concern regulatory studies on the exploration and application to empirical research to test the institutional theory of ‘regulatory space’ (Hancher & Moran 1989; Morgan & Yeung 2007). As it is introduced in chapter 2, by looking at present research on regulation, a gap emerged between legal, industrial relations and management studies to investigate the complexities of regulation. In particular, the study addresses the lack of combination between traditional legal analysis and empirical work, which often is neglected in favour of a narrow understanding of the strictly legal aspects of employment contract. After having identified a research gap and rationale for investigating a broader approach to employment regulation in the gig-economy sector, the task was to identify a specific focus and approach to empirically conduct the research. The choice of exploring the regulation of working time was inspired from analysis around the inherent tensions of employment relations and difficulties for workers seeking satisfactory working time and work-life balance. The fascination about working time also derived from the reading of wide and varied literatures on the topic.

Although studies around the gig-economy have received attention in recent years within the legal and sociological academic debate, most comparative and legal studies have focussed on the discussion around the nature of work and the employment status (Cherry & Aloisi 2017; Todoli-Signes 2017). While issues of working time have been addressed in the literature (De Stefano 2016; Huws et al. 2018), this thesis take a peculiar approach by looking at the specific
issue of working time within a chosen segment of the gig economy; namely food delivery organised through a technological mobile intermediary app between worker and end-user and where work is conducted in a local space. The research combines both legal discussion around the employment status and the contracts used with an empirical analysis of managerial practices and workplace relations, by doing qualitative interviews with workers and key informants around carefully devised research questions, which are explained next.

1.3 Research questions, answers and thesis structure

Given the research gap noted above, a main research question and four supplementary questions have been carefully devised to advance knowledge and connect with contemporary employment regulation debates around working time. Specifically, the thesis seeks to answer the following research questions:

Main research question:

- How do employment relations’ actors influence the regulation of working time, both in general and in relation to the gig-economy context?

Supplementary research questions:

1. What is regulatory space and how is it related to the regulation of working time?
2. How does the State influence formal regulatory processes in working time regulation, both in general and in relation to gig-economy work?
3. How do other (institutional) actors respond to and seek to influence working time regulation, both in general and in relation to gig-economy work?
4. How do workplace relations influence the formal and informal processes of working time regulation within the gig-economy?
To tackle the main research question and related issues, the thesis utilises the application of the regulatory space theory (Hancher & Moran 1989), as an actor-focused approach to the empirical study of regulation in identified geographic areas and emerging (or ‘disruptive’) business arrangements. As anticipated in the introduction, this doctoral work seeks to understand the realities of working time regulation in the recent phenomena of the ‘gig-economy’ (Huws 2016; Prassl 2018).

For the purposes of exploring the area of interest and to address the main research question with greater clarity and focus, four sub-questions were devised. These are outlined next, alongside the illustration of the plan of the thesis and the content of its chapters. The thesis is structured across 9 chapters, which provide for cumulative structure to knowledge generation and empirical data to better answer the main and supplementary questions, as follows:

The second and the third chapters outline the theory and literature debates on the research topic. These help develop a theoretical and analytical framework to guide the research. Together, Chapters 2 and 3 aim to answer the first supplementary research question:

‘What is regulatory space and how is it related to the regulation of working time?’. In particular, Chapter 2 considers the concept of regulation and how regulatory theory may inform the main research question on how employment relations’ actors influence the regulation of working time by looking at specific institutional regulatory features. The main objective of the chapter is to explain and critically assess the debate around regulatory space (Hancher & Moran 1989). Subsequently, the chapter reviews the role of actors, agencies and sources of regulation, which can influence and affect regulatory space. In order to conceptualise the focus of the research work, an analytical framework is identified and proposed. Furthermore, the chapter outlines and defines the levels (international, national and workplace) at which regulation is considered,
bringing together theoretical debates and methodological aspects that are central in the later empirical investigation of regulatory issues.

Chapter 3 then builds on the conceptual framework by providing a deeper focus into the area of working time regulation. The debates here consider how regulatory actors are able to occupy and cede regulatory space, with specific examples from working time regulation. The chapter considers the role of the law, negotiations and unilateralism in the existing body of knowledge that describes and critically assess the regulation of the specific dimensions of working time ‘duration’, ‘organisation’ and ‘utilisation’ both in terms of standard-setting and enforcement. The chapter also provide a review of the literature on the history of working time regulation, the definitions and meaning of working time and its application across the levels identified in the previous chapter (international, national and workplace levels).

The fourth chapter discusses the methodological aspects of the thesis. This key chapter outlines in detail the rationale behind each research question, the methods to collect data to answer those questions, and how such data will be analysed and the tools to interpret and code the research. It first discusses research theories, addressing the specific themes of multidisciplinary research and the combination between legal research tools and qualitative empirical work. The methodology is tailored around the research questions and the analysis is structure according to the analytical and theoretical frameworks discussed in chapters 2 and 3: thus the focus of the research required a focus on regulatory actors and sources, which are operating at the specified different levels. The research takes thus a multidisciplinary approach, taking account of legal, industrial relations, managerial, political, economic and sociological paradigms.

The fifth, sixth and seventh chapters are dedicated to the report of findings. Chapter 5 and 6 are interconnected, as they both take in account the findings from the research at international and national level. Chapter 7, in contrast, is
focussed on the reporting of data from the case study at Deliveroo workplace in three UK cities: Manchester, London and Brighton.

Chapter 5 provides information to answer the supplementary research question 2:

*‘How does the State influence formal regulatory processes in working time regulation, both in general and in relation to gig-economy work?’.*

The chapter draws from extensive documentary sources and interviews with key strategic informants (such as policy-makers, trade union officials, national employers and policy advocates) and seeks to inform on the role of the British State and how it shapes the regulatory arena on the topic of working time and gig-economy employment rights. The exposition of findings reflects the contested and fragmented dynamics with regards to national level actors. The data provides evidence of a regulatory space ‘contestation’ that interests not only national level actors but also businesses and intra-governmental agencies.

Next, chapter 6 addresses the supplementary research question 3:

*‘How do other (institutional) actors respond to and seek to influence working time regulation, both in general and in relation to gig-economy work?’.*

The chapter provides the illustration of findings deriving from qualitative interviews with a range of policy actors and key informants, both at national and international level. It provides a contextual account of the debate around the regulation of working time and the regulation of the gig-economy overall. Firstly, it examines actors’ rationales for regulating working time, reporting insights and debates around the original regulatory logic for regulating on health and safety purposes. Secondly, the contended disruptive nature of gig-economy businesses is scrutinized, showing different actors preferences and strategies on the issue. In particular evidences of lobbying, persuasion and shaping of discourse and narratives are given. Furthermore, the chapter shows how the regulation of working time in the gig-economy is shaped by a ‘manufactured uncertainty’, which favours businesses over workers.
Chapters 5 and 6 shed light on the specified levels of regulatory space. Importantly, while the conceptual framework (chapter 2) identified separate levels (international, national, workplace), the data in chapters 5 and 6 shows that the interplay across actors and sources is complex and inter-woven between international actor agencies and national sources of influence. In practice, international and national levels often blur and interconnect.

Chapter 7 then presents workplace level regulation within Deliveroo. Chapter 7 seeks to answer the supplementary research question 4:

**‘How do workplace relations influence the formal and informal processes of working time regulation within the gig-economy?’**

The chapter presents findings from the empirical research conducted in three cities where Deliveroo operates: Manchester, London and Brighton. Firstly, it outlines the contractual relationships in place between the company and the riders, providing a comparison on the different working time terms and conditions around of the agreements between the three cities. The legal data analysis allows for the scrutiny of the ground rules that regulate the relationship between the riders and the platform, and their working time arrangements. Secondly, the chapters present findings from the interviews with the riders, which provide for first-hand data on the realities and informalities of working time regulation at the workplace. The interviews provide evidence about how riders’ working time is managed, organised, controlled and perceived, around the three dimensions of working time duration, organisation and utilisation. Furthermore, the chapter gives insights on how both management and workers jostle to influence working time regulation at the workplace. These evidences illustrate managerial actions, riders’ adaptability and agency, unilaterally imposed rules, and aspects of labour resistance and collective mobilisation.

Chapter 8 provides the discussion of the findings of the research and relates them to existing literature and debates. The discussion conceptualise the findings from chapters 5, 6 and 7, in the light of the theoretical and analytical frameworks outlined in earlier chapters 2 and 3. This analysis of working time
regulation in a specific business of the gig-economy contributes to an understanding of regulatory processes, adding to the regulatory space debate. The chapter discusses key themes and the contributions of the thesis, which are summarised in the following section.

Chapter 9 outlines the conclusions of the thesis and answers to the research questions. This last chapter provides a discussion on the limitations of the study, potential areas for future research, and outlines the main contribution of the thesis, which are also summarised next.

1.4 Summary of the contributions of the thesis

The research has sought to answer the research questions above. In doing so the thesis makes a number of generalised contributions to knowledge, theory and practice, with implications for multiple stakeholders. The following general contributions include:

**Theory and multi-disciplinarity:** theoretically, the research provides a useful framework to investigate the regulation of employment from a ‘multidisciplinary and multilevel perspective’. This is able to combine doctrinal legal analysis with other empirical social science work, and thus provide a broader picture on the realities of regulation. The regulatory dimensions outlined in the framework proposed in chapter 2 are argued to be useful for legal and social science scholars when approaching regulatory employment studies. The framework demonstrated its utility in constructing an answer to ‘how’ regulatory space can be occupied and influenced by various actors, by providing information about the dominant dimensions that affect a specific area of employment regulation, in this research being working time.

**Fragmentation:** the analysis of findings showed that the regulation of working time happens in a contested space, where the State has often ceded regulatory agency to other actors, without engaging itself in the proactive proposition of new standards and enforcement procedures. The findings show
also a ‘fragmentation of regulatory spaces’, with conflicting interests and positions regarding the need to regulate working time, and the gig-economy more specifically.

**Narratives of persuasion:** the data collected have pointed out how ‘narratives of persuasion’ affect the regulation of working time. The recent debate around the gig-economy brings new challenges for regulatory space contestation between employment relations’ actors. The research illustrates here inherent features of ‘actor agency and power’ that contributes to the understanding of the fragmentation of regulatory sources and how actors are influenced and persuaded.

**Manufactured ambiguity:** furthermore, the concept of ‘manufactured ambiguity’ is discussed as a key and consistent feature crafted by powerful actors (in this case, gig-economy businesses) to create a competitive advantage over other (e.g. workers) actors. The ambiguous nature of gig work contract status serves as an instrument of regulatory power over workers.

**Fragility of management strategy:** finally, the research contributes to the empirical understanding of workplace realities in the context of a gig-economy business in the on-demand food delivery service. The comparative study conducted in three UK cities shows the degree of fragmentation of working time and employment terms and conditions. It also shows how ‘fluid and fragile’ managerial strategies may be in face of countervailing worker responses and collective organising actions. Thus this empirical research contributes to the understanding of regulatory processes such as the manufacture of uncertainties around employment legal entitlements and rights.
1.5 Conclusions

This first chapter has provided a summary of the research purposes and outputs. It has outlined the rationale for the study of the topic, alongside the identification of a research gap. Secondly, it has introduced and discussed the research questions and provided the outline of the thesis overall, briefly summarizing the content of each chapters of the present work. In conclusion, a short report of the main contribution is pointed out, in order to familiarise the reader with the outputs of this doctoral work.
Chapter 2
Explaining Employment Regulation

2.1 Introduction
In this chapter the concept of regulation is considered and how the debates inform the primary research question of the thesis, namely ‘how do employment relations’ actors influence the regulation of working time, both in general and in relation to the gig-economy context?’. As a starting point, the chapter seeks to address the first Supplementary Research Question, namely ‘What is regulatory space and how is it related to the regulation of working time?’. In order to do so, after briefly contextualising the meanings of regulation, the substantive part of the chapter reviews regulatory space theory as to advance the primary research objectives of the thesis. From an analysis of regulatory space debates, a framework is proposed on Table 2.1, which advances the theoretical contributions of this thesis. The chapter also reviews the roles of actors, agencies and hierarchical levels that can mediate and influence regulatory spaces, in particular transnational, national, and workplace level influences. The chapter is important in bringing together conceptual and theoretical debates, which are later applied to empirical issues concerned with working time regulation in the context of the gig-economy in the UK.

2.2 The concept and meaning of regulation
Regulation is traditionally conceived as a governmental activity, exercised by state institutions or other bodies, which include corporations, self-regulators, professionals, trade bodies or voluntary organisations. The definition of regulation has been widely discussed in the literature, with authors contending the breath and the depth of its meaning. For mainstream legal commentators, regulation only reflects State-made rules and legal instruments. However,
broader definitions have been argued to be more suitable and comprehensive of the realities of regulation. For instance, Baldwin et al. (2012, p. 3) understand regulation as every form of social or economic influence, which can be ‘direct and deliberate or incidental’. In defining the concept of regulation for this thesis, the approach from Black (2002, p.1) is adopted because of its inclusion of multiple ‘actors’, variable ‘outcomes’ and the realisation of different ‘means’ that can be used to affect rule-making:

‘The sustained and focused attempt to alter the behaviour of others according to defined standards or purposes with the intention of producing a broadly identified outcome or outcomes’.

The philosophical discourse on regulation investigates and develops the meaning, the legitimacy and the accountability of the regulatory activity. In a democratic system, a regulatory body must have the legitimacy to regulate, and its role has to be recognised by the regulated and/or authorised by the Constitution. John Stuart Mill, in his utilitarian analysis of regulation, while addressing the problem of legitimacy of regulation stated that ‘the struggle between Liberty and Authority is the most conspicuous feature in the portions of history with which we are earliest familiar’ (Mill 1906, p.5). Furthermore, Mill (1906) pointed out that one of the main challenges in regulation is to find the limit to the legitimate interference of collective opinion with individual independence and to protect the society against political despotism. This is particularly relevant in the area of employment regulation, where a balance needs to be found between the regulation coming from a collective agency (workers and their representatives), a private autonomy (a company or employer), and the State (including its various agencies affecting employment rule-making). Regulation is often seen as an instrument for restricting and embedding human’s behaviour, but also for preventing undesired outcomes,

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2 As Majone (1996) pointed out, the regulatory legitimacy depends on the model of democracy (majoritarian or non-majoritarian) that a state or a supranational organisation adopts. The term ‘Constitution’ is intended here in its broader definition, as a set of common and fundamental rules that govern a state or a supranational institution.
Baldwin et al. (2012) offers a broader view on what are the regulatory outcomes, indeed, regulation may also have an enabling and facilitative role.

Regulation can be explained by several methods and from multiple perspectives. One approach is the institutionalist meaning of regulation, which resonates with the definition adopted for this thesis given the theorisation of ‘regulatory space’ discussed later. In order to do that, some hint from a comparative and international perspective will be given, with the aim to offer a critical framework and different institutional perspectives.

Among many other purposes, the regulatory activity of a democratic society in the area of employment relations has – from a labour law view at least – the clear objective of balancing the interests of the parties to the employment contract (the employer and the employee), limiting their freedom to contract through legal dispositions, concessions and constraints. Lord Wedderburn outlined that there is an ancient tension between the common law tradition, which regarded the employment relationship as a contract made by equals, and the labour law point of view, who sees in the labour contract an act of subordination, because the employer and the employee hold unequal bargaining powers (Wedderburn 1965, p.5). The recognition of the historical imbalance between the employer and the employee (traditionally implicitly included in the concept of ‘subordination’), and the recognition of a conflict in interests between the two, has been the cornerstone to legitimate the production of several norms for the protection of the subordinated subject, namely the employee. However, it is important to stress that the purpose of balancing the unequal bargaining power between the employer and the employee can be just one of the causes that legitimate regulatory intervention. Indeed, as Baldwin et al. (2012, p.23) pointed out, the necessity of regulation can be based on combination of multiple rationales, as it is, for instance, in the case of health and safety law, whose rationale combines the need to correct externalities, information defects, unequal bargaining, and to promote human rights and paternalism (Prosser 2006).
The emergence of new forms of work and employment that do not rely on the standard employment contract (i.e. ‘atypical’, ‘flexible’ jobs, bogus self-employment or dependent self-employment), which are therefore able to erode the traditional notion of subordination, is for instance one of the challenges that labour regulation is facing in recent times, and in particular with the rise of the so-called ‘gig-economy’ (Huws 2016). As the traditional element of regulatory legitimacy (the notion of subordination and the unbalance of powers between employers and employees) has being eroded, employment regulation is now facing the question of whether and how these new forms of work will be regulated (Finck 2017).

In the last decades, employment regulation has been receiving more and more attention, both at national and international level: employment law has been affected by increased complexity through the stratification of direct and indirect regulation in all the aspects of labour relation (e.g. health and safety, environment protection, atypical labour contracts, collective rights for workers, equality and non-discrimination rights, etc.). These brief conceptual meanings and definitional issues about regulation provide a backdrop to develop more theoretical considerations in relation to employment relationship changes. To this end the idea of regulatory space is developed as a potential theoretical lens to advance the research questions addressed in this thesis.

2.3 The regulatory space

2.3.1 An institutionalist theory of regulation

The ‘regulatory space’ is defined as an institutionalist theory on regulation. The range of theories on regulation is wide and fragmented: Morgan & Yeung (2007, p.16) have identified three main categories of regulation, which are divided in: public interest theories, private interest theories and institutionalist theories.

In the field of employment relations, the institutionalist approach ‘is intended to capture any theory where rule-based spheres, or the relationship between
different ruled-based spheres, play an important role in explaining why or how regulation emerges’ (Morgan and Yeung, 2007, p.17). It will be considered if it is a suitable theory to offer a conceptual framework to analyse how effectively work is regulated and how actors shape formal and informal rule-making processes. Since its first articulation by Hancher and Moran (1989), the metaphor of ‘regulatory space’ has been extended and further developed, in order to explain the complex dynamics of regulation by considering dominant approaches, political decisions and the ‘limits’ and (implicitly) ‘the potential for law as one instrument of governance’ (Scott 2001, p.330). It is debatable whether regulatory space is a ‘theory’, a ‘framework’, a ‘tool’, or an analytical ‘concept’ or ‘metaphor’. Notwithstanding oversimplification of these nuanced considerations, regulatory space has a solid pedigree is social science and employment relations scholarship to be evaluated as a lens for analysis in this thesis (e.g. among others: Hancher & Moran 1989; Scott 2001; Martinez Lucio & MacKenzie 2004; Berg et al. 2014; Dundon et al. 2014; Vibert 2014).

One of the primary requirements of regulatory space is that it has to be occupied by actors. This space-occupation can be unevenly allocated between the subjects, according to the existing power relations and resources. It follows that the amount of space that an actor occupies in a precise moment can be justified by historical, contingent and economic factors: regulation is not just situated in space, but also in time. The concept of power is inherently linked to the process of regulation: as Dundon et al. (2014) have demonstrated, through a multi-level analysis of regulation on Information and Consultation rights for employees, that power relations are essential elements that influence employment regulation and its outcomes. The theory of regulatory space fosters comparative studies and comparisons between nationals systems of employment relations: the place, as well as the time, where regulation occurs matters. Hancher & Moran (1989) explain that the most important way to analyse regulation and its space dimension is to consider the boundaries of the nation-state. Each nation produce their rules by following different political and constitutional responses, they conceive different relations between public and private, enabling various actors to participate in regulatory issues. These
can be influenced by historical and cultural traditions, as well as by current economic and political situation.

The progressive expansion in the last few decades of European Union competences and its subsequent boost on regulation has certainly modified the way in which regulatory space can be conceived. As a transnational State institution, the EU has increased the complexity of regulation by introducing extensive common rules for member States. The role played by EU, as an institution, in determining regulation is of primary importance and deserves greater attention: the European Union can provide regulation through several instruments (e.g. statutory regulation, directives, soft law, social policies, etc.), which can have many different impacts on employment regulation in terms of effectiveness and strength, both at national and workplace level.

Hancher & Moran (1989) stress that ‘the economic regulation’3 is a form of rule making predominantly made by and enforced through organizations. The ways in which organizations are characterised can vary, and individuals may influence regulatory issues because they fulfil have some organisational role (e.g. civil servants, senior managers, members of unions executive committees, etc.). Therefore organisational status and positional power can be a key factor either facilitating or inhibiting access to regulatory space. Industrial relations actors are also important in relation to their actions and intentions. Actors can leverage differential power through access to resources, they can influence cooperation or consent, and importantly they can shape rule by how they use and share information. Across the regulatory space, ‘parties bargain, cooperate, threaten, or act according to semi-articulated customary assumptions. The allocation of roles between rule makers, enforcers and bearers of sectional interests constantly shifts, which do not show an obvious public-private dichotomy (Hancher & Moran, 1989). Thus, it could be suggested that the regulatory space does not necessary follow a hierarchical and immutable structure. Instead, relationships between actors, sources and levels of influence

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3 For the purposes of this analysis, employment regulation will be considered as just one of the aspects of economic regulation.
always change, giving rise to a continuous process of adaptation and counterbalance, as a dynamic and fluid entity.

The theory of regulatory space fosters comparative analysis between national systems of employment relations: the place, as well as the time, of regulation matters. However, as Arthurs noted, regulatory changes “cannot be imported if they are inconsistent with the historical tendency that has become embedded in existing legal rules and regulatory institutions” (2013, p.356). Hancher & Moran (1989) explain that the most important way to analyse regulation and its space dimension is to consider the boundaries of the nation-state. Each nation produces its rules by following different political and constitutional responses; it conceives different relations between public and private, allowing various actors to participate in the regulatory arena. These relations are naturally influenced by historical and cultural traditions, as well as by current economic and political frameworks. Regulatory influences are also affected across levels and between nation-states, in terms of variable transnational convergence and/or divergence of regulatory patterns and sources of influence among actors (Martinez Lucio & McKenzie, 2004). To this end a multi-level approach applicable across different spaces (e.g. transnational, national, sectoral or workplace) is later considered in section 2.4.

2.3.2 Regulation, de-regulation, re-regulation

Regulatory space is always changing: it is subject to a continuous process of innovation from the point of view of its actors, instruments and contents. The process of change is the outcome of multiple sets of decisions and transfers (Martinez Lucio & McKenzie, 2004). Neo-liberal policies or liberal market changes in regulatory space are often defined as ‘deregulation’, while coordinated market regimes are seen as more rule-bound and ‘regulated’ (Esping-Andersen & Regini 2000). With the aim of exploring this debate, the dichotomy between ‘regulation’ versus ‘deregulation’ is subject to critical and more in depth analysis. As Esping-Andersen & Regini (2000, p. 24) outline, the real meaning of ‘deregulation’ of the labour market is ‘multi-dimensional and
basically ambiguous’. Deregulation can therefore be described from three different perspectives (Esping-Andersen and Regini, 2000, p. 24):

1) As an ‘attempt for minimizing all rules on individual behaviour and all the functions performed by State and associational institutions, in order to increase the individual autonomy of individual firms and workers’;

2) As an instrument for removing rules and institutions that are able to impose ‘excessive rigidities on labour market activity’.

3) As ‘the processes which scale down the role of some instruments of economic regulation – such as the law, or tripartite concertation – to the advantage of others – decentralized collective bargaining, or informal agreements’.

However, from a regulatory space theory, all the definitions presented above describe ‘deregulation’ as a process of redefining and rebalancing allocation within the regulatory arena. If we consider the two first descriptions of the term, it could be found that deregulation does not indicate a process, but rather an outcome. The implied narrative of ‘deregulation’ in this regard includes a strong value-laden judgement because, while describing a simple mechanism for regulation, it implies the idea of lower protections.

Deregulation, as an instrument for minimizing labour rules and protections connected with the idea of flexibility of the labour market, remains a central issue in the debate. Hepple (2013, p.33) reports the deregulatory process has often been described ‘as an absence of regulation… in fact, it meant leaving regulation to ordinary market rules, to the private law of property and contract’. In some European countries (e.g. Italy, Spain and Portugal), recent labour reforms have been presented as an instrument for the rebalancing-of-protection in the national labour market between standard and non-standard workers, with the covert aim of deregulation. This has a distinct ideological intent, which has been criticized by some authors interested in considering the socio-political outcomes of deregulation (De Stefano 2014). Scott (2001, p.337)
further points out that ‘deregulation’, ironically, often involves the development of systematic regulation over State bodies which develop and administer regulation’. It has been shown that the regulatory authority is dispersed between the actors within the regulatory space: Scott reports evidence showing how in the absence of State regulation, a privatised company can become *de facto* the regulator in a market. This demonstrates that ‘even policies of de-regulation cannot completely displace regulation’ (Scott, 2001, p.337). In short, neo-liberal free market ideologues have to impose extensive regulation in order to de-regulate.

This example leads to an important consideration about the nature of deregulation: the term entails a necessary and continuous process of re-regulation, rather than the simple removal or minimization of rules. Majone (1990) further argues that de-regulation nearly always entails some re-regulation. From the point of view of regulatory space theory, re-regulation can therefore underpin informal processes of regulation as well as formal and legal channels of rule-making: when there is an empty space, left by the absence or the removal of law provisions, other actors might intervene in order to influence or impose their rules in that specific area. In these cases, voluntarism and unilateralism might play a major role, shifting the power of decisions from the centre (the supranational or national authority) to the periphery.4

The misleading use of deregulation as a distinct concept or action has been highlighted by MacKenzie & Martinez Lucio (2005). They argue that the term deregulation ‘tends to reduce the conceptualization of regulation to a dichotomy viewed in terms of the quantitative absence or presence of

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4 Gino Giugni describes this process as a process of ‘devolution of regulatory power’ to other regulatory authorities. He distinguishes the different kind of policy of labour in three fundamental directions: ‘de-regulation’, ‘re-regulation’ and ‘devolution or re-formalization’. His analysis is oriented on a labour law perspective; hence, when talking about de-regulation he also mentions that this term is often (mis)used, without solid and scientific basics, to imply the restoration of the principle of the market balance. He therefore accepts the term ‘de-regulation’ when it is implied to point out the removal of useless or inadequate rules (Giugni 1986, p.331). Translation made by the author.
regulation, which is inappropriate as it is insensitive to the variety of ways in which the functions of regulation can be performed’ (MacKenzie & Lucio 2005, p.501). Echoing Standing (2011), Martinez Lucio & MacKenzie suggest ‘there is no such a thing as the ‘deregulation’ of labour markets. No society could exist without modes of regulation’ (Martinez Lucio and MacKenzie, 2004, p. 82). In a recent polemic around some of the debates, Dundon & Rafferty (2018) provoke that deregulated free markets are not based on some natural law, but are in fact socially re-constructed and often premised on misleading notions of pseudo-economic scientificity. They point out that even Hayek (1988), the doyen of unregulated markets, realised that human society is typically premised on collective identities through tribal instincts and social structures for collaboration. For the likes of Hayek, free markets and deregulated rules serve to break down and undermine collectivised worker solidarities in the labour market. Moreover, the mainstream conceptualization of deregulation as a mechanism for ‘removing rules’ and lowering protections can disguise the use of alternative modes of regulation, which can weaken employment right. Deregulation is, in effect, a more complex process that often requires on-going re-regulation, even if it is coming from different political agencies and regulatory institutions. Thus, for the purpose of this thesis, a more appropriate way is to describe the processes of re-distributive regulatory space around the concept of ‘re-regulation’ (e.g. downsizing of the role of the law, weakening trade union rights, dismantling some functions of the nation-State, and marginalising collective societal norms and customs in favour of others and more individual forms of voluntary or self-regulation). These issues of re-regulation are considered in further detail next.

2.3.3 Analysing regulatory space
This section takes account of the variety regulatory sources and processes, to present a broader analytical framework of employment re-regulation. The three dimensions outlined in the framework represent mechanisms of regulation in the area of employment. The framework expands previous work by including, alongside traditional mechanisms of regulation such as the law and collective
bargaining, the important dimension of ‘unilateralism’, which embodies processes generally not considered within traditional frameworks.

The key point is that behind each source of regulation, actors mediate the enactment of the regulatory instrument, through specific pathways and in specific places. Because of international, national, sectoral and workplace contexts, a multi-level analysis offers greater specificity about where and how actors operate, which in turn facilitates the investigation of each regulatory level. The proposed analytical framework offers a picture of the sources and actors found in the regulatory arena, and identifies the dimension and level in which they intervene. The framework does not claim to explain the advocated dynamic nature of regulation or the natural overlaps between sources and levels. However, it constitutes both an analytical and methodological instrument to conceptualize employment regulation in a broader and more holistic manner than the existing legal framework.

The analytical framework in Table 2.1 builds on the work of Berg et al. (2014) to capture how the role of key actor interests, specifically in the area of working time, by representing three ‘ideal models’ that correspond to different national regulatory configurations: the unilateral configuration (which is attributed mainly to the US regulatory framework), the negotiated configuration (exemplified by the Swedish model) and the mandated configuration (belonging to the French tradition). Berg et al. (2014) point out that ‘ideal types’ are for explanatory purposes only, because, in reality, ideal models premised on just one regulatory regime do not exist. To this end the framework in Table 2.1 is proposed as a way to better capture variation within a particular regulatory space, which was not developed by Berg et al. (2014).

The proposed analytical framework also offers useful tool for comparative analysis, because of its broader emphasis on the institutional and comprehensive dimensions of regulation. In addition to Berg et al. (2014), research adapted from Cabrita & Bohemer (2016) in also used to configure elements of the framework in Table 2.1. Their study compares different
regulatory approaches to working time duration, including: ‘pure-mandate’ regulation, ‘adjusted-mandated’ regulation, voluntary ‘negotiation’ and ‘unilateralism’. The importance of looking at the constraining, enabling and/or facilitative role of labour law in each national setting is pointed out. It is particularly relevant to the framework developed for this thesis, as it points out that the legal national setting is often able to shape and prescribe other regulatory mechanisms. However, one limitation with both Cabrita & Bohemer (2016) and Berg et al. (2014) is their analysis of the nation state as a singular homogeneous entity or mode for regulation. As contested in this thesis, even in a single regulatory regime there are likely to exist multiple channels and avenues for regulatory action. For instance, Berg et al. (2014) and Cabrita & Bohemer (2016) simplify the UK as having a ‘unilateral’ regulatory configuration. Yet the UK does also have statutory laws and there are in key industries established and indeed extensive collective bargaining. Thus their approach neglects to consider diversity, variation or the interplay of different regulatory actors and sources of influence within a single regime.

The proposed framework in Table 2.1 is not presenting a static or specific hierarchy within the system, nor does it represents an exhaustive pattern of regulatory sources. Rather, the four dimensions are regarded as complementary and fluid elements of the regulatory activity. The model is inspired by the broader European context of employment regulation, and aims to be both generalizable and responsive to context (including time and space). It therefore takes account of institutions, such as co-determination, that are or have been found in some European national settings, though not necessarily all of them. The framework is shown in Table 2.1 below and its dimensions and elements are described in what follows next.
Table 2.1 - A multi-level and multi-dimensional approach to regulatory space

<table>
<thead>
<tr>
<th>Level</th>
<th>Law</th>
<th>Negotiated Regulation</th>
<th>Unilateralism</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Mandated negotiation</td>
<td>Voluntary negotiation</td>
</tr>
<tr>
<td>International</td>
<td>International Law: ILO Conventions</td>
<td>European Works Councils</td>
<td>Collective Bargaining at EU level (Agreements</td>
</tr>
<tr>
<td>Level</td>
<td>EU Law: EU Human Rights Regulations</td>
<td></td>
<td>between Employers and Employee representatives at EU</td>
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<td></td>
<td>Directives</td>
<td></td>
<td>level)</td>
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<tr>
<td></td>
<td>Recommendations</td>
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<td>Policies</td>
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<td>Soft Law</td>
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<tr>
<td>Level</td>
<td>Labour Committees</td>
<td></td>
<td>Collective Bargaining</td>
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<tr>
<td>Workplace</td>
<td>Codes of Practice*, Customs, Employment contract</td>
<td>Board Level Representation</td>
<td>Decentralized Collective Bargaining (workplace)</td>
</tr>
<tr>
<td>Level</td>
<td></td>
<td></td>
<td>Non-Union Voice</td>
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<td>Employment contract</td>
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2.3.3.a) Law

According to Kahn-Freund (1972, p.5), ‘the principal purpose of labour law is to regulate, to support and to restrain the power of management and the power of organised labour’. More broadly, it is important to consider that the law may not hold just a technical and instrumental meaning: in fact, ‘the law may also be seen as ideology, or as particular rules and sanctions which stand in a definite and active relationship (often a field of conflict) to social norms (...) and it is not possible to conceive of any complex society without law’ (Thompson 1977, p.260). The original perspective on the function of labour law has been, for the better part of the twentieth century, to conceive its aim and objective through the scope of the ‘protective function’ (Wedderburn, 1965). According to this perspective, labour law should regulate in order to protect workers from exploitation and from unjust and unfair treatment from employers.

Building on this perspective, labour law is inherently a political matter: as Hepple states (2011, p. 30), ‘labour law is the outcome of struggles between different social actors and ideologies, of power relationships’. Its protective function develops as well under the light of its enabling function, facilitating the interests of a range of societal actors and goals (Deakin & Wilkinson, 2005). However, against a pure market-efficiency purposive focus (Davies and Freedland, 2007; Deakin and Wilkinson, 2005), scholars have stressed the importance of keeping employment law linked with the concept of citizenship and social inclusion (Dickens, 2004), as well as bringing back the attention on the central function and importance of the role of the State in regulatory processes (Dukes, 2014).

Labour law is one of the main sources of contemporary employment regulation, but not the only one: areas of regulation may overlap with other legal spheres; for example, company law, fiscal law or administrative law have to be taken in consideration (Arup et al. 2006). For instance, the utilisation of specific type of employment contracts can be explained by fiscal advantages rather than labour law’s facilitative regulation, or a combination of the two (Adams & Deakin 2014a).
However, it is important to stress that, in agreement with Deakin (2007), the expansion of the research interest beyond labour law represents a commitment to ‘legal pluralism’ rather than a claim towards the ‘discover’ of a new paradigm for labour law. Within the regulatory space, law assumes facilitative functions; it also has a procedural dimension (Morgan & Yeung, 2007), precisely for its functionality in generating hierarchies and organised systems. Adams & Deakin (2014a, p.804) further argue that ‘a legal system is needed to make labour markets work, and the techniques used to actualize this process, encapsulated in the discipline and methodology of labour law, involve a role for fairness norms as well as mechanisms for co-ordination of exchange’. Therefore, law is not just an instrument for co-ordinating society but is also a channel through which policies are realized and provided with effectiveness (Adams and Deakin, 2014a). Howe (2011) highlights the need to take account of the present challenges coming from labour market changes and describes the variety of regulatory approaches that might operate within the institutional setting, such as ‘soft laws’ and financial incentives. Howe’s perspective aims to highlight the importance of state policies over free labour market ideals, and gives interesting inputs for expanding the regulatory interest beyond the traditional labour law approach. Fox (1974) has pointed out the dilemma in transforming the theoretical or abstract notions of pluralism (e.g. recognising opposing interests and supporting inclusion) into practical organisational rules that work for all (Dundon & Dobbins 2015). To some extent, legal regulations imbued with notions of fairness and equality may help advance the practical utility of pluralism, at least in the regulatory space of the judiciary.

Consistent with Dickens (2004, p.602), the proposed framework posits that the significance of law as the main or only influence shaping employment decisions may be over-estimated, especially when analysed at the workplace level. It has long been established in employment relations literature that a complex web of formal and informal rule-making processes and groups of actors are able to mediate and moderate the influence of legal regulation (Fox 1974; Dundon & Rollinson 2011; Farnham 2014). The legal instruments of
derogation and delegation of regulatory authority are able to create space of intervention for other actors. In this way, it is possible to see how the legal instrument can be responsible for the ‘ceding’ of regulatory space. Thus, the investigation of the other spaces and the interrelation between them become particularly important for the understanding of the regulatory process.

However, greater attention must be directed to the limits of the legal approach. It is necessary to take account of the so-called ‘design failures’ that, for instance, might be caused by ‘vague standards and rules creating legal uncertainty, lack of coordination and consistency between different measures and incentives, or the structural inability to adjust rules according to changing environments’ (Esping-Andersen & Regini, 2000, p. 31). Colling (2010) tries to explain the relationship between regulatory failures and actors’ strategies, describing the legal regulatory system as ‘porous’:

“All legal systems are vulnerable to failures in legal standards, because actors do not understand the law or find space beyond its reach to avoid its requirements. In liberal market economies, like the UK, this space is preserved by the principal role in economic coordination afforded to markets and market rationales. Legal institutions in such circumstances prioritize the discretion of contracting parties to form bargains subjects to the circumstances they face, including employers and their workers. Such regulatory principles and institutions might therefore be described as porous. While permitting valuable flexibility, they also create complexity in legal provision and uncertainty in enforcement’ (Colling 2010, p.323).

For this reason, the analysis of legal regulation must go beyond the standard-setting process, and examine the institutional shaping of competence and accountability issues by the broader range of regulatory actors. Accordingly, the proposed framework outlines the following additional dimensions capable of capturing other aspects of employment regulation.
2.3.3.b) Negotiated regulation

A second dimension in Table 2.1 is that of ‘negotiated regulation’, which includes two variants, those of ‘mandated’ (or statutory) processes of negotiations at one extreme, and ‘voluntary’ forms of agreement-making between employers and worker representatives at the other. These variations differ in terms of the extent to which the law facilitates their application and use, but are prominent within institutional environments that support both mandated and voluntary bargaining systems (Berg et al., 2014). In this section different types of negotiated regulation are considered, namely mandated and voluntary patterns, which may have influence of working time regulatory space.

*Mandated Negotiation:* One example of a ‘mandated’ form of negotiation is co-determination, a mechanism for making decisions within a company, which directly involves the employees and gives them participatory rights. The main example in practice is the German model of industrial relations, where the law specifically provides space for co-determination procedures (Rubery & Grimshaw 2003; Behrens 2013). Here, law does not directly regulate all aspects of the employment relationship; instead, the legal framework explicitly allows, and even requires, employees to participate in a democratic decision-making process. Through specific institutions, such as works councils or supervisory management boards, companies must consult and include worker representatives in decision-making. The particularity of co-determination is that its requirement is strongly supported and shaped by the legal framework to support actors in making employment rules and policies.

Jackson (2005, p.237) has described co-determination as a ‘highly ambitious, but remarkably adaptable institution’. In Germany, co-determination has changed over time: ‘politically, codetermination was a compromise, resulting from particular state strategies to repress organized labour, employer strategies to maintain a paternalistic authority, and employee strategies to democratize the workplace and establish rights of industrial citizenship. Works councils emerged having a ‘dual’ mandate ‘to represent the interests of employees and cooperate in the interests of the firm’ (Jackson, 2005, p.245).
The importance of this institution has been widely recognized and has generated some attempts to introduce this model among the EU member states through legislation. From the 1970s the European Commission fostered three main initiatives in order to propose a European model of co-determination within the workplace. In particular, in 1972 and 1983 the Commission sponsored the Fifth Company Law Directive with the aim of introducing board-level employee representation. All the initiatives were opposed by employers, US corporate lobbying, national governments and problems with the harmonization of different national practices (Hyman 2010).

The final result of the attempt of introducing a model of codetermination in Europe, and thereby promoting participative rights, has been the European Directive on the European Work Councils (EWC Directive 94/45/EC of 22 September 1994, revised in January 2012). This aimed to introduce structures to ensure information and consultation for employees of multinational companies with sites in more than one EU Member State and employing a certain number of workers. However, as a form of co-determination, EWC mechanisms are not without critics. For example, Streeck argues that EWCs are ‘neither European nor works councils’ (Streeck 1997), and the aim of harmonizing the different national industrial relations backgrounds through the mean of Multinational Corporations has not brought the awaited results (Marginson et al. 2004). In short, co-determination may be another form of employment regulation, yet it also remains as contestable as other regulatory spaces. As this thesis is focussed on UK and there are no fully mandated co-determination systems akin to say those in Germany (beyond perhaps some EWCs) it is understood that co-determination systems of governance and negotiation will have limited application. Nonetheless, the concept is intellectually relevant and is therefore briefly noted here as it advances a generalizability of conceptual understanding and theoretical knowledge in the area of regulatory space.
Voluntary Negotiation: Of more specific relevance to the UK (and other liberal market contexts) is likely to be voluntary rule-making between employment relations actors; for example, when the law encourages the parties to negotiate but does not prescribe or set-down the detailed mechanisms or issues about which to negotiate. Voluntarism is typically most prevalent as a form of rule-making regulation in liberal market economies like the UK, US, Ireland or Australia. However, the proposed analytical framework goes beyond the simplified distinction between liberal and coordinate market economies. Arguably, the reality of employment regulation is much more complex and fragmented, and needs to be explained by multiple dimensions and levels of analysis even within a particular country type.

With voluntary negotiated regulation, the law ‘encourages’ and ‘facilitates’ the parties to voluntarily arrive at their own rule-making agreement, often with a minimum floor of rights for workers (such as health and safety, working time clauses, or unfair dismissal protections). This form of agreement making can theoretically occur through relationships at international, national, local, sectoral, plant or individual level. The outcome of voluntary collective (or individual) bargaining might (or might not) assume (depending on the specific institutional design of the state) the force of law, through for instance an *erga omnes* effect, or as an example, the UK and Ireland provide for a minimum legal wage, but under voluntary bargaining, the parties can negotiate a wage above the minimum rate. Such a negotiated outcome has no statutory force or broader application, but is incorporated into the individual workers legal contract of employment.

Historically, voluntarism (in the context of the Weimar Republic) has been explained as a system of governing norms: ‘In bargaining collectively, employers and trade unions did not enter into contractual relations but rather

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5 The *erga omnes* effect it is an extension principle that makes a collective agreement generally binding within its sector of application by explicitly binding all those employees and employers which are not members of the parties to the agreement. See https://www.eurofound.europa.eu/publications/report/2002/collective-bargaining-coverage-and-extension-procedures.
engaged in the autonomous creation of norms governing the relations of third parties’ (Dukes 2014, p.12). However, voluntarism does not include just collective bargaining but also encompasses other ways of achieving regulation through a workplace rule or corporate procedure. Hence, other processes may be viewed as instruments of voluntarism; for instance, the Social Dialogue at supranational European level, and the voluntary Social Partnership system at national level (as in Ireland, although this collapsed in 2010 following the economic crisis in 2008-09). Importantly, voluntary regulation might also be represented at workplace level through newer forms of employee-management dialogue; for example, decentralized collective bargaining; non-union employee voice channels; or individualised voluntary negotiation of the employment contract (Gollan 2007; Gunninge et al. 2009).

The example of working time regulation and the ‘opt-out’ clause in the UK is useful for understanding the dynamic between legal and voluntary negotiated regulation, where the law purposely cedes regulatory power to the voluntary agreement between the employer and the individual employee. In this way, what appears to constitute space for voluntary regulation and respect for personal choice can disguise the de facto ceding of space to unilateral regulation, if the parties do not have equal bargaining power. This case has been illustrated by Smith & Baker (2013) in their analysis of the regulation of maximum weekly working time in the UK.

It can be noted that the rise in individual employment rights for workers (typified through more and more European Directives) may be a chimera, rather than a widening of protective regulations as a matter of fact. In the last decade, voluntary regulation has become more permissive, often on a wave of European Directives designed to protect the individual rather than collective institutions of labour market regulation. So there is a potential paradox of more regulation that has resulted in weakened employee protection, which requires explanation. For example, legal interventions tend to be weak in reality when it comes to protecting employee rights or advancing collective bargaining supports, with a generally minimalist or ‘light-touch’ approach that favours
voluntary regulation over direct legal intervention (Dobbins 2010). The politicised nature of weak regulation, state institutions and the promotion of voluntary self-regulation by business leaders, are also highly significant here. For instance, institutions like the Troika and EU have fostered the decentralization of industrial relations with the explicit aim of favouring individual employee rights rather than extending or widening collective bargaining (Hickland & Dundon 2016). In this sense, free market voluntarism has been left relatively intact, to the advantage of capital over labour. A further example can be found in the workplace dimension, where, as Arthurs (2008, p.30) argued, voluntary systems of regulation and corporate self-regulation mechanisms, (such as codes of conducts) can mask the decline of state labour law; therefore, ‘they help to facilitate and normalise the shift of power from unions and workers to employers’.

Further, the weakening of trade union power in the last decade has narrowed the space for these actors to influence their regulatory spaces (McDonough and Dundon, 2010). Several scholars have pointed out that owing to the decline in unionisation and increased individual rights, opportunities have opened for alternative actors, like citizen advice organizations, civil society organizations and solicitors to speak-up for workers who lack collective bargaining protections (Hecksher & Carré 2006; Williams et al. 2011; Edmund Heery et al. 2012; O’Sullivan, Turner, Kennedy, et al. 2015). It can be argued, therefore, that statutory rights for collective workforce institutions have abated in favour of forms of voluntary rule making including non-traditional labour market actors. It remains debatable how far these changes align with an ideological narrative that underscores free market regulation. Research reports a distinct shift in the sources of power from comparative case studies in the UK and Ireland, where Information and Consultation (I&C) regulations were influenced more by individual managers and employers, including actions by State agencies who preferred voluntary rule-making outcomes (Dundon et al. 2014; Dobbins et al. 2017).
2.3.3.c) Unilateralism

The final dimension in the framework summarised in Table 2.1 is ‘unilateralism’; that is, the provision of regulation by a single authority, typically imposed without bargaining or consultation. The dimension presented here is not easy to evaluate and assess: unilateralism has a strong sociological and political characterisation. The managerial prerogative and literature about union avoidance highlights employer strategies and tactics to make decisions based on the notion of the property rights argument; that is, labour effort is seen as a source of property to be hired and fired at will by managers without the external interference of an outside trade union or other employee representative body. As a particular means of regulating employment conditions, unilateralism therefore has a considerable potential role in the analytical framework to assess regulatory spaces.

At the international level it can be described as the imposition through coerced compliance of some regulation from a superior authority that stands above the national democratic regulatory process. An example of such unilateralism could be found in the role endorsed by the European Commission, the International Monetary Fund and the European Central Bank, such as imposing austerity measures on those EU Member States and workers most affected by the economic crisis (Koukiadaki et al. 2016).

At the national level, unilateralism can be seen in the forms of corporatism and in the stronger forms of lobbying and the idea of corporate ‘self-regulation’. As an example, Crouch (2011) has particularly stressed the role of large firms and Transnational Corporations (TNCs) on national regulations: he contends that firms, by the means of political power and lobbying, are able to have a place in the ‘room of decision-making’. TNCs are able to ‘set standards, establish private regulatory systems, act as consultants to government, even have staff seconded to ministers’ offices’ (Crouch 2011). For example, the American Chamber of Commerce (AmCham) based in Ireland actively lobbied European government officials and Irish civil servants to weaken collective aspects of the Employee Information and Consultation Directive (Dir. 2002/14/EC)
(Dundon et al., 2014). These strong forms of lobbying activity are considered to be source of unilateral regulation in the employment regulatory space when they appear not to be effectively counterbalanced by other actors’ authority. Further processes of influence among corporate capital in relation to the governmental regulatory activity can be found in the analysis of the economic role of the State. Stiglitz (1989) suggested that, although a government cannot be sure that its regulation would not be modified by subsequent governments, it can try to develop strategies to make this difficult.

The role of the State in relation to forms of corporatism has also emerged in the literature: corporatism is understood as a negotiation process between pluralist independent subjects (Hyman 1989) but also, in a distinct and Marxist view, ‘corporatism represented the state’s encroachment into the details of joint regulation and economic activity due to the failure of socio-economic actors to deliver stable, effective and consistent economic results’ (Martínez Lucio & MacKenzie 2017, p.2986)

Finally, at workplace level, the role of Human Resource Management offers evidence of unilateral imposition of the conditions of workers. In this regard, Sisson (1993, p.207) notes that there is a lack of ‘serious legal regulation’ that could provide employees with basic standards and guide the work of HR Managers. In liberal market economies (e.g. UK, Ireland or US) as well as countries in the global South (e.g. Columbia, South Korea) it has been reported that employers devise managerial strategies in order to avoid the collectivization of workers and thereby deny legitimate union recognition and representation (Gall & Dundon 2013). For instance, as an example of the unilateral power of management, Moore (2014, p.412) has described as ‘appropriative discretion’ the managerial prerogative in respect of employees that gives management the power ‘to determine (and subsequently vary) unilaterally the on-going rate of return on human capital in real terms’, either by altering the level and/or rigour of work expected in return for the same level of money compensation, or else by maintaining employees’ prevailing contractual rate of money compensation notwithstanding the existence of price
inflation of other forms of material increase in the cost of living. Furthermore, the study conducted by Wood (2016), shows how the lack of structural economic power or institutional supports to workers and unions can result in employer domination of the issues to be negotiated.

The above three dimensions – ‘law’, ‘negotiated regulation’ (including mandated and/or voluntary) and ‘unilateralism’ – together offer a more inclusive analytical framework concerning the transformation of employment regulation. It is not suggested they are discrete or independent dimensions, and in reality are likely to overlap and be inter-connected. But in this way the proposed framework offers a heuristic sufficient to operationalize the application of a ‘re’-regulation approach, rather than become constrained by the never-ending circular debate about ‘regulation versus de-regulation’ (Inversi et al. 2017). What is important also is the ‘what, where and who’ influence regulatory space. This is considered next in terms of different regulatory levels: transnational, national (e.g. the nation-State) and at the workplace.

2.4 Levels of regulation within the regulatory space

2.4.1 Problems of coordination and cooperation between the different levels

The three dimensions of regulatory space in sections 3 are considered now in relations to three different levels of application: first of all the ‘European (transnational) level’ and its peculiar institutional setting is explored; second is the role of the nation-State in terms of ‘national level’ regulatory space; finally is ‘workplace level’ issues of coordination.

The idea of ‘levels’ bring into focus a hierarchical structure of regulatory space, even though this is not the primary objective of studying employment regulation from the point of view of different levels. Of importance to this thesis are issues of coordination and transference within and between regulatory spaces, involving multiple industrial relations actors, each with their own interests and sources of power and authority over employment. Indeed, a
strict hierarchical view of regulation can neglect wider dynamics and power resources affecting control and coordination of regulatory issues (Scott 2001). Following MacKenzie and Martinez Lucio (2005), regulation cannot be delineated in terms of pre-set hierarchy levels of authority or legitimisation. Importantly, there exist multiple spheres and sites of influence, involving various different actors, utilising both formal and informal channels of dialogue. As MacKenzie and Martinez Lucio (2005, p.513) point out, the boundaries are constantly renegotiated and regulatory jurisdictions may overlap in the process of social and economic reproduction’. It follows, therefore, that regulatory levels can and often are interconnected and intertwined. At the same time, ‘transference’ becomes a key issue as, say, regulatory changes at a transnational level (e.g. EU Directive) may be far removed from the capacity of local employees to affect such change; yet the scope of application can almost immediately affect such employees in terms of their rights, expectation and legal protections at the workplace level.

With these issues in mind, the law often requires a hierarchical structure as a necessary prerequisite for legal co-ordination. But this structure is not always easy to implement in practice, or does not describe the realities of the regulatory space. Regulation of employment issues and rights does occur and transfer across multiple levels. Coordination (and not ‘hierarchisation’) between different levels, through formal (law) and informal instruments (bargaining, lobbying and exchange of information), is one of the issues for employment regulation analysis. According to Scott (2001), the use of delegation and the fragmentation of State functions, there are problems of coordination and the legitimisation of regulatory authority. Scott outlines how the fragmentation can go beyond the simple delegation to multiple agencies. First, in any institutional setting, it is possible to find an inherent intra-state fragmentation (for instance between the role of the judiciary and the law making, or the division between public and private regulation, etc.). Secondly, the increased international dimension of interdependencies creates a complex web of competences and issues about accountability towards the regulation activity of the State and other vested (corporate) interests. Third, given the rise
of the so-called ‘Regulatory State’ model (Braithwaite 2008), strong dependences are found to exist between regulators and regulated firms (driven by information asymmetry, epistemic dependence, negotiations over aspects of the regulatory regime and the minimization of obligations and compliance).

These complexities and sources of power asymmetry in regulatory coordination and transference can be evidenced in related research concerning the European Union, whose regulatory authority is not based on formal legal sources, but rather on their ability to hold and provide reliable information (Majone 1996; Baldwin et al. 2012). Classical examples of problems of coordination between European regulation, national provisions and workplace practices are showed in the cases judged by the Court of Justice (CJEU) Viking, Laval, Ruffert and Luxembourg, which have generated a controversial debate among EU (Cremers 2010). In these cases the Court had to balance the right of free movement of services or establishment (a historical pillar of EU rights) with the rights of trade unions (and, accordingly, of Member States) to protect collective agreements. As Doherty (2013, p.383) pointed out, ‘at the heart of all these rulings is the view that where collective agreements are not declared universally applicable, extended erga omnes to non-union workplaces, or their provisions protected, in some way, by Member State legislation, they cannot be imposed on service providers from other EU jurisdictions operating in the Member State in question’.

Furthermore, the role of the CJEU is notably important, and even unique for those Member State that does not have a common law background: as it has been pointed out, (Wasserfallen 2010) Court decisions can influence policy makers, national legislators and administrations and, through its interpretative function, can integrate European legislation. On the basis of these preliminary considerations, the analysis of different levels for regulatory space coordination will be presented, by showing examples of critical interconnection and problems of coordination among the different areas of employment regulation.
2.4.2 European level

At the European level are the Treaties, ratified by Member States, which specify when and how the EU can or cannot introduce regulation in the subjects of employment relations: in summary, art. 153 of Treaty on the Functioning of the European Union (hereafter, TFEU) gives shared competences in all the area of the individual employment relation (with an exception for wages); on the other hand, accordingly to the strong connection with the national dimension of this discipline, the subjects linked to collective and industrial relations are essentially excluded from the area of regulation of EU’s institutions (trade unions association, right to strike, etc.). Furthermore, article 115 TFEU is a general *pass-partout* rule, because it establish that ‘if action by the Union should prove necessary […] to attain one of the objective set out in the Treaties, and the Treaties have not provided the necessary powers, the Council […] shall adopt the appropriate measures’. These competences have to be balanced by general dispositions concerning the subsidiarity and proportionality principles, and the respect of the difference between national practices, with a special regard to the contract’s relations and the necessity to maintain a sustainable level of competitiveness in EU’s economy (Roccella et al. 2012, p.56).

2.4.2.a) European Actors

The range of European Actors is wide and patchy, subject to the evolution and the development of the EU’s role on regulation, as well as to the process of European integration. European regulatory space has been described then as fragmented, cluttered and complex (Thatcher & Coen 2008, p.830).

Besides the original institutional subjects that are involved, directly or indirectly, in producing and enforcing regulation (e.g. Commission, Council, Parliament, CJEU) new forms of organisation are emerging, adding their contribution into the regulatory pattern; ‘European regulatory space has followed an evolutionary development involving gradual reshaping through a series of steps, with previous stages influencing later stages and institution being built on existing structures’ (Thatcher & Coen 2008, p. 808).
The bodies that compose the range of subjects that have the responsibilities for implementing the EU regulatory space are mainly identified in: European Regulatory Agencies, Independent Regulatory Agencies (and its informal networks), European Regulatory Networks, National Regulatory Authorities and Federal European Regulatory Agencies. Thatcher & Coen (2008) have furthermore identified 7 institutional models (or ‘type of coordination’) for structuring the ‘formal’ European regulatory space, based on the five factors that are composing it: principals and legal basis, participants, allocation of powers and responsibilities, mechanism of implementation and allocation of formal control. These models constitute a starting point for studying the allocation of regulatory space between the different actors: the coordination between these subjects, which can be often territorially dislocated (and for that reason better linked to local situations and needs), requires further analysis and a deeper comprehension of the cooperative mechanism between State agencies and European bodies, especially through soft-law regulation, and the related outcomes generated into the system.

2.4.2.b) Fundamental rights for labour law

An important feature of European regulation is the protection offered by the fundamental rights included in the European Convention of Human Rights and the Charter of Fundamental Rights of the European Union, even if they have different impacts on the EU direct regulation and the CJEU decisions (Roccella et al. 2012, p. 78).

The respect of fundamental rights is nowadays a limit for both the European and the National legislators: the Charter of Fundamental Rights has been provided with the same juridical effect of the European Treaties, while the European Convention of Human Rights has been ratified by all the Member States and its ‘material acknowledgment’ has been explicitly recognised by the EU’s institutions. The rights included in the Convention and the Charter covers individual and collective rights, this latter area of regulation is then particularly interesting for its implications. On the side of the Charter of
Fundamental Rights of the European Union, as Bercusson (2003, p.227) has pointed out, ‘fundamental rights may be used to ascribe legitimacy to collective bargaining and collective action, information and consultation on a wide range of issues (…) More precisely, the Charter can be used to legitimise the actors, processes and outcomes of the EU industrial relations system’.

On the side of the European Convention of Human Rights, indeed, an interesting subject of analysis can be found in the provisions of article 11 of the ECHR and the evolution of its interpretation: this article protects the freedom of assembly and the freedom of association; furthermore it precisely mentions that it includes ‘the right to form and to join trade unions for the protection of his interests’. By considering article 11 as a ‘living instrument’, the European Court on Human Rights, in the decision Demin and Baykara v Turkey, has further expanded the potential of protection provided by this article, and also reversed the decisions made in previous cases in restricting collective labour rights. At first, the Court has identified other essential elements of the right to join a trade union, which can be briefly summarized in: the right for a trade union to seek to persuade the employer to hear what it has to say on behalf of its members (case Wilson and Palmer), the right to draw up and enforce union constitutions (case Cheall v UK), the negative right to dissociate (case Young, James and Webster v UK), and, most recently, The Court has recognised, as covered by article 11, the right to strike and to take industrial action (case RMT v UK and Demin and Baykara v Turkey) (Ewing & Hendy 2014). The activity of the European Courts in defining the boundaries of human rights’ protection is especially important within the regulatory space: this judiciary power directly affect national and European regulators, giving strength to the protection of individual and collective rights for workers.

2.4.2.c) Hard law – Soft law

European regulation may have various shapes and effects; the instruments mentioned by the Treaties are fundamentally five, and they consist in: Regulations, Directives, Decisions, Recommendations and Opinions. Directives have been the most common way by which regulation has been
provided in the area of employment law in the past. For that reason it is important to have a ‘clear picture’ about this fundamental instrument.

The principle of effectiveness on the transposition of directives by the Member State, the duty of interpretation of the national law accordingly to the rules of the directives (in the case in which they have not been transposed and the time limit has expired), the general principle of non-regression and the limitation of direct effectiveness just in the ‘vertical direction’ have to be strongly kept in mind while talking about European regulation.

In particular, the last principle mentioned above, sanctioned in the famous case Marshall I, determine a substantial dichotomy on the protection given by directive’s provision (not promptly transposed by the Member State) between workers employed in the public administration of the State and those who are employed by private employers: accordingly, just the first category of workers would be protected by the direct effectiveness of directive’s provisions. This particular issue is an example of how the European regulation contributes to the complexity of regulatory space, giving different rules, and subsequently different protections derived from different sources and actors, to similar situations. Another issue given by the process of transpositions of European directives can be found in the substantial effects that may be reached once the directive has been transposed into the national level: different outcomes and even ‘failures’ have been found in analysing the role played by Member States in providing with national effectiveness European regulation, for example in the Irish case of the Employee Information and Consultation Directive (n. 2002/14) (Doherty 2008).

2.4.3 The role of the State and the national level
The analysis of the role of the state in employment regulation is fundamental, especially if considering the primacy of the state as an international actor and as a organiser of a given territory and population, which can be fragmented across decentralised local realities. The State is the modern link of connection between local and global and thus a fundamental player in the regulatory arena
in any attempt to analyse regulation at multiple levels. The State is often conceived as the main and principal actor of regulation, in particular from the perspective of a legal regulatory approach. The theorisation on role of the State can vary, according to the breath of the definition of regulation that it is adopted (see Section 3 earlier). It is recognised that any definition of the ‘State’ is itself complex and articulated, although for the purposes of this thesis, an encompassing definition of the State will be adopted. The approach is shared through the work of Martínez Lucio & MacKenzie (2017), who define the state as the heterogeneous and complex entity that needs to be understood in relation to its broader interests, autonomy and social actors. An encompassing definition of the state looks at the different components of the contemporary state machinery (e.g. agencies involved in standards setting and enforcement bodies) and not just at the role of governments in dictating economic and employment relations strategies and policies (Gospel & Palmer 1993).

The central role of the State in employment regulation is recognised in legal theory, political science, economics, employment studies and sociology, making for a multidisciplinary understanding. In historical terms, at least since World War II, there has been a general consensus on the roles of the State as a macroeconomic planner, employer, and provider of welfare. However, the latter has changed with the decline of the welfare model and increased privatisation to the point of theorizing a fragmentation of the institutional form of the State, and its regulatory power (Yeung 2010).

Regulatory theory incorporates the idea of the rise of the ‘Regulatory State’, which, according to Braithwaite (2008), begun in the 1980s with the process of reform of the regulatory role of national states, adapting to an increasing global economy. Indeed, it is claimed that in the past half of century, the State has switched from being seen as a monolithic entity, to represent a system of ‘governance at a distance’ (Yeung 2010). As a consequence, the State can be seen to concede spaces to other actors and agencies, shifting the State’s function from that of ‘rowing’ to ‘steering’ (Osborne & Gaebler 1992). In the view of Sinzheimer (cited in Dukes, 2014, p.8) the role of the State in labour
regulation should be to ‘take steps to “order” the economy and the process of its regulation by economic actors, while at the same time respecting the autonomy of those actors’.

These changes on the regulatory function of the role of the State goes hands in hands with the growing number of other actors present in the regulatory space, and allows for participation to an increasing number of agencies. The ‘agencification’ of regulatory authority is deemed to affect the space where political decisions are taken. New bodies concerned solely with the regulatory process and purposely created with this scope are deemed to take out regulation from explicit political decision-making. Such agencies and actors may symbolise a clear manifestation of the changing configurations and rule-making features that constitute the reformulated (or re-constituted) regulatory state (Baldwin & Cave 1999, p.376). The moving forward in regulatory theory from a narrow concept of the regulatory state is further enhanced by Scott (2004), who challenges the conception of the state as the main loci of control over socio-economic life. The understanding of a ‘post-regulatory state’ could then help to better ‘understand the pervasiveness of non-state law and non-hierarchical control processes and their effects on regulatory processes’ (Scott, 2004, p.167). The evolution of the governance function of the state is discussed by Rodhes (1996) who, by identifying the historical transformations of the role of the British State on regulation, takes account of issues of accountability for emerging regulatory actors and networks and fragmentation (which implies a reduced control over implementation and ability to steer self-organising networks).

Taking a Polanyian view (Polanyi, 1957) further demonstrates the pervasive role of governments, the extended powers of the judiciary over legal regulation, and the State and its agencies in re-shaping capitalist economies around corporate interests and business model prescriptions such as flexible specialization, which often implies employee having to work unsocial and irregular hours to be flexible so companies can be market responsive. Importantly, this particular synthesis further illustrates the ‘myth of the free
market’ and the paradox of self-regulation, according to which governments play an active role in sustaining, through the use of regulation, the illusion of a self-regulating system without State coordination or intervention. Similarly, contemporary heterodox economists have exposed as myth the State as monolithic force unable to provide the same efficiency or innovation in terms of regulatory and economic outcomes (Mazzucato, 2013). Indeed, the State has often provided the necessary springboard for private innovation, providing with some model examples such as the role of the State in the creation of iconic technologies that pioneered things like the iPhone.

In the field of industrial relations, it has been highlighted that until recently too little attention has been paid to the analysis of the role of the State (Kelly 1998). This approach taken by industrial relation scholars and the lack of interest of investigation on the topic is particularly evident in the context of the United Kingdom, which has a long tradition in advocating for a minimalist type of intervention of the State, in particular if compared to other continental European countries (Rubery & Grimshaw, 2002).

The State can vary in the form and in the instruments that it deploys in order to achieve political objectives (Martínez Lucio & MacKenzie 2017). State regulation is not only directed at the economic and social objectives, but it is also an ‘expression of its political ideology about the desirable nature of the society’ (Dundon & Rollinson 2011, p.126).

Scholars have devoted great attention in analysing and theorizing different types of regulatory approaches of the State, analysed in its political role and objectives and by its ability of intervention in the area of employment relations (Crouch 1982). Crouch describes the changing nature of the role of the State and its role played in the regulatory arena in a historical account, considering the dynamism of the British State through the lenses of its politico-economic philosophies and the development of the trade union movement as two related variables (Dundon & Rollinson 2011). He identifies 4 typologies of state
intervention: *bargained corporatism*, *corporatism*, *market individualism* and *liberal collectivism*, summarized in Figure 2.2.

Crouch (1982) points out that *corporatism* was very briefly experienced only during wartime, when a corporatist principle allowed for the incorporation of trade unions are legitimate in the apparatus supporting the war effort. Crouch (1982) describes the rise of the British State until the late nineteenth century as one of *market individualism*, with a dominant *laissez-faire* political ideology. During this time, the State was abstaining from intervention in the matters of employment relations and it conceived the employment relationship as an extension of the servant relationship and property rights (Fox 1974; Deakin & Morris 2012). However, with the increase in trade union membership prompted the State to address the stability of employment relations and adjust its regulatory setting. In this phase of *liberal collectivism* the State maintained a capitalist market system alongside a voluntary regulatory approach; similar to the voluntary nature of regulation discussed earlier in section 2.3. In this role, the State was an enabler of negotiations between employers and employees’ representatives, in particular by supporting voluntarist free collective bargaining. After the end of the Second World War a role similar to Crouch’s (1982) definition of *bargained corporatism* evolved with the growth of stronger and more autonomous trade unions.

The 1980s represented a substantial change in the regulatory approach of the British State for industrial relations, back to *market individualism*. The Thatcher era post-1979 marked a fundamental shift with deeper and more extensive neo-liberal policies and laws designed to weaken collective labour. Widespread privatisations of State industries followed and market ideologies become the order of the day. Subsequent Labour Governments elected in to office 1997-2010 provided some employment regulations, such as legal trade union recognition and an endorsement of the EU Social Charter, although comparable neo-liberal market values prevailed. The ideological market currency can be witnessed in recent anti-union legislation by the incumbent Conservative (Teresa May) Government with the Trade Union Act 2016.
Despite the massive decline of trade union membership and extensive restrictions on workers to engage in industrial disputes, the State continues to constrain the activities of organised labour on the premise of ‘freeing the market’ for business to operate more flexibly.

The four typologies of State intervention are summarized in Figure 2.2 below.
### Figure 2.2 Variations of political intervention in employment relations

<table>
<thead>
<tr>
<th>Liberal Collectivism</th>
<th>Bargained Corporatism</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Liberal capitalist</td>
<td>1) Interventionist</td>
</tr>
<tr>
<td>2) Strong and autonomous</td>
<td>2) Trade union role</td>
</tr>
<tr>
<td>3) Voluntary free collective bargaining</td>
<td>3) Voluntarist and tripartite</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Market Individualism</th>
<th>Corporatism</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Laissez-faire</td>
<td>1) Corporatist</td>
</tr>
<tr>
<td>2) Weak and regulated</td>
<td>2) Weak and regulated</td>
</tr>
<tr>
<td>3) Exploitative or paternalist</td>
<td>3) Subordinated trade unions are agents of control</td>
</tr>
</tbody>
</table>

**Source:** adapted from Crouch (1982).

Crouch’s analysis (1982) is useful in providing an analytical tool to reflect on the changing role of the State in the UK. The State is important to acknowledge as well a broader approach that aims to take account not only of the direct but also of the indirect roles of the state in employment and industrial relations (Martinez Lucio & MacKenzie, 2018). Considering the discursive and ideological dimension (Jessop 1982) or narrative dimension (Howell 2005) besides the organisational, institutional and economic aspects of regulation could help in having an important role in understanding the role of the State. Regulation at the national State level can in fact influence the agency capacity of other actors: for example, ‘there may be very explicit political discourse stigmatising the role and behaviour of certain actors, as in the case of the United Kingdom in the 1980s and the impact of New Right Political discourse on the legitimacy of trade unions’ (Martinez Lucio & MacKenzie, 2014, p.14).

#### 2.4.4 Workplace level

The workplace level is probably the most evident *locus* of where regulation is felt and enacted in terms of employees and employers. Companies can decide
to adopt strategies to avoid or to comply with labour law; they can unilaterally determine through the use of their managerial prerogative the content of the employment contract, which rarely employees are able to renegotiate (Contouris 2011). Barry (2009) shows that firm-level actors, through the action of HRM, are able to shape their own organisational outcomes, being influenced by some institutional factors (the institutional history of the organisation, the culture and style of management, the type of bargaining structure and instruments, the national context of the regulatory system). An interesting comparative study between England, Germany and Sweden (Ronnmär, 2006) on ‘managerial prerogatives’ presents different outcomes showing the reality of ‘unilateral regulation’ across different industrial settings. The literature acknowledges for increased roles and power of businesses, that usually are also employers, to self-regulation (Géa 2015) or avoidance of legal regulation (Prassl 2018). Businesses in the gig-economy and platform economy more broadly, appears to be paradigmatic examples of forms of self-regulation (Finck 2017), able to cast shadows on the application and the validity of labour law. The investigation of workplaces, between legal regulation and practices, has the potential to enrich the understanding of modern working practices, in order to test the validity of the entrepreneurial challenges to the traditional labour law paradigm of subordination. In fact, business compliance in the area of working time is a real issue: many examples of violations, especially for overtime, are identified as the results of low level controls and a weak penalty/enforcement regime, and as a key feature in employers’ competitive strategies (Bernhardt et al. 2013).

Furthermore, at this level, comparative analysis is particularly important in order to understand how regulatory intervention of national States may influence and affect firm-level regulation. For instance, it is particularly interesting how different states have responded to the challenges to labour law and industrial relations brought by the emergence of disruptive business models based on crowd working via the internet, on-demand work through mobile applications. Different approaches to regulation and responses to gig-economy business practices have in fact been adopted by states both in regard
of individual employment rights and the nature of work (Cherry & Aloisi 2017) and workers’ representation, voice and collective bargaining (Johnston & Land-Kazlauskas 2018).

2.5 Conclusion

This chapter has shown the complexity of the regulatory space. It has signalled difficulties in trying to find a hierarchical structure to simplify and explain regulatory space. As it has been presented, the legal system requires a hierarchical structure in order to give ‘order’ within society. However, the order of the law does not fully explain regulatory processes and pressures for change. Beyond the law are sources and regulatory influences. Even if actors in the regulatory space may not experience regulation in a non-hierarchical way, the relationship between actors, regulating agencies and rule-making parts is one of interdependence and transference, rather than a traditional static approach based on command and control (Barry, 2009, p.73). The analysis of employment regulation requires, thus, a more heuristic approach on the forms of co-ordination, co-operation, exchange, transference and interdependence.

The chapter has advanced the framework proposed in Figure 2.1 as one attempt to support such a deeper and more inclusive approach to understand better regulatory space. In this chapter the rationale and literatures underpinning a multidisciplinary paradigm were reviewed, recognising different disciplines such as labour law, industrial relations, labour sociology, political science and economics, and critical human resource management. The analytical framework provided in the chapter serves as a tool to analyse the regulation of employment, and in particular the regulation of working time, across multiple levels and dimensions.

In the next chapter, these conceptual regulatory dimensions and levels will be applied to an analysis of the different sources and agencies that intervene specifically in the area of working time. The focus for later empirical stages of the thesis is also developed next with a synthesis of regulatory issues particular to the gig-economy.
Chapter 3
Employment regulation and working time

3.1 Introduction

This chapter explains how regulatory actors are able to occupy and cede regulatory space with a specific focus on working time standards. The chapter defines working time, building on the concepts of regulatory space previously discussed in chapter 2. In this way the chapter advances analysis underpinning specifically supplementary research question 1, namely investigating ‘what is the regulatory space and how is it related to the regulation of working time’.

Following Thompson’s elaboration (1967), the chapter shows that working time represents a key issue for understanding power relationships across regulatory spaces. Furthermore, according to Blyton (1985), the evolution of working time regulation (formal and informal) is also particularly relevant to the understanding of the future of work, both from a quantitative perspective (e.g. the creation of jobs in newer areas of economic activity, such as the gig-economy) and a qualitative one (e.g. the quality of working conditions and employment rights, including employee preferences for working time). The chapter first defines working time, followed by a review of trends and developments. In section four the operational meanings of working time are considered, along with an explanation of its application across the multiple levels previously discussed in chapter 2 (e.g. international, national, workplace).
3.2 Defining working time: concepts and current issues

3.2.1 History and evaluation of working time

In the socio-political sphere, the conceptualisation of time as a component of labour has evolved with the phases of industrial capitalism. In ‘Capital’, Marx (1976) focused on the relation between working time and the surplus value creation, and the commodification of time as a central feature of capitalism. Marx focused his investigation on the length of the working day (chapter 10 of ‘Capital’) and to the workers’ preference for hours in relation to wages. Subsequent approaches focussed on a so-called ‘scientific organisation of work’. In this Taylor (1911) concentrated on the most efficient ways in which working time could be utilised to the productive benefit of industry. A key element in Taylor’s ‘scientific management’ approach was the separation of the concept of work (reserved for management) and the execution of work tasks (carried out employees under the supervision of management) using time and motion measurement.

Both industrialisation and capitalism are important concepts to analyse in the regulatory framework of working time: according to Thompson (1967), on one side, the industrialisation process was characterised by the search for a ‘greater time-consciousness and discipline among the workforce’ (Noon et al. 2013, p.81) and involved visible changes in the body of rules which regulated the relation between the workforce and the productive process, including, for instance, the setting of rules of times, pace, quality and method of work (Kerr & Siegel 1955). In the structuring of industrial organisation, ‘time spent at work was experienced as time allocated to the employer in exchange for a wage, while time spent in the private sphere was experienced as “free” ’ (Everingham 2002, p.338). According to Pollard (1963), the process of industrialisation was particularly influenced by employers’ imposition of a greater discipline on work organisation, which consisted, for instance, on punitive measures such as locking factory’s gates just after the start of the working shift. Thompson (1967) argued that capitalism and large-scale production influenced workers’ attitudes towards time, leisure and income by
promoting values of ambition and hard work, typical of the bourgeois class, in
the working class, which resulted in the generalised ‘willingness to keep regular
time in order to maximise wages and thus their purchase power’ (Noon et al.,
2013, p.81). It has been suggested that the historical increased attention to the
issue of time in labour relations has been in large degree influenced by the need
for synchronization at work, a feature that was also reinforced by the
organisational structures of education and the influence of moral instructions
of religious culture, such as the protestant work ethic (Thompson, 1967). In
philosophical terms, Alexandre Koyré (2014) saw in modern times the
development of increased ‘precision’, intended as scientific measurement, in
many aspects of human experience.

The shift from a pre-industrial system of labour relations, which did not give
much attention to the issue of working time and rested more on natural-paced
cycles, to a capitalist model, that saw working time as its pivotal element, is
synthetized by Thompson (1967), who argued: ‘is not that one way of life is
better than the other, but that this is a place of the most far-reaching conflict;
that the historical record is not a simple one of neutral and inevitable
 technological change, but is also one of exploitation and of resistance to
exploitation; and that values stand to be lost as well as gained’. Thompson
suggests here that the issue of working time regulation is intrinsically
influenced by power relationships, other than just by the unavoidable process
of technological development; thus, the relationship and the degree of
influence of the various regulatory mechanisms and actors appears to be an
insightful part of the analysis.

A focus on the pure quantitative dimension of working time (seen as objective,
measurable, highly valued and scarce) overlooks its subjective nature. In
industrial sociology it has been argued that there is the need to consider not
only ‘the concrete facts of time structuring, but also the subjective essence of
temporal meanings’ (Blyton et al. 1989, p.31). In contrast to the ‘Linear
Quantitative Tradition’ that perceived time as a real, uniform and mathematical
phenomenon, Blyton et al. (1989) prefer the approach of ‘Cyclic Qualitative
Time Analysis’, which considers time as a ‘product of society’ (Durkheim 1976) and therefore subjected to socio-cultural considerations. As Golden (1998, pp.523–524) pointed out, the ‘production and consumption activities that determine working time trends and patterns are in large part socially-situated, socially-determined with social consequences (…). Individuals are multi-faceted agents with sometimes competing or even conflicting roles and interests’.

The subject of working time crosses many disciplines and different conceptualisations. Blyton et al. (1989) contend that working time has to encompass psychological, socio-psychological, sociological, industrial relations and economics. Drawing on such a multi-disciplinary view can help inform a deeper understanding as to ‘how’ working time can be regulation, by which actors, and ‘how’ they may combine together. As will be noted later, an example of translating social issues into protective labour market regulations represent new challenges when seeking to transfer log-established rights and protections into newer sectors of economic activity and certain categories of workers, as for those that hold care responsibilities or others who may seek work in newer areas such as the gig-economy.

Blyton et al. (1989) show how the legal aspects of time organization are included in the analysis of industrial relations approaches to the study of working time. However, much orthodox industrial relations analysis has a tendency to stress a collective dimension of working time regulation, and specifically regulation through collective agreements, rather than considering working time as a fundamental component of the employment contract or other aspects of regulation including employer unilateralism. It is therefore suggested, building on chapter 2, that a more holistic analysis of regulation is necessary, which can combine different sources of regulatory power, multiple actor roles and influences, along with legal rule-making, collective negotiation and employer actions. Before advancing this framework further specific to working time issues, a review of contemporary trends and developments helps contextualise the phenomenon, which is provided next.
3.2.2 Recent trends: reassessing working time

Historically, the role of labour law in working time was to sustain and regulate the industrial model, by considering time as a means of managing and organizing working relations, both individually and collectively. From the individual perspective, working time was conceived as an instrument of control in exchange for wages; from the collective dimension its objective was to establish discipline and solidarity (Supiot, 2001). Subsequently, the discourse about working time has been strongly linked to the protection of health and safety at work (Sparks et al. 1997; Adnett & Dawson 1998), and to the promotion of work-life balance, in particular in relation to gender issues (Rubery et al. 1998; McCrate 2016; Vincent 2016; Zbyszewska 2016).

In the context of the current world of work, it has been shown that recent changes to work organisation have led to strong individualization and greater heterogeneity of working time arrangements (Supiot, 2001). Examples include casualization of labour contracts and working time arrangements: increased part-time, temporary and zero hours contracts, and increase in self-employment. There is something of a bipolar dynamic regarding working time in labour law conceptualisations. The latter was conceived to provide a level of certainty to the standard employment relationship, but this structure is argued to be a ‘complete misfit with the rapidly changing world of work’ (Kenner 2007, p.216). The original conceptualisation of time in employment regulation rested on a rigid dichotomy between working time and rest time: this bipolar structure can still be found in European statutory regulations and it has been criticised for its rigidity and ineffectiveness in embracing a holistic notion of working time (Bavaro 2009). Indeed, working time regulation has increasingly to take account for new models of work organisation and contractual arrangements, as for instance ‘on-call jobs’, which identify grey areas between working time, rest time and on-call and off-call time, as well as time availability.
Working time is also influenced by the choice of the specific contractual arrangement. The availability of different contractual arrangements and legal solutions that are tailored at institutional level is an important element of the regulatory activity and affects directly the area of working time. The decline of Standard Employment Relationships (SER) and the rise of atypical forms of work that respond to the demand for labour flexibility have a direct impact on the effective regulation of working time (Rose 2016). The quest for ‘flexibility’ has been a common trend in employers’ perspectives in the last decades; the term appears to be ‘a catch-all for everything employers find desirable’ (Streeck, 1987, p. 287) and in a qualitative perspective encompasses workplace-specific regulation of working time and conditions. A related issue is the scope to which a legally mandated or voluntarist employment regime can affect employment regulations. It has been argued, for example, that the permissiveness of voluntary and individual relations found in Liberal Market Economies (LMEs) such as the UK can diminish protective regulations for workers (Dobbins 2010). In contrast, scholars (Streeck, 1987) have pointed out how employers in more Coordinated Market Economies (CMEs) had agreed to workers’ demand for shorter working hours in exchange of the decentralisation of negotiations (thus trading general uniform regulation and substantive rules with a custom-made organization of work and changes in procedural rules).

Because of the recent technological trends and new business models (e.g. crowd working and digital platform working), the profile of the employee tied to a ‘nine-to-five’ working day is a concept that is increasingly questioned. The rise of the 24/7 economy (Crary 2014) and the decline of large scale industrial manufacturing, has led to the fragmentation of working time. In particular, the rise of services available on-demand through mobile applications (such as Uber or Deliveroo for instance), impacts both consumers’ choice and working time patterns. The impact of technologies and digitalisation has also contributed to the acceleration of life and society and to the rethinking of the distinction between personal time and work time (Wajcman 2015). In this so-called futuristic paradigm, where the employment relationship appears to be detached
from the structure of working time rules, it is important to reflect that some regulations still constitute a valid tool for both the measurement of working activity and to protect workers’ health and safety. Given the spread of atypical and teleworking job arrangements via mobile devices, there is a blurred distinction between ‘subordination time’ (working time) and ‘free time’ (rest or reproductive time) (Supiot 2001). In fact, issues of ‘time porosity’ and interference of working activities in private lives pose many challenges to the current legal framework, in particularly in European regulation (Genin 2016).

Another important trend to underline in the re-conceptualisation of working time, is the so-called ‘polarization of working time’: although major problems are linked to the excessive length of the working period for workers, alongside with the control of rests times and holidays, an opposite phenomenon is found to be particularly relevant in modern labour markets. Figart & Golden (2000) argue that ‘underemployment’, which is found when workers are offered work for less than the desired hours, is increasingly prevalent in countries like Switzerland, Netherlands, Australia and the UK. In these cases it is possible to find the paradox of the ‘increasing polarization’ of working patterns, that has a direct impact on the economy and society: for some people working hours are rising, coupled by the spread of the culture of longer time spent at work (Schor 1992), whereas for other workers the labour market is not able to offer a desirable amount of hours to work, with consequential problems of income and insecurity (Figart & Golden, 2000). This recent trend might be exemplified by the data on the increased use of ‘Zero Hours Contracts’ in particular job positions and sectors. These contracts are described as the most extreme example of precarious work and ‘casualization of terms and conditions of employment which has been allowed to take hold in the British economy since the 1980s’ (Adams & Deakin 2014b, p.3). ZHC are becoming more and more common in Britain, affecting 1 million of workers, more or less the 3% of the workforce (CIPD 2013).

Issues of unstable work scheduling and on call work are also scrutinised under the lenses of the power dimension between employers’ and workers’ demands,
and the ability of workers’ representatives to counterbalance the indeterminacy of working time that employers may use to their advantage as an organisational strategy (Coiquaud 2016; Henly & Lambert 2014). In particular, the literature is also attentive in understanding these issues in combination with the gender (Vincent 2016; McCrate 2016; 2012; 2005), employee voice, partnership and newer individual HRM techniques (Dobbins & Gunnigle 2009). For example, the requirement to be available for work during unsocial hours can entail discrimination against those people with care responsibilities (McCrate 2016).

Working time is therefore a challenge both for social economists, who are asked to recognize ‘the complex web of forces that determine paid and unpaid hours of work’ (Figart & Golden, 2000, p.13), and for regulators and policy makers, who need to translate the social complexity into an effective employment system to address health and safety obligations, as well as the problems of employment uncertainty and work-life imbalance. Collective bargaining and union-management partnerships have been used to regulate, voluntarily, agreements. Yet such arrangements have also been criticized as they may weaken union bargaining power while facilitating the introduction of individualised HR initiatives which consolidate managerial prerogative (Dobbins & Gunnigle, 2009). Furthermore, according to Figart & Golden (2000), any new regulatory model may not fully incorporate worker voices in the regulatory space to articulate concerns about their working time.

As a summary, trends to working time are wrapped up with several on-going and overlapping debates: newer HRM initiatives which tend to be management-led, changes to the structure of the labour market and the standard employment relationship (SER), increased precarious working patterns and contracts, such as zero hours, atypical and casualised working. Grimshaw et al. (2016) conclude from a study across several EU countries there is a ‘hollowing out’ to employment regulation, with a series of ‘protective gaps’ were workers may have little access to rights and protections. Taking these trends as important backdrop, the meanings and definitions of working time regulation are considered next in more detail.
3.3 Working time: analytical and operational meanings

Before proceeding with the analysis of recent developments in working time regulation it is important to emphasize that, according to the definitions developed by Adam (1990) and Noon et al. (2013), there are several aspects that provide a focus to the specific research questions to be addressed in this thesis. Indeed, working time can hold three main different meanings:

1) *Time* (Adam, 1990) or *Duration* (Noon et al., 2013), which consists in the quantitative overall time spent at work and the length of working period.

2) *Timing* (Adam, 1990) or *Organisation* (Noon et al., 2013), which describes the working time schedule within the working day, the days of the week or more broadly within the overall period of work. The organisational aspect is strongly linked with the issues of work-life balance and the distinction between ‘social’ and ‘unsocial’ hours of work (Rubery et al. 2005).

3) Finally, *Tempo* (Adam, 1990) or *Utilisation* (Noon et al., 2013) considers the extent of working time spent in productive activity, and the intensity of this activity. This aspect of working time can be influenced by the pace of work and by the production structure. Of importance here is the notion of labour ‘indeterminacy’. Edwards et al. (2006) refine this idea explaining that employers cannot assume workers will cooperate and utilise working time for productive efficacy (see also Edwards 1989). Workers can, and do, resist and continually adapt to seek to influence their own spheres of interest.

When it comes to regulatory issues, it is suggested that these three areas are strongly interconnected and need to be analysed as an overall system, in order to have a more complete understanding of cooperation, regulatory coordination, consent and/or resistance to working time rules (Noon et al., 2013). In modifying one of the three aspects – either duration, organisation or utilisation - it is possible to have side-effects on another aspect that might frustrate the regulation of working time: for instance, changes on the *duration*
of work might increase work intensity (the so-called working tempo or utilisation), or it might include a re-allocation of working times across the day or week (timing or organisation), with the possible result of increasing work-related stress or work-life imbalances. Moreover, it is unlikely that workers (or trade unions) will be passive agents accepting managerial change to work tempo, intensity or duration. Therefore, a change to one aspect by management could well ignite a counter-response by workers, including resistance and a challenge to the managerial prerogative.

As it will be illustrated later, these three aspects are often connected in the legal norms, especially in the case of the duration and the organisation of time. It may sometimes be difficult, then, to analyse these three aspects or their meanings separately, but it could be useful, for the purpose of being able to better unpick regulatory activity, to deconstruct the overall definition of working time in the three sub-meanings and to see how they shape the regulatory space for actors for working time aspects.

Noon et al. (2013) contend that the traditional framework of working time is currently challenged by recent developments in the duration, organisation and utilisation of working time. In the issues related to the duration are included the practices of presenteeism, the widespread use of overtime working, the rise of part-time employment and the practice of zero-hours and on-demand work via digital platforms in the gig-economy. Presenteeism, for instance, seems to be accentuated by the development of new technologies that enable workers to be connected with the employing organisation even when they should not be working or when they are not physically at work (Fuchs Epstein & Kalleberg 2001). More importantly, presenteeism and long-hours working appears to be heavily determined by the managerial design of work organisation (Perlow 2001). Recently, trends on increased unpaid overtime practices have been found in many European countries such as Finland, Bulgaria, the Netherlands, Poland, Romania and the UK; these practices have raised concerns among social partners on the difficulties of regulating working times and monitoring compliance (Cabrita & Bohemer 2016). In the UK, the Trade Union Congress
(TUC) refers to a culture of ‘pointless presenteeism’, which leads to high levels of unpaid overtime (Cabrita & Bohemer 2016). While the study refers to these practices as ‘unregulated working time’, it seems more appropriate here to describe these trends, from a regulatory space perspective, as subject to unilateral regulation, or the result of a weak and permissive voluntarist system of legislation (Dobbins 2010).

The *duration* and the *organisation* of working time seem to go hand in hand with the increasing incidence of a 24/7 economy, which demands further flexibility on workers and working time patterns, shift work, casualised employment and the rise of employees as so-called independent contractors. Furthermore, the recent phenomenon of the so-called ‘on-demand economy’ seems to impose new challenges that may affect working time *duration*, *organisation* and *utilisation*. In these new work settings such as on-demand and gig-work, interesting employment law challenges are found with respect to these ‘disruptive businesses’ models like Uber or Lyft for instance, which are trying to introduce new labour practices, conditions and regulations (Cherry 2016). Indeed, people providing work through a system controlled by an on-line platform (often in the form of Mobile Applications) might not be considered as ‘employees’ (or neither ‘workers’ for the purposes of UK employment law) of the firm for which they provide their work and thus not covered by working time legislation (Cherry & Aloisi 2017; Prassl 2018). The legal issues around the employment status of these workers and the connections with the regulation of working time will be reported and analysed in chapter 5 (e.g. national level and role of the State), chapter 6 (e.g. reporting transnational actors’ views) and chapter 7 (e.g. workplace level of the gig economy).

In addition to the meanings ascribed to working time *duration*, its *organisation* and *utilisation* against the backdrop of recent contextual trends, there are also different actor and institutional levels that require further scrutiny and explanation to help better understand the regulation of working time, which are considered next.
3.4 Working time regulation: the three levels of analysis

Understanding where regulation takes place, and which spaces are occupied by different actors, is central in order to explain the processes of regulation and address the research questions of this thesis. The aim of this section is to give an outline of how the regulation of working time happens at the three different levels – international, national and workplace. It will also consider the different forms of regulatory dynamics (e.g. law, negotiation, unilateralism) in relation to the different aspects – duration, organisation and utilisation – of working time regulation.

3.4.1 International Level

At international level, there are many important actors shaping working time, starting from those participating in the making of international laws, transnational social partners who contribute to negotiated regulations and agreements, and employer groups who unilaterally impose working time and other employment changes. This section offers an overview of international regulatory instruments, both from the European perspective and the broader international one, with a focus on the role of the International Labour Organisation (ILO), the Council of Europe and the European Union (EU) as primary actors of international regulation.

The role of the EU in shaping working time regulation finds its roots in the European Treaties, which give a mandate of regulatory power and authority from Member States to the EU on the delicate subject of health and safety at work. Similarly, justifications for promoting regulation at international levels are outlined by the ILO as the protection of health and safety of workers and the promotion of workers’ work-life balance and ‘decent working time’ (Boulin

\[\text{\footnotesize 6} \quad \text{Indeed, Article 153(1) of the Treaty on the Functioning of the European Union (TFEU) states that the EU shall ‘support and complement the activities of the Member States’ in various aspects of the employment relation as, for instance, the working conditions or in the ‘improvement in particular of the working environment to protect workers’ health and safety’.}\]
et al. 2006). The ILO has also produced several legal instruments for regulating working time, starting from its constitution of June 1919, contained in the Treaty of Versailles, and including many International Conventions and Recommendations.

Fundamental and human rights are important sources that can contribute to influence and direct working time regulation. It has been pointed out by McCann (2010, p.526) that there is ‘a substantial degree of overlap between the field of human rights and labour law in the regulation of working hours’. It is argued that human rights regulations are beneficial for domestic labour laws, especially in the area of working time, because they can support protective oriented interpretation of domestic laws (McCann, 2010). The relationship between national labour law and human rights law can indeed develop in two directions: one movement suggests that international human right regulations might need to be further enhanced by domestic laws or collective agreements in order to be effective; for instance, this process can be found in the case of national labour law implementation of human rights regulation on forced labour and mandatory overtime work (McCann 2007). Other debates argue that national regulations might be inspired by a human right perspective:

7 According to the ILO, promoting ‘Decent work’ entails the enhancement of ‘opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity’ (ILO 1999, p.6). The concept of Decent Work has been applied to working time by Messenger (2004) who proposed to investigate five connected dimensions of working time: the impact on workers’ health, the finding of balance between life and work, gender equality, effects on productivity and efficiency and finally the workers’ capability to influence their working time regime.

8 In Part XIII of the Treaty of Versailles (1919), the Preambles advocates the need of regulating the hours of work and to identify maximum limits for the working day and week; furthermore, Article 427 prescribes the adoption of an ‘eight hours day or a forty-eight hours week as a standard’, as well as a weekly rest of at least twenty-four hours’.

9 See The ‘Hours of Work (Industry)’ Convention n. 1/1919 established the 8 hours per day standard and 48 hours per week in industry (which the UK refused to ratify); the ‘Hours of Work (Commerce and Office)’ Convention n. 30/1930 expanded the scope for regulation to commerce and officers (which had a low rate of ratifications, and it was not ratified by the UK); Convention n. 47/1935, that suggested working time reduction as a regulatory instrument for tackling unemployment; the Reduction of Hours Recommendation n. 116/1962 requires States Parties to develop a national policy able to reduce the hours of work to a standard of 40 hours per week.
some cases, fundamental rights are used for enhancing worker protection and extending the reach of employment law from economic-oriented interpretation to a more broader protective approach for workers and citizens (Bell 2015).\(^\text{10}\) National Courts play a crucial role in interpreting and developing fundamental and human rights: their activity can indeed expand or restrict the scope of national regulation, based on the fact that they can embrace or not a human-rights oriented interpretation of the law, which can then affect future applications and interpretation of the initial body of rules.\(^\text{11}\) Domestic Courts represent in fact the ‘primary enforcement mechanism for human rights’ (McCann, 2010, p.527), and also because they can be more effective if compared to the space of action of International Courts, which fulfil mainly a ‘vertical effect’ that can be held as a case of ‘last resort’, as highlighted in chapter 2 previously.

3.4.1.a) The Working Time Directive and the European case law

The EU Directive and related case law is important to analyse in advancing more detailed understating for this thesis. In November 1993, the European Union enacted the first directive on the subject on working time (Working Time Directive n. 93/104), providing regulation for some fundamental aspects of time at work, rests, and holiday entitlements, with the explicit purpose of protecting workers’ health and safety. This first attempt at regulation was completed by a second directive, n. 2000/34, which included under its scope

\(^{10}\) See also 2.3.1.2 for a further analysis. Bell (2015, p.656) point out, through the exposition of two cases (Schultz-Hoff v. Deutsche Rentenversicherung Bund [2009] ECR I-179; KHS AG v. Schulte [2011] ECR 1-11757), that the picture of the judicial action in balancing social rights and economic rights ‘is more complex than one of unrestrained dismantling of social protection’, as the result of the “Laval quartet” might show; indeed, ‘in both case studies, the Court drew upon fundamental social rights to strengthen worker protection, notwithstanding the adverse economic climate’.

\(^{11}\) For instance, a report from the Council of Europe, testifies some progress achieved in the UK in the implementation of rights under the European Social Charter in relation to working time. See: The United Kingdom and the European Social Charter (2016) Department of the European Social Charter Directorate General Human Rights and Rule of Law, last update April 2016, available at https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680644aa9 (last access on 17th May 2016). The report points out the positive role of the UK judicial actor in extending paid holidays rights in case of sickness.
sectors previously excluded (in particular in the area of transport, maritime activities and doctors in training). Both directives were later recast in a final directive n. 2003/88, of 4th November 2003 (hereafter, the WTD).

The WTD sets minimum standards of protection on working time duration, night work, rests and annual leaves. However, the WTD is not just a means of setting health and safety standards and obligations/rights to employers and employees, but is also an important source of regulatory coordination, which encompasses the differences in legal institutions and industrial relations actor relationships of the various European member states. The WTD designs proper spaces for the collective and individual intervention in a flexible way, by allocating complementary or alternative regulatory power to collective and individual agreements. The pattern of co-ordination outlined by the EU legislator is particularly important, because it was conceived to avoid a massive disruption of those legal systems, like the UK, which preferred voluntary forms of regulation to statutory prescription (Dobbins 2010). However, the Directive was not received in the UK context without some resistance from the British institutions, indeed, it was perceived by the UK as an outrageous interference on its legislative prerogative and sovereignty, bringing an unwanted cultural change in the understanding of working time regulation (Rogowski 2015).

From a legal and regulatory theory perspective, a particular issue on legitimacy and competence arose with the enactment of Directive n. 93/104. The latter was promulgated by the European Union on the basis of its regulatory competences on health and safety issues and therefore legitimated by Article 118A, Amsterdam Treaty, now Article 153.2 of the Treaty on the Functioning of European Union (TFEU). The UK challenged the European competence, contending that the Directive should have been adopted on the basis of a different source of legitimacy (namely Article 100 or Article 235 of the EC Treaty) that specifically required a different - and more stringent - procedure for its adoption (the unanimity of the Council) that would have guaranteed a
form of ‘veto power’. In this case, the European Court of Justice (ECJ, now Court of Justice of the European Union, CJEU) rejected the claim of the UK and determined that working time regulation was directly related to the issue of health and safety of workers in their working environment, meaning that the competence given by Article 118A (Treaty of Amsterdam) in this specific subject remained effective (Van Nuffel 1996; Fitzpatrick 1997). This decision gave particular strength to statutory regulation in the area of working time, due to the primary importance given to health and safety competences in the institutional European framework. At the same time, however, the case is emblematic and reveals the strenuous opposition of the UK to the European Directive. Addison et al. (1997) explained the UK resistance to statutory regulation on working time, as the product of an ‘orthodox economic theory’ perspective, which assumes that ‘competition forces employers to agree working hours in line with the preferences of individual employees’ (Adnett & Hardy 2001, p.114).

Although the WTD had the ‘privilege’ of bringing for the first time in history statutory regulation of working time in the UK, its effectiveness has been found to be limited. It has been criticised for its ‘light touch’ approach (which is the result of the compromise reached to accommodate different regulatory preferences, especially those of the UK) and the wide possibilities for derogation from its original standard that it contemplated (Barnard et al. 2003; Smith & Baker 2013). The derogations contained in the Directive represent an important issue in negotiating regulatory space adjustments in relation to UK preferences seeking an opt-out clause to maintained neo-liberal labour market flexibilities over working time utilisation and organisation (Barnard et al. 2003). The approach that informs the first WTD has been described as precursor of a strategy on Social Policy that will be later found in the Treaty of Amsterdam, which, whilst supporting further standards and core rights for European workers, envisaged promoting labour market flexibility and balances between entrepreneurial and economic freedoms (Hardy & Adnett 1999).

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12 United Kingdom of Great Britain and Northern Ireland v. Council of the European Union (C-84/94).
A two-stage consultation process for the review of the WTD was launched by the European Commission, on the premise that changes in the world of work are having an on-going impact on working time duration and organization, from social, economic, technological and demographic perspectives. The EU Commission acknowledged that previous attempts to amend the WTD in 2004-2009 failed at the conciliation stage. Accordingly, in the last decade, EU policy orientations on working time have been expressed in the form of non-binding recommendations: these soft-law regulatory instruments are the result of a “light-touch approach” that gives greater space of intervention to other regulatory actors at different levels (Dobbins 2010). Indeed, it has been shown that EU regulatory rights implemented at a workplace level have been conceded begrudgingly and only in a ‘light touch’ manner by national level actors and/or the nation State (Dobbins & Dundon 2017).

The failure of revising the WTD at the first attempt led to a series of consultations with the European Social Partners in March and December 2010, and to the production of various reports on the legal implementation of the current directive. From 2011, the cross-sectoral social partners (Business Europe, ETUC, CEEP and UEAPME) communicated to the EU Commission their intentions to start negotiations on the review of the WTD. However, after a series of meetings, the social partners announced the blockage in the negotiations in December 2012, due to the impossibility of reconciling strategies, objectives and contents between the ETUC on one side, and Business Europe, CEEP and UEAPME on the other side. Hence, the

16 In a press release of the 14th December 2012, Business Europe CEEP and UEAPME stated that they ‘regret that the ETUC is not able to continue negotiations on the revision of the working time directive, which is essential to re-establish the conditions for its application in practice’. From the Employers’ representative side, thus, it appears to be a failure of the ETUC if the process of negotiation has been unsuccessful (see
revision of the WTD has been left in the hands of the European Commission, which held a public consultation with all citizens and organizations until March 2015. Finally, the process of revision failed to reach an agreement on the enactment of new regulations, and the outcome has been the adoption by the European Commission of the ‘Interpretative Communication on Directive 2003/88/EC of the European Parliament and of the Council concerning certain aspects of the organisation of working time’ (2017/C 165/01). This document represents further ‘soft regulation’, because it does not provide a legally binding instrument that member states are obliged to follow. It provides ‘guidance’ in interpreting the dispositions of the WTD, in accordance with recent case law evolution. Arguably, therefore, debates point towards a contested arena for working time rule making, with employers (and possibly other corporate and State agencies) jostling to occupy the space to advance a ‘minimalist’ / ‘light-touch’ approach.

The role of the Court of Justice of the European Union is particularly important for the application of both fundamental human and social rights aspects of the WTD. Before giving explanations and examples on the role of the CJEU in participating to the regulatory activity in the area of working time, it is important to remind that its activity occurs at specific levels and has, therefore, limited space of application (see chapter 2).

In the area of human and fundamental rights, the picture that is given by the interpretations of the European jurisprudence on the balance of economic, financial interests and social rights is particularly complex, and has been
interpreted as going beyond a simple trend of ‘de-regulation’, or the dismantling of protections brought by a neoliberal agenda: there are examples of expansions of employment protections on the premise of individual worker-oriented interpretations of fundamental social rights over economic freedoms and adverse financial situations (Bell, 2015, p.656). For instance, for the first time in 2010 the provision of Article 31(2) of the Charter of Fundamental Rights has been used for guaranteeing annual paid leave after a period of sickness absence.\textsuperscript{17} However, the reasoning behind the case law on the balance between fundamental rights and working time entitlements is not fluid and uniform. If in some cases the expansions of the European employment law protections under the prism of fundamental rights is explained by an extensive application and proclamation of the rights granted by the Charter of Fundamental Rights\textsuperscript{18}, other cases\textsuperscript{19} give more room for balancing ‘fairness and efficiency’ considerations, albeit without prejudice to a favourable interpretation for the workers (Bell, 2015).

The CJEU has had an important role in shaping the actual definition of working time provided by Article 2 of the WTD\textsuperscript{20}, in light of the uncertainties that arose from the legal formulation. In fact, the dualistic approach outlined in the WTD has caused many problems of interpretation and has also attracted many criticisms: the definition of working time seems in fact to disregard new forms of work and new methods of work brought by technology, while considering time just as a static and unitary measurement of the working activity; furthermore, the definition is criticized for its negligence on considering issues such as ‘reproductive time’, ‘on the job inactivity’, and ‘consumption time’ (Supiot, 2001, pp.64-66). The intervention of the Court in a such fundamental area as the basic notion of working time, which has the power to expand or restraint the scope for the application of the directive, can

\begin{flushleft}
\textsuperscript{17} Case C-214/10, KHS AG v. Schulte [2011] ECR 1-11757.
\textsuperscript{18} See Schultz-Hoff.
\textsuperscript{19} See KHS.
\textsuperscript{20} In Article 2.1 of Directive n. 2003/88 working time is described as: ‘any period during which the worker is working, at the employer’s disposal and carrying out his activity or duties, in accordance with national laws and/or practices’, whereas rest time is described in Article 2.2 as ‘any period which is not working time’.
\end{flushleft}
be seen as an important occupation of the regulatory arena, occurring in spaces left empty by imprecise legal provisions. In particular, after the enactment of the WTD, guidance on the nature of ‘on call work’ was required. In Simap\(^{21}\) and Jaeger\(^{22}\), for instance, the CJEU had to intervene for the first time to clarify the boundaries of the working time definition. The jurisprudence of the Court has been steady in drawing a sharp line around what can be considered working time and what is, oppositely, rest time. However, this process happened when the distinction between work and rest time was considered to becoming blurred (Supiot, 2001).

In the cases mentioned above, the Court held a basic dualism in the interpretation: the notion of working time that emerges rests on the sharp differentiation between working time and rest time, conceived as opposite. In Simap, the CJEU held that concepts of working time and rest time are reciprocally exclusive; in Jaeger, while clarifying the nature of time spent by doctors during the period of on-call duty, the Court considered that time spent at an employer’s disposal in the place determined by the employer, even if the worker is not actually performing his/her tasks, has to be considered as full working time. As a consequence, the mere fact of being contactable and available, but not in the place determined by the employer, cannot be considered as working time. This interpretation of the Court is considered to leave major spaces for employers to determine, by playing around the legal loopholes, working conditions and therefore undermining worker protections (Adnett & Hardy, 2001). This approach has been confirmed by subsequent cases\(^{23}\) and has been further reinforced by the explicit statement that the definition does not provide for an ‘intermediate category’ between working

\(^{21}\) Sindicato de Medicos de Asistencia Publica (SIMAP) v. Conseilleria de Sanidad y Consumo de la Generalidad Valenciana, C-303/98, European Court of Justice, 3rd October 2000.

\(^{22}\) Landeshauptstadt Kiel v Norbert Jaeger, C-151/02, European Court of Justice, 9th September 2003.

\(^{23}\) See: Pfeiffer v Deutsches Rotes Kreuz, Kreisverband Waldshut eV, C-397/01 – C-403/0, European Court of Justice, 5th October 2004 (in particular points 93-95); Abdelkader Dellas and Others v Premier ministre and Ministre des Affaires sociales, du Travail et de la Solidarité, C-14/04, European Court of Justice, 1st December 2005; Jan Vondl v Nemocnice Cesky Krumlov, C-437/05, European Court of Justice, 11th January 2007; Ncușor Grigore v Regia Națională a Pădurilor Romsilva - Direcția Silvică București, C-258/10, Order of the European Court of Justice, 4th March 2011.
time and rest time, and it does not consider the elements of work intensity and productivity, such as working time utilisation and duration.\textsuperscript{24} The static position held by the CJEU attracted consequent criticisms advanced by some Member States, and it has been one of the main drivers for the proposition of a substantial revision of the WTD (Roccella & Treu, 2012). However, in front of the objections moved to the CJEU’s interpretation on the notion of working time, the Court has specified, in the \textit{Vorel} decision, that only a new and innovative regulatory legal intervention from the EU could cause it to reconsider its current position. This has led to calls in the literature for a reassessment of the definition of working time that will address the oversimplistic distinction between working time and rest time (Supiot 2001; Kenner 2007; Rodgers 2009).

There are additional CJEU interventions concerning the evolving meanings and definitions of working time, which indicate a privilege for a unitary perspective. In the \textit{Tyco} case,\textsuperscript{25} the Court considered that, for workers without fixed place of work, time spent travelling from their homes to the employer’s clients constitutes working time. In this decision, however, the CJEU also specified that the issue of wage determination is a matter for Member States,\textsuperscript{26} which therefore can allow for differentiation in the rate remuneration of travelling time, according to national laws. This regulatory approach of the Court, which holds a unitary perspective on working time but not on remuneration, can open alternative paths to casualization and fragmentation (McCann 2016). In the UK debate, this decision has raised concerns on the part of employers, who fear rising labour costs, especially in the care industry; employer groups have also been critical of the regulatory role of the Court, and pressed for the WTD to be reviewed.\textsuperscript{27}

\textsuperscript{24} Dellas, point 43; \textit{Vorel}, point 25 and Grigore, point 43.
\textsuperscript{25} Federacion de Servicios Privados del Sindicato Comisiones Obreras v Tyco Integrated Security SL, C-266/14, European Court of Justice, 10\textsuperscript{th} September 2015.
\textsuperscript{26} See Art 153.5 TFEU.
In summary to this section, it can be noted that the aspects and interpretations about working time *duration, organisation* and *utilisation* have resonance to some of the areas in which the CJEU has played a role in shaping the regulation of working time. These examples also show the contested nature of regulatory space and working time rule-making activities of the European Court when trying to address gaps left by the law. A further stage in the analysis is what has happened at subsequent national levels, and this is considered next.

3.4.2 National level

The role of the law in shaping the structure of working time duration can be more or less stringent, according to specific national legal systems.\(^{28}\) The experience of the UK in regulating working time in its overall definition, testifies a unique approach in the European context, given its minimalist and voluntary nature to legal regulation.

Historically, in the nineteenth century, working time legislation was introduced for the protection of a restricted group of workers (women and young workers) with the British factories legislation of nineteenth century, while in general men’s hours were an almost exclusive domain of collective bargaining (Wedderburn, 1986). Legal restrictions on working hours were seen as ‘abhorrent to the genius of the constitution and the people’ (Wedderburn 1986, p.411).\(^{29}\) These words effectively describe a very different perspective in comparison with other European ‘labour constitutions’ and experiences, and illustrate the deeply rooted preference of the UK for less state-embedded forms of regulation and the promotion of the so-called ‘collective laissez faire’. In the UK, the statutory requirement for a shorter working day was supported by

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\(^{28}\) For instance, the Italian Constitution (1948, Article 36) gives a primary role to the statutory tool when it states that ‘the maximum duration of the working day is established by the law’; in France, the 8-hour working day was achieved by French Unions through a national law at the beginning of the XX century (the so called ‘Loi des huit heures’ adopted on the 23rd of April 1919).

\(^{29}\) Interestingly, the paradox that could be highlighted is that regulation by law was not considered to be ‘abhorrent’ for women and young workers.
the TUC, although opposed by employers (Hadfield & Gibbins 1892, cited in Blyton 1985, p.21). Hence, for a long time, the employer’s preferences on labour market functioning influenced the regulatory space by favouring statutory ways to regulate working time duration, with implication for its productive utilisation. New justifications on the necessity of working time regulation have subsequently been endorsed (especially at International level), advocating a greater role for the law in the reduction of daily working hours. This reflects a shift in the discourse moved from economic interests and labour market regulation to the promotion of health, efficiency and solidarity among workers (Blyton, 1985). From being a labour market instrument and measurement of the work relationship and productivity, working time became an indicator of employee health and safety conditions and worker wellbeing. However, as has been said before, statutory regulation on working time was only enacted in the UK for the first time in 1998, as the result of the process of transposition of the WTD.

3.4.2.a) The Working Time Regulations

Working time in the UK has been traditionally shaped within the domain of voluntarism and unilateral forms of regulation, with very little intervention by statutory instrument until the enactment of the Working Time Regulations of 1998 (hereafter WTR), which represents the first comprehensive body of statutory regulation. The WTR is the result of the transposition of the European WTDs and the Young Workers Directive n. 93/33.

The Regulations were enacted under the ‘New Labour’ Government, with subsequent amendments in 2002 and 2007. As a dynamic of regulatory space, government policy also followed a Work-Life Balance Campaign (WLBC) in March 2000, which was considered to complement working time legislation (Philip et al. 2015). The aim of the WLBC was to promote a better balance between working and private life, by giving employees the right to request flexible working arrangements and encouraging employers to meet their workers’ requests and offer flexibility. It was reflective of the State’s preferred
voluntarist approach through policy incentives rather than a hard statutory mandated law. The transposed regulation was therefore not divorced from other State incentives which affected the regulatory employment issues such as health and safety reasons, employee information and consultation, paternity and maternity leave, all of which tended to be couched in a discourse of efficacy and economic *utilisation* and *organisation* of working time. For instance, under the model proposed in the 1998 White Paper ‘Fairness at Work’, the Labour Government wished to usher working time regulation towards ‘family-friendly’ policies, such as flexible time provisions for parents and carers. The campaign resulted in a statutory intervention with the Employment Act of 2002, providing working parents and carers the right to request flexible work.\(^{30}\)

However, the UK paradigm on working time and work life balance has been strongly criticized for having loopholes and unintended consequences, and especially for masking ‘the inherent tension between work-life and family friendly agendas’ and placing too little attention on gender imbalance (Smith & Baker, 2010, p.221). Nonetheless, it has also been argued that the regulations on working time represent a ‘turning point in the regulation of basic terms and conditions of employment in the UK’ (Deakin & Morris, 2012, p.336) and a ‘fundamental shift’ in the organization of the labour market (Philip et al., 2015) because, for the first time, working time regulation was directed to the workforce in general (without any distinction of age or sex) and by a statutory measure.

From a regulatory space perspective, the transposition of the WTD has been informed by the concern of the British Labour Government to avoid excessive burdens on business and employers (Blair et al. 2001). According to Adnett & Hardy (2001) ‘this concern reflected not only the historical voluntarist British legal position and intense lobbying by British commerce, but also their commitment to a ‘Third Way’ philosophy’, elaborated by Giddens (2000). This rejects ‘the anti-market bias of the ‘old’ state intervention and accepts a need to

\(^{30}\)The right was made effective by the Flexible Working Regulations (SI 2002/3207 and SI 2002/3236, as amended by Regulations SI 2006/3314).
re-design welfare systems and labour market regulations in the face of the demands of the ‘new economy’ (Adnett & Hardy, 2001, p. 121). The WTR show continuity with the approaches of previous UK governments, as they adopt all the derogations that were negotiated to allow employer greater flexibility (Smith and Baker, 2010; Adnett & Hardy, 2001), thus offering only a bare minimum of protections for workers (Pitt & Fairhurst 1998). The actual derogation pattern and the ‘opt-out clause’ shows that the opposition of the UK government to a more stringent legal intervention altered the regulatory space with fewer rights and less protections for workers which favoured the interests of corporations who demanded workers be more responsive with unsocial working hours. Indeed, propositions on amending the Directive collapsed at European level in April 2009, thus maintaining the status quo in terms of regulatory space by ensuring that ‘the UK workers without caring or other non-work commitments will continue to enjoy the “right to choose” to entrench long hours working as the gold standard in the UK workplace’ (Smith and Baker, 2015, p. 252). The criticism on the effectiveness of the WTR arguably demonstrates a fragmentation to the legal regulation of employment. How these affect workplace level relationships is considered next.

3.4.3 Workplace level

The workplace is the terrain where the organisation, duration and utilisation of work time actually takes place; accordingly, working time patterns can be customized to the sector and the nature of the activity. This is also the place where, more directly, working time preferences can be advocated, both from the employer’s and the employee’s perspectives. Evidence on the practices of some leading employers show considerable manipulation of working time rules considered at transnational and national levels. For example, ‘Sports Direct’ excluded from official (or formal) working hours the time it takes to search employees at the end of each shift. Such a practice is indicative of unilateral employer occupancy of the regulatory to manipulate workplace level practices.

In this section, several important factors are considered in order to further explain and understand how regulatory space may be affected. These factors include: the nature of the sector and market, occupation, the level of unionisation, the size of the organization, and the role of both labour and also management agency and power.

The WTR assign large spaces of potential regulation to collective bargaining at a decentralized local level. A corollary is that individual negotiation and agreement making can also be of importance at the workplace level, with potential contestation between the actors that occupy this space. Accordingly, the relationship between employers (which includes human resource and other managers) on the one side, and trade unionists and employees on the other side, is particularly relevant in explaining how working time regulation is shaped. It can be argued that the WTR had the effect of sustaining an individualized approach to working time regulation, which is highlighted by evidence of the common use of opting-out clauses in agreements (Barnard et al., 2004). Furthermore, it is apparent that workplace practices, such as annualised hours and on-call work, show further evidence of this ‘individualist’ model (Adnett and Hardy, 2001, p. 117).

Arrowsmith & Sisson (1999) argue that, although settlements on working time and pay have become more and more decentralized in certain sectors, key distinctions in working time arrangements in different workplaces can better be explained by the type of activity and sector, rather than the institutional framework, and the use of decentralized bargaining is more common in the UK instead of multi-employer agreements, which find favour elsewhere in central Europe. Despite – or because of - the preference for minimalist and voluntary regulation, industrial relations actors appear to have vacated to a large degree the space for working time regulation with the demise of sectoral collective agreements (Arrowsmith & Sisson, 1999). In a closer look at the role of trade unions in advancing collective regulation on working time, the Danish case study conducted by Scheuer (1999) concluded that Unions are able to provide further protections for workers in terms of reducing overtime and
increasing its compensation. Furthermore, case studies on working time regulation are found especially in the care industry, which is characterised by a high level of ‘informality’ and has been influenced by a strong ‘deregulatory’ approach. In this area, the literature argues for a greater regulatory intervention by the law, on the basis that voluntary solutions do not appear to be effective in regulating employment in a fair and balanced way between employers and employees (Rubery et al. 2015; McCann & Murray 2014).

At the workplace level, individual negotiations on working time are particularly interesting phenomena to analyse. Regarding the type of organization, Supiot (2001, p. 63) underlines the fact that ‘in small specialized companies (…) negotiation of working time often become a kind of personal agreement in which the skilled worker sets the price of his or her own professional experience and technical expertise’. However, labour market and economic conditions are obviously able to influence the employee’s regulatory counter-power; indeed, ‘if more flexible labour markets create greater employment insecurity, then workers’ ability to resist employers’ attempts to extend working hours, paid or unpaid, is reduced’, as workers might be influenced on agreeing unwanted working time agreements because they are facing an uncertain and unstable future (Adnett and Hardy, 2001, p. 118).

Taking the aforementioned multiple levels – international, national and workplace – the next stage in advancing the aims of the thesis is to build the framework around the applied dimensions of working time regulation detailed previously in chapter 2, namely the law, negotiation (mandated and voluntary) and unilateral employer power.

### 3.5 The regulatory framework applied

The purpose of this section is to operationalize the conceptual framework detailed in chapter 2, by considering how and where working time regulations

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32 The Danish case is particularly interesting for comparison with the UK because of his voluntarist model of industrial relations, where regulation on working time takes place mainly through collective agreements rather than the law.
can be applied using the multiple approaches of the law, negotiation (mandated and voluntary) and unilateralism. It takes the elements considered thus far in this chapter in terms of the working time duration, organisation and utilisation. The present analysis builds on previous work by Berg et al. (2014), and has the aim to further explain how regulation is shaped in those countries that do not correspond to the ‘ideal type’ of each regulatory dimension.\(^3\)

The importance of statutory legislation, along with its limitations and constraints in the area of working time regulation, has been extensively outlined in the literature (Vallée & Gesualdi-Fecteau 2016; Zbyszewska 2016). Lee & McCann (2006) based their research on the capacity of workers to express their preferences and choices in working time arrangements. From a labour market perspective, the investigation of working time capabilities based on a utilitarian analysis seems to suggest that workers effectively have the power of voluntarily choosing their working time; therefore they should be considered responsible for their situation at work. However, Lee & McCann (2006) correctly point out that in order to be accounted as responsible for some choice it is necessary to have the freedom, or the possibility, to choose.\(^3\)

From this point of view, the action of the law should be directed in providing workers with an equal ‘capability set’ (Browne et al. 2002, p.13), which include freedom of choice, correct information, as well as minimum standards specified in the traditional forms of regulation (the setting of daily/weekly working hours, minimum rest times and holidays, etc.). In addition to this first and basic role, it is suggested that the law should also promote policy and social rights to support workers’ choice and influence on working time (Lee and McCann, 2006).

\(^3\) The case study made by Berg et al. (2014) explains the regulatory framework by giving examples of ‘ideal countries’ where a type of source (legal mandate, negotiated or unilateral) is dominant in respect to the others. In this study the US represented a unilateral model of regulation, France exemplified the state embedded by legal regulation and Sweden was the reference to illustrate collectively negotiated working time regulations.

\(^3\) The authors cite Sen (1999, p.284): ‘Responsibility requires freedom (...) Without the substantive freedom and capability to do something, a person cannot be responsible for doing it’.
From regulatory space perspective, therefore, the role of the law should theoretically allow the space for employees’ influence on working time issues. However, in reality it has been shown that the actual space for employees to contribute to and adjust working time preferences is very limited, primarily due to the subordinated position of workers in employment regulation. A potential corrective, discussed more fully later, is this space for workers’ capability could be enhanced by the valorisation of employees’ voice within the firm, as well as by the restriction of the type of sources of employer-led regulation (Lee and McCann, 2006).

Scholars have further argued that, given the conflicts between interests for flexibility from the employer side and the demands for accommodating employee’s time preferences, the setting of highly standardized working hours, established by statutes, becomes extremely difficult (Bosch, 2004; Berg et al. 2014). Although workers’ capability can certainly be improved by the introduction of hard and soft regulation (for instance with the right to refuse work in certain working time arrangements and for certain categories of workers,\(^{35}\) or in the case of the right to reduce or modify the hours of work in specific situations)\(^{36}\) the effectiveness of the legal instrument for individual rights, as a stand-alone strategy, is found wanting (Ierodiakonou & Stavrou 2017). In order to overcome the problems that individual legal regulation could bring, Lee and McCann (2006, p. 86) suggest that a greater role should be played by the collective agency of actors through negotiations; along with better and stronger protective regulation (Rubery et al. 2005; Smith & Baker 2013; Adams & Deakin 2014a;McCann & Murray 2014; in the US context see also Golden, 1998).

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\(^{35}\) As in the case of the ILO’s Night Work Convention n. 171 of 1990, article 7.1.

\(^{36}\) As, for instance, it was conceived in the UK by the Employment Rights Act 1996, section 8(a), for parents with children under 6 years old or disabled children to 18 years old.
3.5.1 Law

Legal regulation can affect the three aspects of time that have been previously outlined and explained in Section 3. This subsection aims to demonstrate in which areas legal regulation is more influential and how the aspects of working time are affected by the law, and which spaces are left to others actors and sources to establish further rules. Furthermore, the objective is to show how elements of working time duration, organisation and utilisation are intrinsically linked in the making of legal provisions, and how they become useful to describe the processes of occupation of the regulatory space.

**Duration and organisation**: Regulation on working time duration and organisation are set both at international and national level by provisions that, for instance, limit the length of the working day/week, provide for rest times and their length, give rights to annual paid holidays, etc. Further space is then allowed for decentralized forms of regulation at industry or workplace level: indeed, in some case regulation at lower level can derogate, *in melius* or *in peius* from legal provisions. However, derogations can happen only within the limits and by following the formal requirements outlined by the law, which is ceding regulatory power and authority to other actors, who may then jostle to occupy (or not) the space made by the legal derogation mechanism.

Regulation on working time duration is often accompanied by organisational aspects that in some case can make provisions more flexible; for this reason it is considered important to analyse these two elements together. For instance Article 4 of the WTR, while imposing a weekly limit of 48 hours (including overtime), states that the reference period for calculating the average hours worked for the purpose of the limit is settled at 17 weeks (and the starting day for the calculation can be voluntarily agreed by the employer and the employee, or his representatives). This provision includes both aspects of duration and organisation, as it provides for a ceiling on working time duration,

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37 However, Regulation 4.2 WTR requires the employer ‘to take any reasonable step, in keeping with the need to protect the health and safety of workers’ to ensure that the 48-hours limit is ‘complied with in the case of each employee employed by him’. 
but at the same time it allows a flexible distribution of working hours over the 17 weeks of reference period. This mechanism is an example of ceding of space from the legal instrument to voluntarily agreed provisions affecting the organisation of working time, which combine the regulation on working time duration and organisation to aspects of source coordination.

A stronger role of the legal instrument is found in the area of annual paid leave: this is the only requirement coming from the WTD that cannot be modified or derogated and must be guaranteed to the worker. In fact, the CJEU has emphasized that the right to annual paid leave is a ‘particularly important principle of the European Union social law from which there can be no derogations and whose implementation by the competent national authorities must be confined within the limits’ that are expressed by the WTD and that cannot be ‘interpreted restrictively’. In this case, again, elements of duration and organisation are mixed together to build the concept of annual paid leave: workers are entitled to a minimum period of paid leave of 5.6 weeks (28 days), that must be taken during the year and cannot be carried on the next year or be paid in lieu, unless exceptions apply.

The provisions on paid annual leave shows evidence of how the ruling of the CJEU has been effective in combatting the government purpose of minimizing some WTD provisions. Indeed, the original Regulation of 1998 required, for

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38 Regs. 13 and 15 of the WTR.
39 The citation is from case Zentralbetriebsrat der Landeskrankenhaus Tirol v Land Tirol, C-476-08, [2010] IRLR 631; the interpretation is confirmed in British Airways plc v Williams, C-155/10 [2011] IRLR 948.
40 The length of the holiday entitlement has been expanded on April 2009 from its original duration of four weeks, this was the result of a campaign started from the unions’ disappointment (Smith and Baker, 2010).
41 The leave year is normally considered to start from the date of commencement of employment, unless a relevant agreement applies (Reg 13.3 WTR). It can be noted that The formulation of the law gives primary space for the voluntary solution of the relevant agreement.
42 According to Reg. 13.9, the termination of the employment can give right to a payment in lieu on respect of the holiday entitlement. The CJEU has expanded the exceptions in case where the carrying of the holiday entitlement might be ‘inevitable’; see Federatie Nederlandse Valkbewijingen v Staat der Nederlanden, C-124/05 [2006] ICR 962, [2006] IRLR 561, CJEU; HMRC v Stringer, [2009] UKHL 31; KHS AG v Schulte, C-214/10, [2012] IRLR 156.
the application of the holiday entitlement, a minimum working period of 13 weeks of continuous employment. This Regulation was successfully challenged at the CJEU in the *BECTU* case,\(^{43}\) who found that the British legislation was too restrictive in comparison with the right provided by the WTD, and therefore overturned it.

**Utilisation:** Provisions on working time utilisation are more difficult to find within the legal dimension of regulation. An interesting discussion, however, can derive from the tight connection between the regulation of hours and pay. The measurement of the pace of the working activity can find its regulatory dimension in the evaluation of the remuneration for time spent at work. Pay could indeed be differentiated on the basis of the different utilisation of working time. The case of on-call workers is particularly interesting: in *Rossiter*\(^{44}\) and *Hughes*\(^{45}\), the EAT had to consider and make reference to work intensity for evaluating pay rates for workers during their time on-call. In *Rossiter*, the EAT held that work intensity should not be considered as a factor determining the level of remuneration under the NMW; this reasoning is found to be in line with the aims of the WTR and WTD (Rodgers 2009), but it has been challenged by recent position of the CJEU in *Tyco*, and by the *Hughes* decision, where the EAT stated that work intensity should be an element of evaluation for the calculation of the minimum wage and therefore on-call time spent, for instance, sleeping should be excluded from the application of the NMW rates.

This analysis shows how working time utilisation can become an interesting element of evaluation of the workers’ condition, linked with both working time regulation and pay regulation; furthermore, it shows how regulatory arenas can connect and combine across different spheres or spaces to adapt and fragment regulations.

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\(^{44}\) *Burrow Downs Support Services Limited v Mr E Rossiter*, UKEAT/0592/07/LA.

\(^{45}\) *Mrs S J Hughes v Mr Graham and Mrs Lynne Jones t/a Grayynn Residential Home*, UKEAT/0159/08/MMA.
3.5.1.a) Labour law and the contract of employment

Within the modern labour law structure, working time is particularly linked to the nature of the contractual relationship between the employer and the employee. It is not just a matter of the number or duration of hours that the employee is requested to work, or the exact timing of the activity; the issue of working time regulation is implicitly included in the contract. For instance, the use of part-time employment contracts, zero hours contracts or job-sharing positions, represents a way of influencing the temporal dimension of the employment relationship, in a pre-defined way by the law and prompted by the employer in offering a specific labour contract, in line with the organizational business strategy.

Legal regulation on working time should therefore not be regarded only as the set of rules which organize the working experience by limiting the working period or promoting specific rest times and holidays (i.e. the WTR); but must consider as well, in an overall definition, the legal pattern that establishes the availability of different contractual situations for the purpose of working time flexibility (i.e. on-call work, zero hours contracts, etc.). In this sense, working time is not just limited to the establishment of regulatory instruments for ensuring decent conditions of work, but is also the element that differentiates different forms of employment and workers’ status or position.46

Of particular relevance are the working time issues connected with the widespread use of Zero Hours Contracts. These arrangements are not provided with legal regulation in the UK and they are commonly associated with insecurity of income and low pay for workers (Adams & Deakin, 2014b). ZHC are defined as contracts ‘where a person is not contracted to work a set

46 Even in forms of traditional or subordinated work some differences based on power of self time-management can affect the employee status and the application of the regulation to its case. See for instance derogations allowed in the Reg. 20 of the WTR for workers that, for the specific characteristics of their activity, the duration of working time ‘is not measured or predetermined or can be determined by the worker himself’; this category includes, for instance, ‘managing executives or others with autonomous decision making powers’, ‘family workers’ and workers ‘officiating at religious ceremonies in churches and religion communities’.
of number of hours and is only paid for the number of hours that they do’ (ONS 2014). Furthermore, according to Eurofound, ‘zero-hours contracts are a form of flexible working that specify no minimum number of working hours a week. While the employee may sign an agreement to be available for work as and when required, the employer is not necessarily obliged to give the worker any work and the employee is not obliged to accept the work offered. The employee is expected to be on call and receives compensation only for hours worked’. 47 48

It may be argued that, in these types of work arrangements, the main recurrent issue is not whether the working time provisions are in compliance with working time duration and organisation, but rather the lack of certainty over the hours of work. This issue can be related to the discourse on workers’ capability to determine and choose their working hours, along with the problem of underemployment, where the worker does not work a sufficient/desired amount of hours. Indeed, in the case of ZHC (especially those under ‘if and when’ arrangement), one of the points of concern is that these contractual arrangements do not offer a desirable amount of work and do not guarantee definite working times, and therefore pay. The effects that these contractual forms can have on the labour market can be related to the discourse of individualization and heterogenization of working time patterns; furthermore, in a labour market that, for its precariousness, leaves very little space to employee’s choices this area supports a particular focus on the unilateral occupation of the regulatory space by employers (Wood & Burchell 2014).

Among others, O’Sullivan, et al. (2015), Adams & Deakin (2014b) and Ewing et al. (2018) argue for the idea of more consistent and formal regulation of ZHC, by proposing the right for workers to a regular work and income and the improvement of statutory instruments such as the modification of the ‘written

48 A theoretical differentiation between the two types of contract in Irish labour law (ZHC and ‘if and when’ Contracts) is further investigated by O’Sullivan et al. (2015).
statement’ provision, thus providing employees with further statutory protections and certain information about the terms and conditions of employment.49 Such analysis connects with debates emerging in this thesis for a “re”-regulation narrative, which affects regulatory coordination across various spaces and sources of influence (Adams & Deakin, 2014b). Propositions encourage the use of ‘alternative regulatory mechanisms’, such as an expanded role for collective bargaining and codetermination-type mechanisms, which could work as instruments for rebalancing regulatory power and control with the objective of promoting a fairer use of casual contractual arrangements (O'Sullivan et al., 2015; Adams & Deakin, 2014b). It could be poised then, from a regulatory space perspective, ZHC belong to the domain of unilateralism, but may also be ameliorated by actor bargaining power and/or informal agency capacity of workers where there is a lack of any specific legal mechanism. Thus, the propositions of enhancing spaces for regulatory change are noteworthy and warrant in-depth empirical investigation. How far these lend themselves to negotiated adjustments to the regulatory spaces for working time is discussed next.

3.5.2 Negotiation

Although the UK law on working time concede multiple spaces to collective bargaining, the negotiation process is not actually underpinned by the law, as the British tradition is historically one of voluntarism rather than mandated negotiation or co-determination. It was discussed in chapter 2 that while co-determination as a form of statutory negotiating rights are important for the theoretical generalizability of the framework, its direct application in the UK has less relevance because of the voluntarism industrial relations regime.

Voluntarism, in its forms of collective bargaining and individual negotiations, still represents one of the most important sources of regulation in the area of employment relations and working time (Dobbins, 2010). The British tradition

49 The written statement on terms and conditions of employment is regulated by ERA 1996, sections 1.4(c) and 2.2.
assigned historically a prominent role to collective bargaining in the definition of working time. Collective bargaining at sectoral level represented the main mechanism of regulation of basic working hours, overtime, shift-work *premia* and annual paid holidays until the 1980s, when policies of ‘deregulation’ had the effect of restricting the coverage of sectoral-level collective agreements (Deakin & Morris, 2012).

The European WTD and the subsequent British legislation provided a new balance between statutory and voluntary sources of regulation: in many provisions of the European and National working time regulations there is space allocated for voluntary regulation, both at national and regional level. Collective and workforce agreements can derogate from and modify regulations in the area of night work, daily and weekly rest periods and breaks, weekly limit on working time and also on the reference period.

As previously mentioned, an important provision that designs a very wide space for voluntarist individual negotiation is the possibility of ‘opting-out’ the 48 hours limit of weekly working time *duration*, although how genuinely voluntary the opt-out is in practice is highly debatable. The validity of the opt-out is conditioned by the presence of an individual written agreement between the employer and the employee, which can last for a precise or indefinite period of time and it is terminable by the worker with a written notice. It is also part of a power relationship where the employer (or management as agents of the employer) can have a greater degree of persuasive influence over employees (Dundon et al. 2017).

Barnard et al. (2003) reveal that the opting-out instrument is preferred by employers to other forms of derogation provided by the WTR for guaranteeing time flexibility. This was for pragmatic reasons which appear to support employer interests: for example managers considered that, to avoid the 48 hours limit, negotiating individual opt-outs were ‘less risky and administratively easier’ (Barnard et al., 2003, p. 16) than other types of derogations (like those provided by Reg. 20 of the WTD), which are considered to leave too much
space for judicial interpretation and intervention by other actors, and thus create uncertainty of application. In these cases, then, it is possible to notice that voluntary regulation was preferred over the possibility of (unilaterally) classifying the worker under the categories of Reg. 20, because of the fear of the judicial action that can gain space of intervention when the law leaves room to interpretation.

The voluntarist nature of the ‘opting-out’ procedure is, however, problematic. In the Pfeiffer case, the UK opting-out procedure was criticized by the CJEU because it does not appear able to provide a stable and sure degree of contractual freedom. Accordingly, the employee’s freedom of choice might be at risk, especially if the contract of employment is set by the employer and the opt-out clause is implicitly proposed as a condition for getting a job (Smith & Baker 2013). Thus, the voluntarist nature of the opting-out clause can lead to a unilateral reality, especially if one of the parties to the contract (e.g. employee) is not in a true or genuine position to freely choose or negotiate. The option to make a hazardous or unpalatable decision - such as sign an ‘opt-out’ clause and work longer hours, or have no job at all – is what it is to be forced to do something as a pretence it is a free choice (see Cohen 1988). It is thus important for this thesis not only to assess the spaces that result from the final draft of regulation, but also the social context and conditions that shape how rules are adapted and manipulated in practice, and by whom. Considered next, therefore, is the potential unilateral dynamic to regulating the spaces for work time.

3.5.4 Unilateralism

The unilateral aspect of regulation deals with the power of managers in shaping and directing the organization, duration and utilisation of working time, but also includes the employees’ capacity to resist and challenge the managerial prerogative.\(^{50}\)

\(^{50}\) Forms of employees’ resistance, that intends to influence the pace of work or its length, include examples such as the phenomenon of ‘soldiering’ (Taylor 1911), or the
Historically, the unilateral managerial dimension was underpinned in the UK institutional context: Wedderburn (1986, p. 412) pointed out that the measures adopted by the UK government in the second half of the twentieth century dealt ‘with areas where trade union organization, and therefore collective bargaining, is relatively weak and where deregulation means a further increase in managerial power and prerogative and increased difficulty for workers to resist whatever demands are made on them’. The picture of a regulatory space which is consistently dominated by employers and largely unconstrained by trade unions is still reflecting of contemporary times (Grimshaw et al. 2017).

In contemporary analysis, Rubery et al. (2005) outline the different sources of working time utilisation and organization, by looking at how employment regulation has been shaped by an employer-led model (unilateral), rather than by voluntary and legal forms of regulations. The UK regulatory regime of working time has been described by Eurofound (2016) as ‘unilateral’, which implies regulation of time is determined more by employer power, rather than the law or collective bargaining. It should be noted here that defining ‘unilateralism’ is not straightforward. For example, unilateralism described by Eurofound (2016) resonates with different customs and national practices of EU member states, as first articulated by simplified typologies of (Berg et al. 2014). However, such a view of unilateralism does not focus on the combination of differences known to exist within a national regime, or that employer unilateral power can transcend national boundaries through multinational capital and subsidiary site management structures (Gunningle et al. 2009) that influence unilateral regulatory spaces. Expansions towards increased unilateral power of regulation of employers has indeed been found in other EU countries, as an effect of austerity reforms during the most recent economic crisis (Lang et al. 2013; Koukiadaki et al. 2016; Martinez Lucio et al. 2017). Furthermore, ‘unilateralism’ is seen as the domain of the individual agreement, acknowledging the Eurofound study (2016), whereas the discussion in this

‘banana time’ practice (Roy 1959). In the UK Unions have historically had campaigns and disputes to reduce hours, often ‘shorter working week’ campaigns.
thesis has advanced a more nuanced interpretation, in that other (less significant) sources of regulation can coexist and overlap with other levels, as explained here and in chapter 2.

Berg et al. (2014, p.811) argue that ‘the unilateral configuration is characterized by a high diversity of working-time practices, is highly exclusive given that it focuses on varying share of the workforce, and it is relatively unstable as practices often change with shifting labour market conditions. Moreover, the ability of the employees to access working-time practices is relatively weak and dependent on employer willingness to concede to employee interests. The study conducted by Berg et al. (2014) links the unilateral configuration with regulation at micro or firm level. Moreover, the framework developed here argues that unilateralism can be found at higher levels, by the occupation of the regulatory space at national and international level by actors that foster the imposition of forms of regulation that influence national standards; for example, national and transnational employer federations and multi-national employers implementing unilateral practices across different national boundaries and countries. Examples include the American Chamber of Commerce who actively lobbied at EU level to affect the transposition of European regulations concerning employee information and consultation regulations in the UK and Republic of Ireland (Dundon et al., 2014; Dobbins et al., 2017). Other evidence relates to employer occupation of regulatory space for working time in the retail industry (Carré et al. 2010; Hadjisolomou et al. 2017). Of note is that the State leaves freedom for employer actors to adjust the organisation and utilisation of working time. In this case managers were able to ‘capture’ the regulatory lacuna and implement unilateral decision-making (Hadjisolomou et al. 2017).

Unilateralism find spaces to regulate the duration, organisation and utilisation of working time, but it appears to have an even stronger and prominent role when considering the organisation of production that happens at company level. In particular, the literature shows evidence of unilateralist practices and
strict managerial control to decide workers schedules without involving employee voice and preferences (Henly & Lambert 2014; Wood 2016).

Unilateralism holds a prominent role in the regulation of working time duration, utilisation and organisation in the UK and it has been linked to the use of the opting-out clause made available by the WTR, which has been extensively used in the UK national context. In a perspective that looks at the future of regulation, it has been pointed out that ‘as long as the individual opt-out continues in place, a much needed stimulus for the modernisation of working time, which could have come from the Directive, will fail to materialise’ (Barnard et al., 2003). But, in a regulatory space perspective, it is also argued that the removal of this provision alone will not be able to develop a complete framework in working time regulation: according to Barnard et al. (2003) the challenge of employee representation is also inherently linked with attempts to modernize working time rules. It is contended that the mere removal of a legal norm that gives a large amount of space to the employer’s unilateral power would be ineffective if not supported by a complementary regulatory restructuring in favour of more collaborative forms of regulation, such as co-determination or voluntarism. The simple limitation of working time duration would not be sufficient to guarantee workers’ health and wellbeing, as the influence of the employer on the aspect of utilisation (such as the increase of the rhythm of work over a shorter period of time) could counterbalance the positive protection brought by statutory rights.

3.6 Conclusion

The chapter has advanced a deeper and more refined understanding about the ways, levels and processes in which IR actors may adjust and shape the regulatory spaces for working time. The analysis draws attention to variation and nuance to the complexity within a single regulatory regime, recognising the importance of power and actor interest formation. This chapter reviewed literature about working time regulation that supports a wider framework to addressing the research questions for this thesis, namely the main RQ ‘how do
employment relations’ actors influence the regulation of working time, both in general and in relation to the gig-economy context?’ and the supplementary Research Question 1 ‘what is regulatory space and how is it related to the regulation of working time?’.

The analysis of the relevant literature and legal regulations on working time has followed the theoretical framework that has been outlined in chapter 2. Regulation has been then considered through the lens of the three dimensions: (law, negotiation - mandated, voluntary - and unilateralism), across three levels (international, national and workplace). Examples of the application of working time regulations across these dimensions and level were given to reflect on the complex structures and relationships affecting working time duration, organisation and its utilisation. These definitions will guide the collection and analysis of empirical data to address the research questions of this thesis. The methodology design and the data to answer these research questions will be explained in the next chapter.
Chapter 4
Methodology

4.1 Introduction

The present chapter discusses the methodological aspects of the research, by detailing research objectives, methodological theories and perspectives, and the suitable methods for answering the research questions. The chapter will explain research validity and reliability, as well as for providing full justifications for the research methods adopted for answering the research question.

The framework presented in chapter 2 holds important methodological implications because it considers regulation at transnational, national (or sectoral) and workplace level. These levels entail the need to investigate multiple actors and institutions involved in the regulatory processes. The literature review outlined numerous challenges that regulatory actors have to address, in particular substantial legal rules that are set by statute and State agencies. By going beyond a pure legal analysis, the aim of this research is to understand how employment regulation is influenced by different relevant labour market actors. To this end the research requires information to be collected from multiple sources: key informants with pertinent knowledge of regulatory dynamics, alongside the analysis of official regulation, legal sources and acts, and policy documents. The research is sensitive to an interdisciplinary approach, which takes account of the legal, industrial relations, managerial, political, economic and sociological paradigms.

The chapter considers next the research purpose and research questions. In section 3 it discusses research theories and perspectives, with a special section on legal research. Section 4 considers challenges and value of conducting interdisciplinary research to answer the research questions. In section 5, various
research methods are outlined and the suitability of specific research techniques is discussed. Section 6 presents details about the data collection instruments, along with the levels, type and depth of data collected. The procedures of data analysis is then outlined in section 7, where the first part (4.7.1) is dedicated to legal analysis, the second sub-section (4.7.2) explains the analysis of interview data, while the third sub-section (4.7.3) described the coding of data using content analysis techniques. Finally, methodological issues encountered and limitations to the research design are acknowledged.

4.2 Purposes of the research and research questions

The research questions that inform the thesis are specifically directed at understanding how regulatory actors are able to occupy, share and use the regulatory space with regard to working time regulation in the gig-economy. The main research question is designed to build theoretical and conceptual generalizability and is underpinned by four supplementary questions. The supplementary questions map to subsequent empirical data and its analysis is presented in later chapters of the thesis.

**Main Research Question:**

How do employment relations’ actors influence the regulation of working time, both in general and in relation to the gig-economy context?

The theoretical framework in chapter 2 defined the interaction of three regulatory dimensions that might be combined or overlap (e.g. law, negotiation [including mandated and voluntarist], unilateralism) across three main levels of application (e.g. transnational, national, workplace). The main research question is directed to understand how working time is regulated in the UK, with a specific concern of working time regulation in the gig-economy. The aim is to explain how labour market actors occupy the regulatory space, what their aims, objectives and strategies are, and which prevailing regulatory space dimensions dominate.
The main research question directs the overall purpose of the thesis. However it is a complex issue and cannot be addressed directly. For this reason it is better addressed in a structured and systematic approach and is broken down into four further sub-questions, as follows.

**Supplementary Research Question 1:**

*What is regulatory space and how is it related to the regulation of working time?*

The first supplementary research question is addressed in chapters 2 and 3 of the thesis and it has the objective of outlining the theoretical framework on the subject. The concept of regulatory space has been explored and regulatory dimensions and levels provide a theoretical and conceptual contribution to develop further empirical research. In order to explore the UK institutional regulatory context, it is important to assess how the legal framework is able to create, allocate and cede space for other actors to intervene. It is considered that an historical and critical approach should be adopted in order to address this type of question. This historical approach has been undertaken with a review of the literature on the making of working time laws and regulations in the UK and in the European Union, and their evolution. Chapter 2 discussed the concept of regulation and regulatory space, identifying actors, dimensions and levels. Chapter 3 reviews extant knowledge on specific aspects and levels of working time rules and regulations.

**Supplementary Research Question 2:**

*How does the State influence formal regulatory processes in working time regulation, both in general and in relation to the gig-economy employment?*

The literature review exposed the role of the State as a significant actor that can shape the regulatory debate. It is considered that, given the primary function as a regulator and a guarantor of laws and rules, the analysis of the
role of the State in its institutional and formal processes would be a necessary step to investigate regulatory space and address the main research question. In general terms, the State is the actor who sets, amends or rescinds employment laws and rules (e.g. Working Time Directive and other national laws and policy objectives). In terms of the gig-economy, the State has been important in relation to action of the Courts and employment standards and policy objectives for work relations in the gig-economy (e.g. the Taylor Review). At the same time, the State and its agencies can be influenced by other actors (employer bodies or federations, unions, think tanks, etc.). In addressing Supplementary Question 2, chapter 5 provides evidence from various sources: grey literatures including official reports, reviews, press releases, parliamentary inquiries and documents, supplemented by interviews with strategically-placed informants to gather information about formal regulatory processes of working time by the State (in terms of general employment, and in relation to specifics of the gig-economy).

**Supplementary Research Question 3:**

*How do other (institutional) actors respond to and seek to influence working time regulation, both in general and in relation to gig-economy employment?*

For the further comprehension of the regulatory space around working time, the role of actors other than the State need to be taken in account as the State might delegate regulatory functions to other subjects or these may try to influence the actions of the State. Therefore information about the agency of other national and international regulatory actors is important to capture a wider range of sources of influence. Among others these actors are trade unions, think tanks, international organisations such as the ILO, independent research bodies, employer federations. Chapter 6 reports findings from interviews conducted with some of these actors along with a content analysis of official reports and research documents. Information is reported about general regulation on working time (e.g. the WTR/WTD) and the case of working time regulation within the gig-economy.
Supplementary Research Question 4:

How do workplace relations influence the formal and informal processes of working time regulation in the gig-economy?

The final supplementary research question provides a deeper investigation of both ‘formal’ rules but also ‘informal’ processes of regulation at the workplace level. This question requires a closer look to the realities of employment relations and the structure and organisation of working time among those working in the gig-economy. Chapter 7 provides data from workers and trade unions through the use of semi-structured interviews focussed around one gig-economy business, Deliveroo. Attempts and requests to collect information from Deliveroo management were made, but unsuccessfully. Despite their refusal to participate, information about employer regulatory preferences and strategies was gathered via content analysis of other sources, including parliamentary inquiries and other reports (see Chapter 6). In order to add variability across the sample it was deemed important to collect information from workers in three different cities (Manchester, London and Brighton). Desk research revealed that regulatory issues and approaches differed for Deliveroo’s riders across these locations in terms of the management of work organisation, management control strategies, payment systems, contract status, and union organising.

Taken together, the 4 supplementary research questions provide a coherent and structured approach to building data to better answer the main research question, by capturing the dynamics and tensions concerning multiple sources and different actors’ approaches to influence working time regulation in the gig-economy.

4.3 Research theories and perspectives

The rationales for the aforementioned research questions do not exist in isolation. They are developed from a range of employment relations’ issues, literature concepts, contemporary challenges and practices, along with
ontological and epistemological trajectories of a field of knowledge. The present research aims to contribute to the development of the field of employment regulation, adopting a multidisciplinary approach. The philosophical approach of the research takes account of Kuhn’s paradigm elaboration, which starts with describing paradigms as ‘universally recognized scientific achievements that for a time provide model problems and solutions to a community of practitioners’ (Kuhn 1962, p.x). The use of paradigms as a fundamental research philosophy is justified by its methodological fit within studies that take account of multidisciplinary and complex issues in the field of social science. As Patton (1978, p.203) has pointed out, paradigms are ‘a way of breaking down the complexity of the real world’: they therefore serve the purpose of explaining social complexity, without falling into the dangerous reductionist outcome of over-simplifying the reality of phenomena. Taking account of Kuhn’s paradigms is here deemed particularly important to the enrichment of legal studies, in agreement with that part of the literature that argues for the need to look at the law in its social context, political, historical and theoretical (Kahn-Freund 1966; Freeman 2014). Therefore, both research theory and philosophy are inspired by a strong historical contextualisation and an ‘historically oriented view of science’ (Kuhn 1962, p.x).

Paradigms are also described by Guba & Lincoln (1998) as the basic set of believes that steer the researcher in their approach to the question considered. One of the researcher’s tasks is therefore to reflect about the epistemological, ontological and ethical assumptions that she or he considers as an appropriate way of explaining knowledge, reality and values. The current analysis about paradigms and research theories has the aim to outline some crucial points of view for the development of the research project, however it does not consist in a rigid positioning of the researcher’s ontological, epistemological and ethical assumptions. As it will be further discussed in Section 4, multidisciplinary work poses challenges in how to approach research philosophy across different disciplines. In order to address this issue, the approach of social science research philosophy will be first considered, with a separate discussion and comparison with the legal methodological approach.
Common philosophical paradigms used in social science are positivism, post-positivism, critical theory and social constructivism (Howell 2013). The main difference between these paradigms is based on a different understanding of the intrinsic nature of reality, and how to explain it. Positivism relies on empiricism and a strong sense of prediction and control: in the positivist paradigm reality can be understood and discovered and the social world is just as predictable as the nature world (Howell 2013). Positivism’s objectivism, detachment and a-morality have been criticised by later theories such as, post-positivism, critical theory and social constructivism, which rely on a more subjective approach to knowledge and reality. The present research embraces a subjective and reflexive position, considering that subjective epistemological and political pre-conceptions are intrinsically part of the research process. Consequently, a purely objective approach to knowledge and reality, as posited by the positivist paradigm, is refuted in this instance.

Following the epistemological subjective standpoint, the researcher’s ontological position perceives reality and the object of the research as a social construction, thus adopting the constructionist idea that the world is locally constructed and based on shared experiences (Howell 2013). Constructivism and critical theory take similar approaches to epistemology, but the former considers findings and results developing at the same time as the investigation progresses (Howell 2013). This way of interpreting the research process is considered useful for questioning and understanding the value dimension of the knowledge-discovering process. Critical theory is thus considered attractive for its interest in understanding and exploring power relations, as well for its capturing reality as shaped by social and historical processes (drawing from the historical materialism developed by Marx and Engels). The research adopts and engages with the critical realist tradition, which understands social action and agency as subject to social structural arrangements (Godard 1993). Critical realism, as outlined by Edwards (2005), is particularly useful in order to identify the theoretical approach of employment relations regulation (governance), by considering as a starting point the structural antagonism...
between actors, power and knowledge influences and institutional embeddedness.

### Table 4.1 – Researcher's philosophical positions

<table>
<thead>
<tr>
<th>Features of Phenomenological Paradigm</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>View of reality</strong></td>
</tr>
<tr>
<td>Subjectivist</td>
</tr>
<tr>
<td><strong>Epistemology</strong></td>
</tr>
<tr>
<td>The world is socially constructed, it is changeable and organised through paradigms; Science and knowledge reflect value systems.</td>
</tr>
<tr>
<td><strong>Researcher</strong></td>
</tr>
<tr>
<td>Is part of the process of knowledge-making and therefore connected with the investigation; Develops theory in historical and political circumstances: historical values influence the analysis; Develop ideas through induction from data.</td>
</tr>
<tr>
<td><strong>Preferred methods</strong></td>
</tr>
<tr>
<td>Qualitative methods, historical contextualisation, in-depth interviews, qualitative content analysis of texts or images.</td>
</tr>
</tbody>
</table>

Source: adapted from Easterby-Smith et al. (1991)

#### 4.3.1 Legal Research Theories

Orthodox (or traditional) legalistic research paradigms suggest a certain degree of objectivity is necessary for applying legal methods of enquiry. The study of the law is deemed to be a consideration of ‘standardised’ meanings of texts. In legal research, space for interpretation is thus limited by the standard procedures of the traditional legal methods of analysis (case law research, doctrinal interpretation, analysis of the content of statutes, etc.).

It is indeed not common, in the legal field, to discuss philosophical approaches to research and the researcher’s ontological and epistemological point of view. In legal studies the philosophical approach seems to be connected to a reflection about the role and the nature of law in a society. We can thus identify schools of thoughts (in the common law traditions identified by the word ‘jurisprudence’) as legal naturalism, legal positivism, the Kelsenian theory of law, Marxist theories, Human Rights philosophy, legal pluralism. Paradigms
in legal studies are not disconnected from those of social science, indeed they develop in the same historical and social context, but the object of the reflection is shifted, with a major focus on the text of the law as main object of study.

The lack of discussion on legal paradigms in academic work might be linked to the critique of Freeman (2014), who argued that legal education has been historically conceived, at least in the common law tradition, as a technical and pragmatic discipline, with a substantial lack of philosophical and critical debate. However, recent contributions in the field, which see the origins in the work of Hart (1961), bring together legal studies and philosophical approaches under the umbrella of the concept of ‘legal theory’.

Galligan (2010) discusses the connections between legal theory and empirical research, identifying differences and common features. Legal theory, from a general philosophical perspective, questions the nature of the law and its tenets, looking at the overall framework of legal thought (Hart, 1961); other authors consider that the subjects of legal theory are those unquestioned and implicit assumptions that legal practitioners use in their activity (Kelsen 1967; Morawetz 1980).

In parallel, empirical legal research looks at the practical implications of the law, questioning the role of the law in a broader social perspective. Given the aim of empirical research, it is argued that ‘it is to be expected that law’s interaction with other social factors is often one of its subjects’ (Galligan 2010, p.979). Empirical legal research is therefore considered extremely useful in order to answer questions on how laws are made, which functions they hold, how legal institutions work, how law influences actions and expectations of the people, how people react to the law and what they think about it.

Legal theory and legal empirical research are fundamentally and traditionally distinct by the methods they apply; while empirical research aims to collect data on the law and its interaction with the social environment, legal theory is
mainly interested in law-related matters: thus it does not generally consider the wider social context around the law (Harris 1979), while focusing only on collecting and analysing data about law and relying on common knowledge about the law, refining and developing concepts that are implicit in legal systems (Galligan 2010).

However, it should not be forgotten that ‘legal theory, while philosophical in method, still has its subject a social phenomenon, created and practiced for social ends’ (Galligan 2010, p. 979). In this respect, empirical qualitative research can be considered very useful to inform legal theory and philosophical discussions about the law, with the possibility to empirically test the fit of legal theory’s assumptions in the practical world. In contrast to a quantitative approach (Botero et al. 2004), it seems that legal theory could expand its traditional methodological tools of empirical research, and empirical research could engage more with legal theory in order to generalise and abstract theory from data.

Linking the discourse with a broader discussion on research theories, the research philosophy of this thesis embraces Kuhn’s perspective on the necessity of developing legal research theory in light of an external social need (Kuhn 1962): legal theory of employment regulation is therefore considered to be of maximum importance for understanding the society and its progresses; at the same time, it also constitutes a construct of society, created to respond to institutional problems. In this respect, employment law and legal regulation are seen both as a result and a variable of the study: actors usually act in the boundaries created by the law, but they can also intervene for modifying it.

Researching how actors perceive and receive regulation, and then act to respond, adapt, implement and influence it, can therefore contribute to a better understanding of employment law and developing labour law theory. Furthermore, a multi-faceted examination of socio-economic and cultural issues is considered to give a better understanding of the complexities of governance and policy making (Doherty 2016). For these purposes, empirical
research is understood as a potential contribution for answering the research questions, with the aim of generalisation and connection with both legal and employment relations' theorisation. In agreement with (Thompson 1956, p.102): ‘Research must go beyond description and must be reflected against theory. It must study the obvious as well as the unknown. The pressure for immediately applicable results must be reduced’.

4.4 Contextual challenges for conducting inter-disciplinary research about employment regulation

Building on legal perspectives and social science research theories, this section will discuss some of the methodological challenges of conducting research in the inter-disciplinary field of employment regulation (e.g. legal, political, socio-economic, historical, and economic).

A first challenge was related to outline of the research theory and perspectives. It is common practice in social science research, but not so much in the legal discipline, to outline the researcher epistemological and ontological positions or assumptions when approaching the methodological discussion. In order to overcome this difference, the discussion was developed by looking at both legal and social science approaches and comparisons were made. As the objective of the thesis is to look at regulatory actors agency and processes, with attention to substantial regulation (formal or informal), it has been considered appropriate to first develop an overall discussion about research theory informed by organisational, managerial, and industrial relations traditions. However, considering that the legal discussion as a fundamental part of the research, it has been deemed useful to clarify the position between legal theory and empirical research.

A further challenge that has motivated the research is the intention of contributing to the development of labour law, employment rights, industrial relations and human resource management debates, which are at times presented as different components instead of being seen as related
contributors to the structuring of the employment regulation. The present work support the idea that both the individualist and the collectivist dimensions of labour law, along with historical contextual and socio-economic dynamics, should all be considered as related elements affecting potential employment regulation. Furthermore, besides the macro analysis, the research seeks to understand internal organisational processes and division of labour that affects regulation (Edwards & Kuruvilla 2005).

The theoretical and analytical frameworks outlined in Chapters 2 and 3 argued for the need to expand the traditional focus of labour law research to take account of other regulatory influences and stakeholders (for instance, identified in other legal sphere and other dimensions of the regulatory activity, such as voluntarism or unilateralism, as well as other potential actors interested in participating in the rule-making process, including think tanks and State agencies—among others). Under these premises, the broadening of the regular labour law paradigm, contended by Arup et al. (2006), is not intended to replace labour law as a discipline; rather, it aims to sustain inter- and multi-disciplinary approaches, legal pluralism and the dynamism of labour law scholarship (Deakin 2007). The research methodology is therefore oriented to integrate the classic legal research analysis, with the methodology used by industrial relations and managerial qualitative studies. In this respect, the combination of traditional legal analysis and empirical qualitative research is considered fundamental in order to answer the research question. Hence, legal analysis is here considered also from its sociological and political science perspectives, as its objective is to study the interactions of law with external socio-economic institutions and actors (Doherty 2016).

Another challenge, as Galligan (2010) argues, is combining traditional legal methods and linking empirical data analysis to general theories. Legal and social science scholarships tend to have different narratives and perspectives, as well as a specific and unique language. On the practical side, because labour law, management and industrial relations studies use different ‘languages’, and especially because legal terminology is often very technical and exclusive (in the
sense that it holds a strict legal meaning which might be different from the understanding of another research field), attention will be focused on the terminology and the wording in order to keep the language as accessible as possible to a non-legal public. This will be adopted not only in the actual writing of the thesis, but also during the data collection and the dialogues with the informants.

4.5 Research methods

There have been considerable transformations to labour law scholarship and research over the past three decades (Deakin, 2010). These entail a diminishing of stable industrial relations structures since the post-war consensus. In the UK much was previously premised on stable collective bargaining at industry and workplace levels. However, changes have been associated with attempts to individualize the employment relationship, which often ‘have been accompanied by the enactment of even more voluminous and complex legislation’ (Deakin 2010, p. 309). To understand these on-going changes, questions on the role and the extent of the effects of regulation have brought scholars to focus on the empirical analysis of labour law, besides the traditional doctrinal and theoretical legal discussion.

As common with many nascent and intermediate field research areas (Edmondson & Mcmanus 2007), empirical analysis in the field of labour law is considered a contested area, because of the ‘multiplicity of approaches making it hard to assess empirical claims concerning the effects, or non-effects, of legal measures’ (Deakin 2010, p.309). Furthermore, as showed by Deakin (2010), traditional labour law research has mainly focused on quantitative analysis and evaluation of labour market outcomes, rather than qualitative measurement of broader legal effects.

In labour law, traditional legal research approaches often use case law reports and decisions of courts as their source of data, or to analyse the evolution of judges interpretation and understanding of legal rules: this work can be assimilated to qualitative work and content analysis in the field of social
sciences, but it is considered ‘jurisprudential work’ (in the understanding of
civil law tradition) in the legal sphere. This example also illustrate differences in
the research methodology approaches between disciplines, and highlights the
isolated yet well-established tradition of research in legal studies, which often
does not communicate or exchange with methodologies and research theories
from other fields of study such sociology or organisational studies.

Besides the qualitative nature of case law research, however, example of
qualitative inductive approaches to legal analysis have been outlined by Webley
(2010): these approaches use, for instance, individual and group interviews,
qualitative document analysis, participant observation and case studies, in order
to better understand social phenomena.

The research method for this thesis follows such an eclectic approach to gather
data from multiple sources. The research aims to understand how regulatory
actors influence and respond to multiple spheres of employment regulation.
Accordingly, the focus of the empirical legal analysis is not centred on
understanding the impact of labour laws through a quantitative analysis (labour
laws’ causes and effects), rather the attention is oriented towards the role of
actors on sustaining and modifying labour law, either through formal and/or
informal processes. From this perspective, the interest on traditional legal
analysis (doctrinal work, commentary of regulation and case law research)
represents just a first step in the investigation of the realities of employment
regulation. In line with Partington (2010, p.1020), empirical legal research is
considered here as delivering a major contribution for the understanding of the
impact of law on society, by analysing ‘the differences between the theory and
practice of law and legal institutions’.

In the field of employment relations (and humanities disciplines in general)
mixed methods are often combined and used together (Bryman 2008). Indeed,
qualitative research is often considered complementary to quantitative
methods: surveys are used to give the ‘pulse’ of the situation by showing the
evidence of a phenomena (the ‘what’), while in depth interviews are necessary
to explore with more details and attention the causes and the elements of the research focus (‘why’ and ‘how’).

In order to understand and explain how labour market actors can influence and adapt working time regulation, it is argued that qualitative methods of investigation will be the better tools to answer the research question, because of their methodological fit in investigating the ‘how’ and ‘why’ of phenomena. Qualitative methods can better address questions of processes, stressing how social experiences and processes are created and given meaning (Denzin & Lincoln 2000). Furthermore, in qualitative research, the combination of methods is often chosen in order to provide methodological triangulation (Mason 1996) and therefore to corroborate sources one with each other. In this research, the triangulation between methods as the analysis of documents, legal cases, texts, official government and other agency reports, and interviews are all considered essential in order to be able to illustrate the potential distance from ‘theory to practice’ (i.e. what the contract of employment prescribes and what is actually the working practice that the employees experience). Because actors are context-dependent, analysing their role in shaping and modifying working time regulation requires also preliminary considerations on the role of the law in sustaining specific regulatory instruments or powers, by the ceding of regulatory space. For this reason, the research questions require the application of mixed methods; in particular, through the collection and analysis of documents (hard law, soft law and other types of formal and official documents as, for instance, press releases, agency meeting proceedings, parliamentary texts and through interviews with relevant key informants at different levels of investigation).

Similar mixed methods approaches have been used in employment relations’ research, with a pedigree of case study analysis. For example, classic texts such as Gouldner (1955) shows that insights only come from being immersed in the context of the research site to understand deep social processes by interviewing actors. Others such as Edwards & Scullion (1982) illustrate case study insights such as while employee and employer objectives vary, that does
not mean conflict or resistance is always manifest. More recent and contemporary interview-based qualitative research shows how the role of the State, as a regulator and guarantor of employment standards, can be re-configured and re-shaped by evolving political and neo-liberal narratives set by global capital (MacKenzie & Martinez Lucio 2014). Research conducted by Dundon et al. (2014) is qualitative and uses both documentary content analysis and semi-structured interviews with key informants, with the purpose of integrating macro and micro levels of analysis across transnational and national regulatory spaces (in their case the transposition of the Information and Consultation Directive in the UK and the Republic of Ireland). Further, Wood (2016) reports how actors’ power relations affect working time organisation within the workplace, combining interviews with participant observation of the workplace. In short, there is an established pedigree across research in the field for the approaches adopted in this thesis.

Participant observation is a method that could potentially be very useful for exploring the research question, as well as ethnography could provide very interesting data and perspective to understand the regulatory processes. However, it has been deemed that this methodology cannot be used considering the timeframe of the research. Indeed, the research is focussed on the role of many actors (not just employees, but also managers, trade unionists, State agencies and think tanks for instance) and therefore, in order to have the right balance, the observation should regard all the actors involved in the regulatory arena. However, the research has been of use some rudimentary observation where appropriate during interviews; for example observation about the context of the job and work environment have been noted on the day of the interview, rather than a deep participant observation or an ethnographic study.

Also, for reasons of feasibility and time related constraints, it has been deemed necessary to triangulate methods across levels, with a case study on workplace realities. Data from other levels will pay attention on the ways actors can influence working time regulation across their respective spaces and to the
relationships between employers, management, employees, trade unions and other stakeholders and institutional agents. Key informants beyond the workplace level case study include policy-makers, professional body representatives, trade unions representatives and employers’ association representatives.

In the field of industrial relations research, case studies in specific industries and workplaces are usually justified because of the possible link with government intervention (Cappelli 1985) and therefore their impact on the macro-level; for the purposes of the presented research it can also give insights about meso and micro levels of regulatory dynamics. The case study examination will pay attention to both the individual and the collective level of analysis in workplace regulation; in order to do so, interviews will be used to understand more about the individual relationships, as well as collective representation of the employees in the negotiation with the employer/s or managers. Interviews are considered here a valid and reliable instrument for the investigation of regulatory dynamics rather than other methods of investigation of the actors’ perspective and experiences, for instance by surveys questionnaires. This choice is motivated by the type of information that can be acquired by the use of interviews, especially by open or semi-structured interviews; these methods allow to investigate actors’ stories and experiences, and they hold a great potential of inductive discovery of information, because the interviewee is not directed by closed questions, but he/she is encouraged to tell about real experiences in the field of working time. The nature of the interviews will be further discussed in section 4.6.2 below.

In conclusion, in compliance with the policy of the University of Manchester, the methodology has been informed by the ethical guidelines and policies and an ethical approval was submitted and obtained by the internal ethical committee of the University of Manchester. The fieldwork experience, the data collection and the data analysis, especially when requiring interviews and thus issues of privacy, the treatment of personal information and confidentiality, have been conducted following the University policies and the required ethical
standards. The templates used to inform the participants about the research and ask for their consent in participating are attached in Appendix 1.

4.6 Data collection

This section will describe the processes to collect information to answer the research questions. The first part will describe three levels of investigation and the type of data that was collected at each level. The second part will reflect on the depth of the data collected and the validity of the size sample acquired.

4.6.1 Levels and sources of data collected

Although the research is not directly based on grounded theory, the tactic of analysing data in alternation and iteration with the data collection stages (Edmondson & Mcmanus 2007) is considered particularly useful for the development of the investigation and the gathering of relevant information. Hence, as an example, the information collected by first analysing law and the case law reports shaped the directions for the investigation of the other regulatory dimensions. Likewise, key informants highlighted the limitations (and advantages) associated with legal regulation which brought further questions on how other actors responded to issues and challenges given by legal regulation. In addition, given the connection between the three levels, data collected at one level could enhance further investigations across other levels of analysis. For instance, the discourse about the nature of the employment relationship of workers in the gig-economy has been found fundamental at both national and workplace levels of analysis, with key informants (e.g. trade unions) participating both at micro-level (e.g. through workplace organisation and individual and collective legal battles) and at national level (e.g. intervening in the political and policy spaces debating gig-economy employment rights).

The following table illustrates the sources of data: at which level, from which type of respondents, and the multiple sources (e.g. number interviews, type of informants, scope of documents and reports, and observational elements). A
detailed table of the interviews conducted and the coded names that have been used in chapters 5, 6 and 7 can be found in Appendix 1. In the following tables, interviews have been divided through 'spatial' rationale, identifying at workplace levels the size and the geographical area interested. The workplace level included interviews from riders and trade union officers, however, interviews with trade unionist reflected as well on elements of national and international regulation.

Table 4.2 - Levels and Sources of Data Collected

<table>
<thead>
<tr>
<th>Type of Data</th>
<th>Description</th>
<th>Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interviews (levels)</td>
<td><strong>International level</strong> (ETUI, ILO)</td>
<td>3 respondents</td>
</tr>
<tr>
<td></td>
<td><strong>National level</strong> (Think Tanks, Research bodies, Trade Unions, TUC, Employers, ACAS, etc.)</td>
<td>9 respondents</td>
</tr>
<tr>
<td></td>
<td><strong>Workplace level</strong> (Riders and Trade Union representatives)</td>
<td>40 respondents:</td>
</tr>
<tr>
<td></td>
<td>- Manchester: 11 resp.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Brighton: 12 resp.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(of which: 10 from Camden and Kentish Town, 5 from Spitalfields).</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- 4 IWGB Officers</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(of which: 3 from the London branch; 1 from Brighton branch)</td>
<td></td>
</tr>
<tr>
<td>Observational elements and interactions</td>
<td>Interactions, not formally recorded conversations, contextual observations, that informed the data to address the RQs</td>
<td>120 interactions (approx.)</td>
</tr>
<tr>
<td>Documents</td>
<td>Reports, press releases, contracts, cases, working papers and policy option</td>
<td><strong>Contracts</strong>: 6 contracts analysed in 3 cities (3 ‘old contracts’; 3 ‘new**</td>
</tr>
</tbody>
</table>
The framework presented in chapter 2 defined three levels in which regulation can happen: the ‘international’, the ‘national’ and the ‘workplace’ levels. Accordingly, the data collection has followed this three levels structure. Chapter 5 reviews the role of the State with national and some international data (supplementary research question 2), chapter 6 other national and some international actor responses (supplementary research question 3), and chapter 7 workplace relations findings (supplementary research question 4). It is important to note that the three levels are not completely distinct territories or closed spaces: in fact, they are likely to overlap one with the other. Indeed, actors and sources may have influence on more than one level. Hence, although the data collection will be presented as structurally separate, the analysis will also involve cross-levels discussions.

At national level, the data collected focused on official statutory regulation, relevant case law, official reports, codes of conduct, and other forms of soft law regulation, policy recommendations and national campaign information relevant to working time issues and employment regulation in the gig-economy. Relevant sectoral and national level documentation amounts to the analysis of over 20 reports, cases in front of the ET or other courts (N=10) and other documents of different actors. In addition, thirteen few interviews were conducted with key informants from institutions such as the Advisory Conciliation and Arbitration Service (ACAS), the Trade Union Congress, other advisory bodies on regulation and think tanks such as the Royal Society for the encouragement of Arts, Manufacturers and Commerce (RSA), the New Economics Foundation (NEF) and New Economy Manchester (NEM).
At international level, the data collection gathered information from transnational actors and international institutions that can influence the regulation of the working time, such as the ILO and actors at the EU. As a first step, over 50 documents regarding the international context of working time regulation such as international law, official reports, recommendations and policy opinions have been collected. At the European level, information was scrutinised from the WTD, along with recommendations and policy strategies by think tanks and other agencies. New developments on ‘better regulation’ policies and propositions for the modification of the WTD and the regulation of modern forms of work (such as work in the gig-economy) have been explored, in line with the current political and public policy debates on the topic.

The evolution of case law is fundamental when examining regulatory space dynamics across levels and institutional contexts, so relevant European and national case law has been considered (N=24). Documentary data has been integrated with interviews of policy-makers, policy-advisors and expert in working time related issues, from institutions such as the European Trade Union Confederation (ETUC), European Trade Union Institute (ETUI) and the ILO. Although the number of interviews at this level is relatively small (n=3), they are key strategically placed informants with access to regulatory rules for working time and are in addition to content analysis of over 15 documentary reports.

The workplace level collated a larger amount of data, both through the collection of documents, in excess of 6 Suppliers’ Agreements (in particular content analysis of contracts between the rider and the company and press releases from trade unions and the employer) and qualitative interviews (n=36).
**Table 4.3 - Levels of data collection and specification**

<table>
<thead>
<tr>
<th>Level</th>
<th>Data collected</th>
<th>Interviews</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>National (Chapter 5)</strong></td>
<td>Statutory regulation, main case law, policies and data from national campaigns, sectoral documentation.</td>
<td>9 interviews with regulators and policy advisors (i.e. ACAS, TUC).</td>
</tr>
<tr>
<td><strong>International (Chapter 6)</strong></td>
<td>International laws, recommendations, policy strategies documents, European case law.</td>
<td>3 interviews with regulators and policy advisors (i.e. ETUC, ETUI, ILO).</td>
</tr>
<tr>
<td><strong>Workplace (Chapter 7)</strong></td>
<td>Contracts of service in Manchester, Brighton and London; Communication from the company (press releases, YouTube videos); Press releases from the Union; Campaigns documents and leaflets</td>
<td>40 Interviews with managers (agreement not obtained, see Section 8), riders, trade union representatives.</td>
</tr>
</tbody>
</table>

4.6.2 Type and depth of data collected

In addition to the levels and sources of data collected (4.6.1 above), this section provides information about the depth of data collected, to reflect on issue of data validity.

4.6.2.a) Scope of documentary sources

A variety of legal sources and documents were scrutinised, amounting to over 240 across the three levels as noted above and shown in Table 4.4 below: official reports, working paper, research document, press releases, work contracts, legal case decisions. A list of the international and national law and case law consulted is given in Appendix 4.

The collection has been done through two fundamental steps:
1) Online research of materials produced by government and government agencies, tribunal courts (case law research), organisations, trade unions, thinks tanks.

2) During the interviews relevant documents were shared (e.g. Deliveroo riders provided copies of the contract they signed with the company, known as a ‘Suppliers Agreement’).

Table 4.4 summarizes the scope and depth (number) of documents collected for the research.

<table>
<thead>
<tr>
<th>Type of source</th>
<th>N=Documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Official Reports</td>
<td>30</td>
</tr>
<tr>
<td>Parliamentary inquiry documents</td>
<td>8</td>
</tr>
<tr>
<td>Case law</td>
<td>24</td>
</tr>
<tr>
<td>Press releases and online information (e.g. IWGB and other bodies)</td>
<td>120</td>
</tr>
<tr>
<td>Working papers and policy option documents (e.g. think tanks etc.)</td>
<td>40</td>
</tr>
<tr>
<td>State Laws, Acts, Directives</td>
<td>21</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>243</strong></td>
</tr>
</tbody>
</table>

4.6.2.b) Interview data and respondents

Interviews with key regulatory actors and key informants were conducted through a semi-structured interview format. In some cases, interviews were conducted through the use of Skype or telephone calls. Access to interviews has been sought by contacting relevant institutional bodies or key actors (management, trade unions, employers associations) and by adopting a ‘snowball’ strategy: actors were asked to suggest other actors that might be useful to interview or consult.

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Which, as it will be exposed in chapter 7, does not constitute an employment contract.
According to the semi-structured nature of the interviews, the outline of the interview was drafted, but the actual interview did not always follow a precise order: from the answers received the discussion could expand on certain aspects or not touch issues that did not appear applicable or relevant to the case. The interview schedule contained the list of questions or points that will be explored during the course of the conversation (Patton 2015). This method has been particularly useful in order to reach consistency in the data collection, because it outlines a template with a set of questions and their progression. At the same time, the semi-structured interview gives the researcher a considerable amount of freedom to develop or investigate further aspects of interest that will emerge from the respondent’s answers.

The aim of the interviews is to understand actors’ perception of the regulatory process, in relation to the outlined dimensions of working time (e.g. duration, organisation and utilisation). The information collected concerns the respondent’s experience of regulation and rules, trying to influence rules, and working time issues in the specific regulatory space in which the actor operates. For instance, policy makers will be asked about their area of competence (which may vary from respondent to respondent considered the multi-level analysis) on the process of making, influencing and responding to working time regulation. The actors’ perceptions and their stories will be both defined by the pure content of their discourses, but also by the observation of the participant and the analysis of their narratives (body language, level of emotionality, etc.).

Questions were crafted in relation with the particular role of the respondent: in the case of legal experts, questions focused on an expert analysis of the regulatory issues; and in case of regulators, question oriented on the political role of the regulatory activity. Interview questions map to the research question: actors were asked to describe their ways of influencing or adapting working time regulation, according to their level(s) of action (some may act on multiple levels, for instance trade unions coordinate at national level and also
act at the workplace or international levels), in order to influence other actors or enter new connected arenas.

Questions were framed in a neutral and open-ended fashion to permit maximum responsiveness. The interview schedule followed guidelines suggested by Patton (2015, p.277): in order to establish an open and free conversation, dichotomous question will be avoided, as well as question that could influence the respondent’s answer. The design rendered the questions clear and singular, with the purpose of avoiding confused and over-complex questions. As often the legal language can be overly complicated and technical, thus the wording of questions was adapted to the professional background of the respondent.

Interviews were recorded with the informed consent of the participant and in agreement with the ethical and professional standards in research of the University of Manchester. During the interviews, the researcher made use of field notes, which were useful to reconstruct the context of the interviews and for information that will not arise from spoken words/transcripts (for instance, the degree of emotionality, anxiety or anger of the participant). Records and interviews transcripts are kept and securely stored, according to the University policies.

The numbers of interviews undertaken appears consistent with the type of research undertaken and validated by the literature (Saunders & Townsend 2016), which identifies as between 15 and 60 the number of interviewees for qualitative interviews in a single organisation.

At workplace level, 40 interviews were conducted with Deliveroo riders. Given the nature of their work and managements none response regarding research access, interviews with workers were held in public spaces and, when agreed with the rider, interviews were recorded. By focussing on Deliveroo meant that other exogenous variables could be kept to a minimum. In order to find riders to interview two main methods were used. In Manchester, I first started by
going out in the streets to meet riders opportunistically as they were waiting for deliveries. Second, after making some contacts, I then deployed a snowball tactic and asked riders interviewed if they could put me in contact with other riders. When I was approaching the riders in the street I gave the option to arrange for a later meeting (in a coffee shop or over the telephone) or to do the interview immediately, on the basis of the riders’ preferences. In London and Brighton, because of the previous contact with the Trade Union (IWGB) and the distance factor, I was able to obtain some telephone interviews with (N=9) unionised riders. Later, I adopted the same fieldwork method as in Manchester and meet riders in public spaces and asked for agreement to be interviewed. On most occasions riders were helpful and happy to participate, with very few exceptions. Interviews were also conducted with trade union representatives (IWGB) both in person and over the phone. As issues evolved and changed during the research, repeat interviews were held with two union respondents.

At workplace level the data collection was operationalized by the meanings of working time ‘duration’, ‘organisation’ and ‘utilisation’, as previously discussed in chapter 3. The interview schedule is provided in Appendix 2.

In addition to interview data, an online survey of riders was attempted in the three cities, but proved largely unsuccessful. The number of responses was very low at nineteen (despite help from the trade union in disseminating the survey among its members, with repeat reminders), and therefore not useful for quantitative purposes. However, the survey allowed for a ‘blank comment box section’ where riders could write about working relationships and working time issues at Deliveroo. Although small in number, this information has some utility for qualitative data alongside interviews, and is therefore integrated into the findings in chapter 7. A summary of the template and the nineteen survey responses is given in Appendix 3.B and, where relevant, noted in chapter 7.
Table 4.5 - Number of interviews conducted by type and average length (total transcript time)

<table>
<thead>
<tr>
<th>Actor</th>
<th>Number of Interviews</th>
<th>Length</th>
</tr>
</thead>
<tbody>
<tr>
<td>International level strategically-placed key informants</td>
<td>3</td>
<td>Average 50 minutes (total transcript time 153 minutes)</td>
</tr>
<tr>
<td>National level strategically-placed key respondents</td>
<td>4</td>
<td>Average 55 minutes (total transcript time 224 minutes)</td>
</tr>
<tr>
<td>Other Organisational Actors (e.g. Trade Unions and Think Tanks)</td>
<td>9</td>
<td>Average 55 minutes (total transcript time 495 minutes)</td>
</tr>
<tr>
<td>Riders</td>
<td>36</td>
<td>Average 25 minutes (total transcript time 896 minutes)</td>
</tr>
</tbody>
</table>

4.6.2.c) Type and Nature of data sources

The mixed method approach, by design, captures different types of data. Documentary data is a mix of descriptive (factual data) and option (policy preferences) information. Legal data is focused on substantive regulation: statutory laws, regulations, judicial decisions, and codes of conducts or codes of practices which offer insight about and description about the official purpose and aims of regulation. Other types of data sources include official reports, policy documentation, parliamentary inquiries which provide information about ‘preferences’ or ‘attitudes’ concerning the direction of regulation, de-regulation or re-regulation. These in turn can inform about actor and institutional agency subjective judgements and positions on working time regulation. For instance, press releases or official communications from firms, employer associations or State agencies such as ACAS, provide information about working time policies or recommendation for work-life balance issues. These reveal actors’ position on preferred regulatory instruments or the willingness to intervene (or not) and act in regulating time-related aspects of work.
Interpretation of multiple sources of data includes legal regulation, content analysis of themes within documents and interviews, with 4 types of information to help answer the research questions:

- Factual data
- Attitudinal information
- Data on perceptions and values
- Judgmental data around the interpretation of rules policies and regulations

The first type of data is the one that holds the least subjectivity, because it explains the phenomena under investigation (e.g. an interviewee is asked to describe how many hours he/she works per week). Given the semi-structure of the interviews and actor ‘stories’ on regulatory issues, it is likely that factual data will be accompanied by more subjective and attitudinal values of the respondent. This type of data can reveal preferences, perceptions and judgments on how and why working time may be regulated (e.g. the intensity or utilisation of time is different to factually reporting the number of hours worked per day or week). Hence, the subjective experience of the respondent is considered to be particularly important in order to investigate power dynamics that are often untold and cannot been discovered by analysing pure factual data or legal texts. Information on actor perceptions and judgements about how working time is regulated and controlled is considered very useful to understand processes and relationships between actors. As it will be explained further in section 7, it is also necessary to differentiate the different types of data in order to help triangulate analysis overall.

4.6.3 Case study of Deliveroo workers in three UK cities

The case study is of Deliveroo riders, based on threefold selection criteria. First was to find a workplace level with known working time regulatory issues in a new type of work organisation, dependent on the use of the internet and mobile applications that support faster communication between costumers and
the service desired. These newer forms of work organisation have affected, for instance, traditional sectors such as private transportation (taxis and minicab) and the delivery of food.

Second, known legal issues and challenges about the nature of work relations, work organisation and time-related issues need to be evident. In Deliveroo various employment and working time legal issues were known to have arisen as a matter of wider public policy concerns, offering debates about new regulatory space areas. In other gig-economy contexts there have been industrial action and legal challenges related to working time regulation.  

A final criterion is the preference for variability within the data sample. To this end the nature of gig-economy business models for food delivery via mobile applications raises a number of interesting challenges and tensions around working time regulation. At surface level it was discovered that the working time and pay arrangements differed for Deliveroo riders in the three different cities. Therefore this satisfied the criteria for variability among the case study population, offering a more comprehensive angle with degrees of data comparison.

The three cities chosen for the data collection were Manchester, London and Brighton, for and they were chosen for a variety of reasons: first, Manchester, for reasons of proximity it was the first city considered. During my first interview, I discovered the interviewee was moving to Birmingham to study and would continue working for Deliveroo, but under a different working time and pay arrangements, which he/she found less attractive in comparison with Manchester. Secondly, the Trade Union (IWGB) provided information on a wider range of issues for Deliveroo riders in London and Brighton. The variability and comparison was evident at that time: Manchester represented a

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reality where working time was more regulated and, to a certain extent, more secure, and no union organisation was operating; in London and Brighton riders were less secure in their working hours and income. Riders displayed direct challenges against management with more advanced collective union mobilisation along with legal challenges to the courts. Having explained data collection methods and types of data sources, how the data was analysed is described next.

Table 4.6 - Number of interviews and length by city

<table>
<thead>
<tr>
<th>City</th>
<th>Number of Interviews</th>
<th>Total length</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manchester</td>
<td>11</td>
<td>505 minutes</td>
</tr>
<tr>
<td>London</td>
<td>13</td>
<td>145 minutes</td>
</tr>
<tr>
<td>Brighton</td>
<td>12</td>
<td>246 minutes</td>
</tr>
</tbody>
</table>

4.7 Data analysis

Legal analysis was conducted by following the traditional legal method, which takes account of the hierarchies of the sources of legal regulation and proceed by examining the legal provisions on the specific topic of working time (which has been done in the literature review) seen in its three aspects of duration, organisation and utilisation. This first step of analysis is useful to evaluate the spaces that the law leaves to other forms of regulation, as well as the loopholes that could enhance regulatory failures (see 4.7.1 below). Following the legal analysis, data collected from both interviews (see 4.7.2 below) will be considered by looking at the same three meanings that have guided the data collection (duration, organisation and utilisation). As for the data collection process, in order to facilitate the exposition and the discussion, a content analysis procedure (see 4.7.3 below) was conducted to map findings, concepts and theory dimensions in order to have better insights on the overlap and the communication in a multi-level regulatory framework.
4.7.1 Legal analysis

After the process of collecting relevant documentation and legal regulation on working time, the first step of the data analysis required to look at labour laws on working time and to identify which are the spaces left for the other three dimensions identified by the analytical framework (co-determination, voluntarism and unilateralism). The analysis explores the content of the legal sources of regulation collected, along with case law and doctrinal interpretations. The analysis proceeded from the higher level (e.g. transnational/European) to the meso/middle level (e.g. national, including sectoral), and finally at the lower micro workplace level.

In relation to the legal regulation of working time and other areas of labour law, some preliminary considerations have to be taken into account. The rule-making activity can develop in two types of rules (also called standards) that are useful for the occupation of the regulatory space; these rules consists in ‘protective’ and ‘participative’ standards (Sengenberger, 1994). Protective standards are those that enhance positive rights and obligations, such as limits to weekly working time and the right to rest periods and paid holidays. In contrast, participative standards are described as those rules that facilitate the reproduction of self-regulation and self-regulatory mechanisms; for working time, these are exemplified by provisions allowing for derogation or implementation of employment rights such as the ‘opting-out’ of the 48 hours weekly limit for the individual.

Because of the strong interconnection between the two types of rules, both standards have been analysed for the purpose of enhancing a better understanding of the regulatory dynamics: participative standards in particular deliver greater insights on the process of space occupation and contestation between sources of regulation. In relation to protective standards, the research has explored in particular how actors’ occupation is able to influence working time regulation in its three dimensions of duration, organization and utilization (Noon et al. 2013). On the side of participative standards, the research has focused on how actors’ change the regulatory competences by influencing rules
that are intended to foster standards. Historical and contextual features were taken into consideration in relation to the content analysis of documents and policies. For instance, hard and soft regulations are analysed in light of the political and social context of their time of enactment and enforcement.

Legal documents and contracts were scrutinised and coded according to the previous issues related to working time regulation and gig-economy context sensitivities (hence, distinguishing different aspects of working time regulation in relation to duration, organisation and utilisation) and the dimensions outlined in chapter 2. During the documentary content analysis of the Supplier Agreements (e.g. work / employment contract terms and obligations), for instance, the degree of possibility to voluntarily regulate working time or the unilateral imposition of certain organisational rules or norms and aspects of pay were analysed and codified.

4.7.2 Analysis of interviews

Following the collection of data by the means of interviews, the data was analysed following the same dimensions and definitions of working time as applied to legal and documentary data analysis previously explained. The interviews were recorded, a sample transcribed, and audio files listened to several times and transcripts analysed multiple times over and data coded. Field notes of observations were also coded to complement interviews with information about contextual factors about the context of work (e.g. streets and places where riders congregated and debated issues while waiting for work). A further guiding element of the data analysis will be the differentiation between the different types of information collected through interviews (factual, attitudinal, perceptions and judgment) to reconstruct the experience of regulation and to categorize themes for the understanding of the subjective experience of regulating working time.

The analysis of interview themes and issues sought to discover relevant concepts for the purpose of theory building. In this respect, it is essential to
remind that in social and organizational studies, starting from the assumption that the world we look at is socially constructed, it is important to focus on the means by which social actors construct and understand their reality and less on the measurable and quantifiable occurrence of events and constructs (Gioia et al. 2012). For this reason, the analysis understands some ground assumptions:

1) People are ‘knowledgeable agents’ and therefore can explain and understand their actions, intentions and operations. For this reason, their information can be considered valuable and reliable and it should ‘not’ be embedded in the constructs identified by the researcher but instead should be free to emerge from the subjective understanding of the issues of actors themselves.

2) The researcher is a knowledgeable agent and has prior understandings of the subject matter, and is therefore able to identify patterns in the data and extrapolate concepts in theoretical terms (Gioia et al. 2012).

4.7.3 Content analysis and coding protocols

Qualitative ‘content analysis’ is an analytical tool that was used to interpret meaning from the content of texts and documentary sources, including interview transcripts. The protocol consisted of coding text in a consistent and uniform way. The coding activity allows for the identification of themes and common points between different phrases in text and documentary sources (e.g. legal texts, official reports, parliamentary inquiries, acts and directives, and other documents). Following the method identified by Gioia et al. (2012), the coding from both documentary content analysis and interviews followed a step-procedure useful to develop a systematic presentation of the themes and concepts emerging from the data. A ‘first-order’ content analysis was identified, which consisted of coding respondent-centric issues, terms and responses. Then a ‘second-order’ of content analysis was conducted, which mapped first order codes to the concepts and definitions of working time regulation, drawing on researcher-centric knowledge. A ‘third order’ analysis extrapolated to connect to wider framework dimensions, potential regulatory levels and theory building. This method of analysis is argued to be the most
suitable and reliable, allowing to identify those themes that emerged from the respondent, outside the previous conceptualisation, but which is then connected to the theoretical lenses being examined (e.g. regulatory space and overlapping regulatory levels).

Following the structuring of the content analysis, the first-order coding of issues are those that emerged from the analysis of multiple documentary sources and interviews. The relevance of issues and themes presented across multiple data sources was observed, coded and reported. The coding activity was subsequently mapped to second-order concepts, research questions and issues that have been previously reported in the literature review and which compose the definition of working time. Third-order coding them allowed for refined insight in relation to multiple regulatory space dimensions (law, negotiation, unilateralism), across actors at different levels (transnational, national, workplace). Table 4.7 summarises the coding stages and protocols for content analysis techniques.
Table 4.7: Example of content analysis coding and protocols.

Source: Gioia et al., 2012.
4.8 Research limitations

All research has limitations of various sorts, and the research in this thesis is no exception. First of all, the most difficult part of the process has been access to key informants at all levels. These problems differed depending on the level and the context. For instance, interviews with riders have been very difficult for multiple and contextual reasons: in Manchester, riders explained that they had been approached by researchers or journalists many times. As a result there was overload of research requests and riders had to some extent become sceptical of those people that were asking questions. Furthermore, the riders also stated that they were ‘scared’ of being seen by other riders or group leaders (e.g. managers) conducting interviews with external researchers. Sometimes riders asked me if I was working for Deliveroo, as they feared reprisals against them and their work opportunities.

In another context, interviews with riders in Brighton were difficult. Riders were constantly getting orders during their time at work and they mainly used scooters and motorbikes to do the delivery; furthermore, the data collection was conducted in a period of the year (August) were the lack of student population and the good weather made the demand for food delivered at home lower than at other times. These two factors influenced their waiting time between one delivery and the other (which was very little) and the speed at which they were able to move; for these reasons, interviews that were made in the streets were shorter and sometimes suddenly interrupted because the rider had to get a new delivery and leave.

For the purposes of completeness and richness of data, I tried to access the management of Deliveroo. This was done by going personally to the offices that were indicated by the riders (although these offices were changed at the time so that resulted in a ‘treasure hunt’). Unfortunately, the management, after a personal contact and several emails, decided not to take part in the research and refused to meet again.
To help minimise these limitations, data supplied by company management was found in various sources: parliamentary inquiries, reports, the media, and other fora (such as YouTube videos promoted by Deliveroo) which were used to draw and understand the position of management towards the debate around labour regulation of the gig-economy.

At the level of national and international actors, even when contacts were made with potential interviewees, in some occasions the participant either did not answer the invitation, decided not to take part, or gave initial consent but then withdrew. The process of contacting trade unionists, managers and policy officers has been sometimes frustrating for the researcher, as the ratio between the contacts made and the answers obtained was very low in regard to the initial expectations. To some extent these are the realities of real world research, which can be compounded when researching issues of a context-sensitive, critical and politicised nature about power relations and regulation.

Finally, there are limitations with case study, qualitative interviews and legal doctrinal research techniques. Interviews can be difficult to generalise to a wider population or other contexts. Legalistic texts tend to be more descriptive and technical, which can be a poor predictor of behaviours about regulatory space and power relationships. To help minimise these limitations, multi-method and inter-disciplinary approaches were deployed to support conceptual and theoretical generalizability. Further, triangulation of various sources adds a degree of validity and reliability while also capturing subjective and competing perspectives from different actors about the research phenomena under investigation.

4.9 Conclusion

As cornerstone of the doctoral study conducted, the present chapter introduces the methodological discussion to clarify the approaches, methods and research objectives that this doctoral work has followed and undertaken.
Firstly, the chapter has provided guidance to the main and supplementary research questions. Furthermore, it has illustrated showed the methods used, by mapping extent, levels and depths of data. In conclusion, the chapter has also acknowledged inherent difficulties incurred during the data collection, and took account of the limitation of the research.

Picture 1: Time Regulatory Institute in Camden Town, discovered during fieldwork and data collection (London, August 2017)

Source: photo by the author
Chapter 5

The (contested) role of the State in the regulation of working time

5.1 Introduction

This is the first of three chapters reporting empirical findings. This first findings chapter reports from different sources of data that inform supplementary RQ2, namely ‘how does the State influence formal regulatory processes in working time regulation, both in general and in relation to the gig-economy’. It is an actor-based findings chapter and has as its main focus insights about national actors’ influences shaping formal regulatory processes to working time. While the data in this chapter is not extensive in terms of respondent interviews, as explained in chapter 4 these are key strategic informants. In addition, the findings draw from extensive documentary sources subjected to a content analysis, including official reports, law cases, legal judgements and policy recommendations of various actors agencies, which were also detailed in chapter 4.

Overall, the findings show a contested dynamic with regard to national level actor regulatory spaces for employment standard setting. Notably, the British State is not a straightforward or monolithic entity that can be easily unpicked or interviewed as single actor. Importantly, the State comprises multiple agencies and government departments, all with variable power sources and uneven and multi-level political interests. The State incorporates the judiciary, the Government and Parliament and other national institutions, which constitute its ‘core’ fundamental components. Other examples include
government departments, health and safety agencies, labour inspectorates and government-initiated commissions and inquiries.

The chapter reports triangulated data to inform as deep a picture as possible about national (and in some cases overlapping transnational) level actor issues concerning the regulation of working time in the gig economy. The evidence includes multiples sources, which are structured into two complementary categories of data analysis.

First, interviews with 4 respondents were strategically placed to provide subjective and objective data concerning their experiences of the role of the State. These include policy-makers, trade union officials and other policy advocates who had been involved in the national discussion around the regulation of working time and the gig-economy. Second, content analysis of legal and policy documents provides objective evidence: these included for example statutory Acts, legal regulations, government policy guidelines, official reports, European directives and statutes, recent judicial case law judgements, and transcripts from parliament inquiries.

These findings make for a distinctive contribution to understanding national level regulatory space occupation and the chapter is structured in three parts. The next section reports data to show a three-step approach affecting regulatory spaces (of ‘pre-regulatory activity’; ‘setting employment standards’, and the ‘enforcement’ of worker rights). Section three reports on data to show a counter-mobilising group of actor forces, which push-back against the role of the State. The final section signals the role of intra-governmental agency dynamics in shaping regulations.

5.2 Analysing the regulatory role of the State: a three steps process (pre-considerations, standard-setting and enforcing)

The preliminary actions of the core actors of the State and related policy actors (such as employer groups and union federations) are particularly important
because they can shape the expectations about the standards in employment to be regulated. At this pre-regulatory stage, the State can facilitate or restrict access to regulatory spaces for industrial relations actors by using research bodies, parliamentary committees, think tanks, private bodies and the public to influence regulatory issues and views. These activities are followed by the actual drafting and writing of new regulations, or the modification of existing laws. Thus the first steps are to consider the role of the legislator and other influencing agents, but also the role of the judiciary in shaping the expectations about future laws, regulations and the data used to inform policy and practice (thus, the role of the judge is considered here in its ‘creative’ powers granted by the institutional and constitutional setting).

It is necessary to clarify that in the present chapter the pre-regulatory (i.e. research or making of reports) and standard setting activities will be analysed together, as it deemed not useful for the purposes of this thesis to separate the dialectical exchange between these two phases. Following the reporting of findings on ‘standard setting’ for employment regulation and ‘legal enactment’ in the next section, the evidence about ‘enforcement’ will be reported separately.

5.2.1 Intra-governmental agency dynamics concerning the regulation of modern working practices in the gig-economy

In September/October 2016 the UK Prime Minister Theresa May appointed Matthew Taylor, Chief Executive of the Royal Society for the Encouragement of Arts, Manufactures and Commerce (known as the RSA), to conduct a review of ‘Modern Working Practices’ (hereafter the ‘Taylor Review’ or TR).\(^\text{53}\) Its aims were to evaluate and respond to the regulatory challenges associated with new ways of organising work, including conditions of contract status and working time issues in the gig-economy (such as crowd working or work through mobile applications, etc.). The TR is part extend the steps of

\[^{53}\text{See Mason (2016), available at: https://www.theguardian.com/money/2016/oct/01/theresa-may-hires-former-tony-blair-policy-boss-to-review-workers-rights.}\]
preliminary analysis and move into enactment process of regulation given the weight and political thrust of its recommendations. It is through the TR that the government had the intent of collecting information and practical propositions that can serve as a base for the creation of new laws and regulations. Of importance to this thesis is the TR formed a blueprint for debate around policy actors on the regulatory space issues around employment rights in the gig-economy. Although technically separate from the government, the TR effectively shifted the regulatory agenda into a new ‘politicised’ space insofar as the State would be obligated to response and engage, even if it decided on a different legislative path post-TR.

For national level actor evidence for this thesis, the TR was itself subject to content analysis and respondents reflected on its evolution and role. The TR is of central importance for its ‘longer term strategic shifts’ and ‘a call for us as a country to sign up to the ambition of all work being good work’ (2017, p. 5). In particular, the emphasis on what constitutes ‘good work’ is relevant data and points to a new narrative or space concerning working time and employment rights.

The Taylor Review, published in July 2017, and co-authored by Matthew Taylor, Greg Marsh, Diane Nicol and Paul Broadbent, had the aim to collect important information on the regulatory preferences and issues of multiple State-level actors concerned with the shaping of modern working practices. In its foreword, Taylor recognised the important role of stakeholders in shaping its content and eventual recommendations. The TR was in effect another forum on which actors could seek to leverage regulatory influence. Of note, he cites expressly entrepreneurs and business leaders, legal professionals, and enforcement agencies. He highlighted the important connections and the support received State agencies, especially the Department for Business, Energy and Industrial Strategy. The latter is a central if not ‘the’ key part of the machinery of the State where government formulates, drafts, enacts and subsequently presents to parliament (or to Ministers) regulatory rules and laws.
The content analysis data shows that, in contrast to engagement of stakeholders reported above, the Taylor Review group had very limited engagement with trade unions and workers’ representatives. The unions who represent gig-economy workers (especially IWGB, but also UNITE and GMB) are distinctively absent when examining the content analysis of TR proceedings and report. Further scrutiny of this data reveals that the Review had widely engaged with employers’ groups which suggested a skewed or biased emphasis privileging those regulatory spaces and issues favoured by capital as well as the governments’ ideological standpoint. As commentators have argued, in fact, ‘the Review seems to have taken seriously its mandate to remain silent on collective voice in form of trade union representation and Brexit’ (Bales et al., 2018, p. 48). Further claims of bias towards one of the component of the board were raised in the public media, as Mr Marsh was revealed to been an investor in Deliveroo, until January-February 2017, after works on the TR started.54

In terms of the substantive employment rights issues, the TR fails to develop to consider within its remit options about collective regulation or negotiations. In its final recommendations to government it emphasises issues surrounding individualistic legal matters a further explicit call for voluntary unilateral regulation by employers. The report is peppered with a discourse of ‘best practices’, with any precision as to what a best practice might look like, and without the inclusion of worker or union agency in shaping such regulatory rules. To illustrate, for example, point 4 of the Taylor Review recommends that:

‘The best way to achieve better work is not national regulation, but responsible corporate governance, good management and strong employment relations within the organisation, which is why is important

54 See the article by Ram, A. (2017) ‘Taylor review member was early Deliveroo backer’, Financial Times, 10th July, available at https://www.ft.com/content/95392a68-6596-11e7-8526-7b38dcaef614 (last access: 3rd October 2018).
that companies are seen to take good work seriously and are open about their practices and that all workers are able to be engaged and heard’.

In the Taylor Review the aim of delivering ‘good and quality work’ for the labour market is a recurrent dialectic in its discourse between rights and voluntary arrangements for businesses. Its language talks up specifically the concerns of those who work in a blurred, precarious and uncertain employment situation (sections 2 and 3 of the TR). With regard to working time, the Review draws on a narrative about the indicators of ‘good quality work’ in terms of work intensity’, which connects to the specific dimension of working time ‘utilisation’ considered previously in this thesis as a key feature of regulatory space. Furthermore, the TR illustrates how national policy affects the ‘allocation’ (e.g. unsocial schedules, ‘duration’ (number of hours worked) as well as restricting personal control over working hours by utilising narratives of ‘best practice’ and ‘flexibility’ (e.g. setting limits to expected time off for personal needs). The foundations of what is considered quality work are drawn in the Taylor Review by reference to the ‘QuInnE’ model of job quality, developed by the Institute of Employment Research and others as part of a Pan-European research programme. While this signals engagement with policy agencies and other actors, the TR seems to be highly selective on who it includes, and over what aspects of working time. The evidence here points to fault lines with the TR process of actor engagement, its substantive content and recommendations which fall short of suggesting direct regulatory intervention in the area of working time. Instead, the data here suggests it put emphasis on the needs of employers and employees to promote a voluntarist ‘best practice’ agenda, without explicitly explaining what constitutes best regulatory rules within organisations.


55 See: [http://bryder.nu/quinne1/uk](http://bryder.nu/quinne1/uk) for documents subject to content analysis on this matter.
that the UK government have followed the recommendations of the Taylor report in shaping areas preferred regulation of the gig-economy. It has been found through the content analysis of official reports, documents and other press releases from trade union actors (e.g. GMB, IWGB, Unite, TUC, ETUI), the narrative of both the Taylor Review and official governmental responses advancing ideals around ‘good quality work’ have been questioned in terms of its impact on sustained regulatory rights for the workers concerned. For example, the IWGB explained:

“The third bullet point [of the Government Response to the Taylor Review] claims “for the first time the government will be accountable for good quality work as well as quantity of jobs – a key ambition of the UK’s Industrial Strategy”. This is classic Taylor-speak and means absolutely nothing until you set out how you intend to do this” (IWGB, 7th February 2018, p. 2).

The Taylor Review has also been scrutinized by other regulatory agencies of the State: the Work and Pensions and Business, Energy and Industrial Strategy committees, reporting to House of Commons select fora. Subsequent parliamentary enquiries consulted employers and employees, producing volumes of data and information about working conditions in the gig-economy. These formed the State’s response to the Taylor Review and a first draft of proposed regulation on the topic (WP & BEIS 2017). Content analysis of the oral evidence to these committee deliberations will feature more prominently in Chapter 7, when considering workplace regulatory space responses. Of significance here for national level regulation is the evidence reviewing the recommendation on the topic of defining employment contract status for gig-workers. The report suggests that ‘new’ legislation should focus on ‘the importance of control and supervision of workers by a company, rather than a narrow focus on substitution, in distinguishing between workers and the genuine self-employed’. The narrative is important because it underpins an approach that closes off a pure legalistic intervention in dealing with the issues reported earlier of uncertainty, insecurity and ambiguity in the gig-economy. This appears to show that
regulatory options for the government to apply ‘by default’ ‘worker status for those employed by gig companies to have been missed, ‘who have a self-employed workforce above a certain size defined in secondary legislation’ (Paragraph 15 of the Draft Bill). The Report outlines protective standards (Paragraph 21) in order to guarantee pay premiums to compensate the uncertainty of hours for workers with non-guaranteed hours contracts (such as for instance Zero Hours Contracts). Also, it reviews the regulations on continuity of service, to protect workers who experience gaps in services (Paragraph 25); it support the view that it is necessary to guarantee the NMW and the NLW to gig-economy workers (Paragraph 36); finally, it stresses the importance of information about the condition and terms of employment, supporting future better mandatory regulation on the entitlement to a written statement of employment particulars (Paragraph 40).

5.2.2 Enacting standard-setting for regulatory spaces

Given the discussion and review of literatures in chapter 3, it may not come as a surprise that the evidence from senior and strategically placed informants shows that the British State influenced its regulatory space in accordance with a ‘light-touch’ and ‘minimalist’ approach. The ideological values of market freedom, innovative business models and labour market flexibility all underpinned the British State’s actions towards national level employment and working time regulations.

A respondent from the Trade Union Congress (TUC Officer 1), who was involved in the drafting of WTR explained that the British Conservative government would go to extraordinary lengths to avoid mandatory legal regulation, and instead emphasised voluntary self-regulatory options for businesses. A TUC respondent explained thus:

56 The Draft Bill is available at: https://publications.parliament.uk/pa/cm201719/cmvorl/cmselect/cmworpen/352/35209.htm#idTextAnchor048 (last access 20th October 2018).
The early negotiations before the WTD were very difficult, accommodating the UK worries. There were lots and lots of exceptions and different treatments and possibilities of changing things. All of this was an outcome for the UK negotiations. Then the UK went pulling out and try to take a court case that eventually failed (…) The deal was Europe goes ahead but the UK does not implement it’. (TUC Officer 1)

The data further shows how the TUC is a major institutional actor who actively seeks to shape its regulatory space at a national (and transnational) level. However, actively ‘seeking to influence’ is not the same as actually changing regulations or successfully ‘occupying the regulatory space’. The TUC played a major role in lobbying Members of Parliament, Ministers and Civil Servants. Unlike the then British conservative government, the TUC sought to influence legislation to promote stronger protective standards to safeguard workers interest on health and safety and work-life balance. The lobbying activity of the TUC intended not only to enhance stronger protective standards (as possible further limitations on the maximum hours for working week), but also to limit the scope of weaker individual agreements and derogation of standards, for instance, with reference to the opting-out provision. The political values of the government of the day were central to the expectations of actors with regard to national level State actions. A TUC respondent explained that a change in government (e.g. from Conservative to Labour) facilitated a shift in the expectations of actors for access to regulatory spaces. For example:

‘An incoming labour government after years in opposition: expectations sky high you know’ (TUC Officer 1).

However, expectations among union actors for improved regulatory standards were short lived, as the high hopes from a (new) Labour government uplifting worker rights were found wanting. Respondents explained that institutional supports for mandated regulations under Prime Ministers Blair and Brown
(1997-2010) did not materialise: the approach of the government, both at national and international level, towards WTR did not change fundamentally from the standards set by previous Conservative governments. Both the Conservative and Labour Parties showed a clear intention of putting in place less restrictive regulatory mechanisms to ensue business flexibility, which was felt by respondents to reflect the boundaries of wider European policy objectives for market efficacy (TUC Officer 1).

Along with content examinations of policy documents and regulatory directives, the evidence appear to confirm that the lobbying activity of employees’ representatives, such as the TUC and ETUC, had little effect in substantially influencing the regulations for better protections for employees. In its lobbying attempts during the negotiations around the transposition of the WTD, one of the ‘big losses’ for the TUC was the Government’s decision to maintain the ‘opt-out’ provision from the 48 hour weekly limit: a particular regulatory space that other national level trade unions also failed to occupy, especially in their efforts to revise regulations transferred from Europe (e.g. the supranational) to the national level.

The evidence further shows that the British State appeared to actively marginalise and/or by-pass forms of social dialogue approaches with legitimate international institutions concerned about working time and employment standards, such as the International Labour Organisation (ILO). Importantly, there was found to be a stark contrast between the regulatory approaches of the UK, and the desired standards of the other transnational agencies such as the ILO and EU. The dissonance of the British State’s role is exemplified by the on-going process of withdrawal of UK membership from the EU project; not only in relation to the recent Brexit vote, but importantly the long-running approaches (and attitudes) of former British Conservative governments to European social policy. On this issue respondents stressed that the UK, who has always been hostile to the WTD, could potentially ‘get rid of it once it will have regained its ‘sovereignty’ (TUC Officer 1). Further evidence from a ETUC respondent showed that one of the priority issues for the union movement has
been to ensure, through its affiliates, that ‘worker standards are protected and social and labour rights will not cease to be implemented in the UK’ (ETUC Officer1).

A comparable pattern that signals the fracturing to regulatory space was found in relation to the UK Government relations with ILO research and expertise. In particular, it appears the UK State decided as a matter of policy to not engage with ILO in shaping future employment standards around the gig-economy, new forms of work organization and related working time obligations on employers and nation States. The UK decided to produce its own reports independently, even though the agenda of the ILO falls under the auspices of the United Nations (UN), to which the UK has been a signatory to numerous UN Declarations on employment rights. In other words, the British State has diverted from an established regulatory pathway on employment rights standards, which has effectively marginalised and fragmented the roles of other (legitimate) national level actors, without interaction with the international regulatory fora.

A content analysis of UK reports, legal cases and in particular the Taylor Review of Modern Working Practices (Taylor et al. 2017) shows the British State did not include knowledge and data that was known to exist in ILO Reports (i.e ILO 2016): information that sought to shed light on changes to employment standards in new sectors such as gig economy. Similarly, content analysis data for this thesis shows that the British State decided not to participate in various other consultative processes with the EU on the topics of working time standards. Instead, other countries like France and Germany were much more proactive in shaping the regulatory space for employment standards which eventually had a spill over transference effect to the UK context. Examples include research reports, data, information sharing on labour market changes, and employment standards advice from international organizations such as the ILO. These covered inter alia working hours of gig workers around the globe, concerns about low pay, contract status, and gender participation rates. As an ILO Officer commented:
‘There are certain countries and governments that looks more favourably to the ILO and use it for guidance, but others that never do it. I mean, for instance, the US government would never cite anything from the ILO, I would even not expect it to happen’ (…) ‘I think in the Anglo-Saxon world this is just not on the horizon’ (ILO Officer 2).

5.2.3 Enforcing national level regulations for gig economy

In chapter 3 it was discussed that efficient and hierarchical structure is considered vital for effective enforcement of regulations. It emerges from the content analysis of both documentary sources and interview data that the arrangements for enforcement become particularly important for the issue of working time regulations in the gig-economy. Actors reported different responses and preferred solutions to some of the previously noted legal loopholes and uncertainties that characterize work relationships What is perceived by actors to be effective regulatory enforcement of working time in the gig-economy varies from actor to actor: employers are more concerned on maintaining minimal (light-touch) regulatory solutions. Unions are also strategically focussed on hierarchical enforcement, but to expand rather than minimise rights for workers. The IGWB General Secretary explained:

‘By far the biggest employment rights problem facing low paid workers in the so-called gig-economy is a lack of enforcement of existing law. (…) The reason they are not enjoying these rights in practice is because there are essentially no consequences for companies who purposely misclassify them as small business people and simply ignore the rights to which they are legally entitled’ (IWGB Press Release, 7th February 2018, p.1).

However, and in practical terms, the hierarchical structure to activating enforcement constrained union influence over regulatory processes. For example, evidence from the Taylor Review, the Work and Pensions committee report, the Business, Energy and Industrial Strategy committee and parliamentary inquiry evidence all consistently caution against the difficulties to trigger the enforcement of employment legislation, such as minimum wages

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and working time protections. In this matter, the data stresses not only the inefficiencies of a system that relies on individual workers to enforce their rights, but also the complexities brought by legal costs and structural disincentives to bringing a tribunal case (e.g. considering the drop in number of cases brought to tribunals following the imposition of fees before the Supreme Court decision on 26 July 2017).\textsuperscript{57}

It is possible to detect here a tension for the enforcement of the employment rights between the regulatory actors: on one side employers appear to be playing the ‘wait and see game’, which mean that companies will not enforce automatically the result of individual disputes and they will not by default change the contracts for the whole workforce. But it appears they will wait until each worker will seek to enforce their rights, and then at that stage rely on a hierarchical system of control and on-going ambiguity about working time and self-employed status. For example, reports highlight the strategy of employers playing a ‘wait and see’ approach as a form of shaping regulatory enforcement; the employer Hermes Parcelnet illustrate this conscious employer response:

\begin{quote}
‘It will be for the individual courier to assert their right through the tribunal. We would wait and see the take-up of that’.\textsuperscript{58}
\end{quote}

On another aspect of enforcement, government committees and reports recognize that the Taylor Review had emphasized the need of ‘deterrence methods’, suggesting the government take measures to ‘disincentive businesses’ from misclassifying workers’ contract status by enforcing higher penalties for companies who repeatedly lose legal cases (Taylor et al. 2017, p.63). Of note here is that penalties to regulate employer (unlawful) actions, to protect individual workers, only become articulated at the enforcement step, rather than at the earlier standard setting or enacting of regulations stages.

\textsuperscript{57} R (on the application of Unison) v Lord Chancellor [2017] IRLR 911.
\textsuperscript{58} The video of the Parliamentary Inquiry is available at: \url{https://parliamentlive.tv/event/index/e1e66f5d-7a50-46d0-a0a6-b998f696d32c} (last access on 20th October 2018).
Evidence from content analysis of the WP and BEIS committee’s position is illustrative:

“We are concerned that this approach still relies on individual workers bearing the risk of litigation in a tribunal system that is not currently providing effective access to justice for all. Sir David Metcalf told us fear of victimisation prevents individuals pursuing their rights via the tribunal system. He explained there are “many vulnerable workers” who are either unaware of their rights or who are “rather frightened of complaining”’ (2017, p, 15).

In responding to the Taylor Review, trade unions and other State committee reports argue that the central matter in terms of enforcement relies on the ability of workers to bring cases (e.g. ‘class actions’) when in dispute over wages, employment status and working time, and to implement higher and punitive fines for those employers who violate laws. The more individualised narrative taken by the authors of the Taylor Review which recommended enforcement through hierarchical judicial statutes, tend to reinforce a ‘command and control’ type of regulatory space by the State. The IWGB summarised the idea that enforcement was being presented as somehow a ‘new’ right:

“‘Millions of workers to get new day-one rights with sick and holiday pay to be enforced for vulnerable workers for the first time’. The claim is a bit unclear but we wouldn’t normally think of enforcement as a new right, we would think of it as government finally doing its job: ensuring the laws on the statute books actually mean something’ (IWGB Press Release, 07 February 2018, p.2).

The views of actors around enforcement show a multi-faceted dynamic. Enforcement is complicated as a regulatory space not only on the accessibility to employment tribunals, a burden of increased legal costs for individuals, but it involves also the issue of guaranteeing inspections and deterrence. The
response from the government to the ‘first steps’ of the regulatory process has not been clear yet and actions have still to be taken in respect of the results of the researches and suggestions made both from the Taylor Review and the Report on the Framework for modern employment. However, as the Committees highlighted, the removal from the Supreme Court judgment of the barrier of tribunal fees remains a central action for the regulatory enforcement of workers’ rights. In this case, documentary data signals a dialectic to the regulatory spaces of the State: a governmental decision to introduce tribunal fees then subsequently overruled by the enforcement of law in the Supreme Court shows the importance of the judiciary in counterbalancing the regulatory space powers of the legislator.

Content analysis of data was examined around several well-known legal cases, as Pimplico Plumbers\textsuperscript{59}, Citysprint\textsuperscript{60}, Addison Lee\textsuperscript{61}, Uber\textsuperscript{62} and Deliveroo\textsuperscript{63} which have been brought in front of the Employment Tribunal by individual workers, often with the support of trade unions. The case law data shows the ET recognised the right of the claimants to be re-classified as a ‘limb (b) worker’, with some added protections and obligations. In the Uber case, the Court of Appeal also confirmed the decision by the ET.

The Uber case, in particular, has introduced for the gig-economy an important reasoning in the application of UK case law and the application of the judicial ‘tests’ for the investigation of the nature of the contractual (dependent or independent) relationship between the service provider and the platforms. This reasoning was first outlined by Lord Clarke in Autoclenz Ltd v. Belcher and others\textsuperscript{64}, where, for the first time, the judge recognised that valeters were, ‘notwithstanding the express terms under which they worked, employed by the respondent company as ‘workers’ for the purposes of, inter alia, WTR’ (Uber judgement, point 77).

\textsuperscript{59} [2017] EWCA Civ 51.
\textsuperscript{60} Dewhurst v Citysprint UK Ltd ET/220512/2016.
\textsuperscript{61} Mr M Lange and Others v Addison Lee Ltd, 2017, ET/2208029/2016.
\textsuperscript{62} Uber BV v Aslam, UKEAT/0056/17/DA.
\textsuperscript{63} Independent Workers’ Union of Great Britain (IWGB) and RooFoods Limited T/A Deliveroo, (2016) TUR1/985.
\textsuperscript{64} [2011] ICR 1157 SC.
Following *Autoclenz*, in the Uber case, the judge disregarded the terms of the written contract, re-characterising the nature of the contract from one located within the commercial world to one rooted in the rules of labour law. Similarly, in the *Citysprint* case, the judge determined that the ‘substitution clause’ was not genuine. Because the company still retained important powers in determining the riders’ organisation of work and the delivery of the service, the rider could not be considered an independent contractor (thus self-employed), but should be regarded as ‘limb (b)’ worker. One of the IWGB respondent’s remarked:

“We made employment tribunal claims against four of the biggest courier companies using the WTR to claim that they were workers and not independent contractors (…) We also have legal actions against Deliveroo but in this case we did not use the WTR, we used the collective bargaining laws, in particular the Trade Union and Labour Relations Consolidation Act 1992, and the way we used that is to say we are seeking trade union recognition, in other words a collective bargaining agreement between the IWGB and Deliveroo on behalf of Deliveroo drivers’. (IWGB Officer2)

This data points to a different enforcement strategy by the IWGB in the Deliveroo case. The IWGB sought trade union recognition for bargaining purposes under other statutory instruments based on the re-classification of riders as ‘limb (b)’ workers, with subsequent rights. In this case, the claim had been brought collectively by the union, in representation of the riders affiliated in the area of Camden and Kentish Town (London). Because of the nature of the Judgment, rooted around the demand of union recognition, the case had been moved from the ET to the Central Arbitration Committee (CAC). The CAC, although recognizing certain elements of extensive control of the Company over the riders, finally rejected the demand of re-classification when it concluded that the contractual provision of the ‘substitution clause’ was genuine. However, as will be reported in chapter 7, there were substantive contractual differences in payment systems and work organisation arrangements, which make the CAC decision controversial and perhaps
questionable. Overall, in relation to working time, these case analyses show key insights about working time enforcement regulation and self-employed status across different gig companies and national-level actors. While there is a pattern pointing to unilateral imposition of working time rules (e.g. by companies, the State and government agencies), the flow of regulatory influence is not always linear or straightforward for the government. In the next section, data points to a counter-mobilising source of influence which pushed-back against the power and role of the State.

5.3 Pushing back against State (re)regulation

The neoliberal and free market narrative of the British State is epitomised (or immortalised) in Margaret Thatcher’s famous speech about “rolling back the frontiers of the state” (Ackers et al. 1996; Jackson 2014). The objective was to weaken trade unions, support a more flexible market and allow business the space to make unilateral decisions without the interference of State agencies or regulated bodies. However, as some of the evidence in this section testifies, such ideals are not always easy transferred and the role of national level actors makes for a more uneven and contested regulatory space for the State.

The evidence shows for example that the TUC was successful in some of its tactics to influence the Government to extend the application of the WTR to the broader employment category of ‘workers’, and not just to ‘employees’. The implication is the TUC’s lobbying helped to adjust the space for the setting and enactment of rights to include a wider population of workers than the government (and employers) initially envisaged. A respondent from the TUC noted:

‘What we did get, and Ian McCartney was an MP working on this was to extend the coverage in the UK, because most employment rights apply to employees, and this regulation applies to a broader category called workers, which only exists for the two laws, the ‘Minimum Wage Act’ and the Working Time Regulations’” (TUC Officer 1).
Importantly, because of this working time provisions applied to a broader range of working people, thereby expanding or pushing into the regulatory spaces the State normally reserves or protects for itself to decide. Albeit marginal and incremental, the pushing back against the State signals a contested dynamic of national level regulatory space. Furthermore, this particular aspect becomes even more important when considering the increasing phenomena of (bogus) self-employment that has escalated across gig economy jobs (see also chapter 3 for a discussion). The fact that these WTR apply to ‘workers’, as to the definition of section 230(3)(b) of the Employment Rights Act65, in addition to ‘employees’ further increases the potential to nudge into presumed protected regulatory spaces and adjust the protections granted by law. A union respondents explains, at length, scope to challenge national level State regulatory rules:

‘Because of this the WTR applies also to people that may be self-employed for tax purposes but aren’t really running their own business. Say in the building industry, you find some people that are genuinely contracting their labour, but they are not really running their own business, and they are self-employed for tax purposes but covered by the WTR definitions (…) There are some legal tests that we use to check that in the UK. So, balance of probability test is: “do they have more than one customer?”; or, “can you send someone else to do the job?”, so substitutability is, “do you have significant assets in the business?”; for instance a van, according to HMRC66. And then, “do you get most of your income from wages?”. So they look at the balance of those tests’ (TUC Officer 1).

65 A worker is defined by the aforementioned act as the person who ‘has entered into or works under (…) (b) Any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract of whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual’.

66 The HMRC is the UK tax, payments and customs authority, a non-ministerial department.
As the law links rights to particular employment categories, the definition of these become essential to understand the extent and coverage of working time legal rules. Indeed, the definition of employment contract status, as explained in chapter 3, relates to the different categories of ‘workers’ and ‘employees’ that can be found in British employment law and is a key issue for the ‘enforcement’ of working time regulations becomes debatable within the gig-economy.

While it is evident that for many gig workers the status of ‘independent contractor’ remains in force, rather than that of ‘worker’. But it is the processes of contestation surrounding the enforcement, application and enactment of these regulations that can be evidenced through national level dialogue and actions. Later in this thesis (chapter 7) local level responses are reported using multiple data sources (interviews with gig-workers, trade unions, content analysis of official government reports).

For the purpose of this chapter and mapping data to the research questions, there are additional pockets of evidence of unions and areas of the judiciary pushing-back the frontiers of State regulation. Workers in the gig-economy and their unions reported how they mobilised campaigns to challenge the contractual imposition by companies that classified them as purely ‘self-employed’. Under the latter, working people in the gig-economy do not hold any protection in terms of employment rights; instead, the category of ‘workers’ holds at least some entitlements such as the minimum wage and the application of the WTR. In response some campaigns by the IWGB included innovative crowd-funding initiatives to obtain the funds and resources to make legal challenges at the highest legal levels.

Reporting from case law data and legal judgement reports, there are three indications from the analysis of findings showing regulatory space adjustment when examining worker status. First is the ‘mutuality of obligations’ classification from evolving legal and judicial cases. Under this criterion the individual who is providing the service has to have a contract with the hirer of
his/her labour. In relation to this element of mutual obligations and hours of work, the Employment Tribunal found that, in the *Addison Lee judgment,* it was found that (point 48):

> “The Respondent must have expected the driver to log on and work in sufficient numbers and for sufficient hours for the business model to be fulfilled. The arrangements between the parties must have been based on these mutual expectations, otherwise there seem to lack a rationale’.

The second aspect is the nature of the service provided. To be classified as worker the individual has to perform the service personally. To this end, companies in the gig-economy have used contracts that offer the possibility to ‘appoint a substitute’ for the execution of the contractual tasks. These substitution clauses, when genuine, prevent the individual to be classified as worker, and they require a particular attention as they were at the heart of the discussion in the decision of the Central Arbitration Committee (CAC) on the Deliveroo case. Thirdly, for workers to be classified as such, the hirer of labour has not to be the individual’s client or costumer, however this aspect has generally been less debated in the cases on the gig-economy.

Legal case data and official reports show how workers have impacted national level regulatory spaces, on the basis of challenging the contract of services and the nature of their self-employed status across gig economy companies and actors. Gig-economy workers (and their unions) have altered national level regulation through cases won in Employment Tribunals and the Appeals Tribunal. These led to decisions which have changed job classification (e.g. as in the Uber case) and contract status for some workers; namely the ‘limb (b)’ legal worker status. In the legal case documents reported against Deliveroo by IWGB at the Central Arbitration Committee, it confirmed the self-employed nature of riders’ work, based on a consideration of what is described as a ‘the genuine nature of the substitution of work’ clause. In recognising the uneven and contested nature of regulatory space, the latter ruling is now (at the time of

writing) subject to appeal at the High Court, which gave permission to IWGB to challenge the CAC decision. Even through these report minor and/or technical legal challenges, they nonetheless point to adjustments to the processes and power sources setting employment standards at national level in the gig-economy which affect worker status, hours of work and potentially other employment protections (health and safety, dismissal, redundancy, etc.) in the future.

From the content analysis of data at least four insights can be added: first, it helps to understand the legal regulatory challenges in order to assess change and possible impact on working time; second, the data analysis provides a more nuanced and refined picture on working time practices in the gig-economy; third it unpicks the contested spaces of challenge; fourth, it also provides insight on the structure and organization of work in these newer business model arrangements; and finally, the evidence reveals important information about actor interests and their regulatory strategies and objectives.

Further, content analysis from policy reports (such as the Taylor Review) show a degree of legal uncertainty and a lack of clarity in primary and secondary regulatory areas: the Taylor Review report explicitly noted that there was an “overwhelming case” for the introduction of greater legislative clarity about worker contract status “sooner rather than later” (p. 35). The concerns about ambiguous regulatory rules is similarly found in joint reports from the ‘Work and Pensions’ and ‘Business, Energy and Industrial Strategy’ Committees (2017, p. 10), which reported:

‘Questions of employment status are often not clear-cut, and legislative reform would not entirely eliminate the need for the courts. But it is evident that clearer legislation on employment status could be valuable in preventing confusion and promoting fair competition between businesses. This would lessen the need to go to court and, most importantly, protect vulnerable workers’.
Evidence also finds unions (and to some extent national employers/companies) reflected that the complexity of legal policy, and the loopholes in the law, represent an ‘obstacle’ to effective challenges to regulation. The uncertainty on employment contract status, for example, and an extensive role of the judiciary in intervening on these matters are areas which limit to some extent the ability of the State to exclusively colonise the regulatory system and leave an important hole in the protection of workers, specifically in these newer gig-economy sectors.

5.4 Conclusions

Chapter 5 has reported data to address the supplementary RQ2, on ‘how does the State influence formal regulatory processes in working time regulation, both in general and in relation to the gig-economy’. It has done so by using content analysis of multiple documentary legal sources about national level actor responses to working time regulations, along with interviews with 4 strategically placed informants. The data provides to some extent a generalizable finding, that is ‘contestation’ surrounding regulatory space exists among not only various national level actors of the State, but in addition a degree of intra-governmental agency relations all jostle to shape, in different ways, regulatory spaces regarding working time (and other employment issues) in the gig economy.

The chapter has critically assessed the role and the perspective taken by the TR on the regulatory process of modern challenges for work, confirming previous critical commentators (Bales et al., 2018) under many points. First, the lack of involvement of Trade Unions to the shaping of the TR may help to explain both the absence of issues of collectivism and workers voice from the final recommendations; secondly, it also serves the purpose of outlining both the Government and the TR experts’ strategy and perspective in terms of regulatory strategies and preferences. Furthermore, as it will be stressed in the following chapter, the TR avoid to liaise with higher regulatory levels (the international level) by not addressing the debate on decent work (promoted for instance by the ILO) or discussions about fundamental human rights for modern workers. In building the evidence
and analysis further, chapter 6 moves to report data on other actors, some of which cover transnational institutional influences.
Chapter 6
Different actors and their rationales for regulating working time in the gig-economy

6.1 Introduction

This chapter considers the regulation of working time both as a broader general issue, which affects the labour market as a whole embracing different occupations, from the perspective of actors in the gig-economy. In the next chapter a more micro focussed approach is developed with insights reporting workplace level issues from a single case study company, Deliveroo. For this chapter the data addresses the supplementary RQ3, namely ‘how do other (institutional) actors respond to and seek to influence working time regulation, both in general and in relation to gig-economy work?’. The findings show how regulatory issues in the context of employment are connected and interrelated, and thus require to be understood in their unique context. It will also be shown that the regulation of working time in the gig economy is shaped by what this thesis presents as the ‘manufacturing uncertainty’. That is to say, the evidence shows that employer strategies extend a preferred vagueness for ambiguous interpretations about the logic of gig economy work arrangements and employment conditions, including the ‘type of contract status’, a ‘disruptive business model’, ‘flexible preferences’, the ‘organisation of work tasks’, and the ‘allocation of working time schedules’. Taken together, these point to a concerted uncertainty which has a degree of manufactured intent.
The chapter is structured as follows. Firstly, it sets out to examine in Section 6.2 the different rationales of actors for regulating working time in the gig-economy, reporting insights about the logic of health and safety. In Section 6.3 the rationale of disruptive business models is scrutinised, showing a contested and fragmented space across different actor preferences. Next, in Section 6.4, the strategies of gig-companies (along with some other policy agencies) are reported. This shows how ‘lobbying activity’ (6.4.1) and various ‘discourses and narratives of persuasion’ (6.4.2) serve to maintain a high degree of uncertainty about regulatory rules, which support how employers protect and advance their regulatory spaces.

### 6.2 Key working time and health and safety policy issues in the gig-economy

Following the contextualisation given in chapter 3, it has been already stressed that in the UK a traditional and widely discussed issue has been the possibility of extending the 48-hour weekly working time opt-out clause. As discussed, the debate around the possibility of the opt-out provision remains active and contested trade unions have disapproved this opt-out provision by highlighting the very fundamental rationale of the working time regulation is to protect the health and safety of workers. A TUC respondent stated:

“We believe that if a law is made on the scope of health and safety then you should not be able to opt-out of it” (TUC Officer 1, London).

For trade unions the health and safety rationale is a fundamental core which, by default, should not allow for the possibility of derogation. In particular, opting-out should not be left to individual discretion. Supporting the health and safety rationale has been a long-standing strategy of the TUC since the negotiations around the WTD at European level, although this health and safety regulatory space appears to have shifted for the trade unions over time. In its lobbying activity on the negotiations of the WTR, one of the ‘big losses’
for the trade union movement was not being able to stop the opting-out provision. For example:

“In the course of the years our demands in respect of the Working Time Directive have always been the same: of course we wanted to get rid of the opt-out (…) but the negotiations have failed and at some point within the ETUC we decided that we should have a broader discussion about the topic, not only linked to the directive but as well linked to new developments on the labour market and for instance the digitalisation of work. And let’s say we are more in that arena now’ (ETUC Officer 1).

The data charts a shift in the health and safety rationale for working time regulation in several respects. Union respondents explained that the health and safety logic changed significantly over the time due to evolving agenda concerns of other international actors, including especially the ILO. While the health and safety rationale had been the first and foremost cause to argue for enforcement structures for working time regulations around the world, the evolution of new patterns and forms of work are challenging the traditional ways of dealing with health and safety issues. In the contemporary context of new disruptive business models re-structuring work patterns, health and safety does not occupy the same logic as it did in the past. Initial regulatory concerns focussed on protection from long hours and fatigue. However, a newer regulatory health and safety agenda involves issues of work intensification, personal stress, individual wellbeing and mental health and issues of anxiety. One of the ILO respondents explained:

‘The issue of not guaranteed minimum hours this is a big issue: this is a coming issue and it is very different than the traditional issues. Let’s face it: the big big issue from the beginning of the regulation of working time was the demand of workers that moved around the world to have limits on working hours. Maximum limits or at least normal hours and extra pay for overtime to try to give workers more money but also to discourage
employers from recurring to overtime more than they needed to (...) and now there is a lot of discussion where there should be some minimum amount of hours. That’s new. Nobody was talking about that a hundred of years ago: everyone was talking about limiting hours, not guaranteeing hours’ (ILO Officer 1).

The data analysis shows that, besides the need to address work stress and intensification, other rationales for working time regulation are emerging. Factors affecting these were reported as structural changes in the labour market, the evolving regulatory priorities of different actors, and new ways of managing employment relationships in gig-economy companies. As the casualization of work is rising, with the increase of atypical employment contracts being deployed such as zero hours contracts, international actors reported a growing concern around underemployment with workers seeking more hours to meet financial needs (Aleksynska & Berg 2016).

In a strange twist, employer and policy-makers evidence confirms the prevalence of underemployment, although from an entirely different narrative. Employer and policy agencies advocate worker ‘choice’ and ‘individual flexibility’ preferences when it comes to working time organisation. The content analysis evidence shows the importance of policy arguments advocating ‘schedule management’ and ‘flexibility’ as central regulatory issues high on policy-makers agenda, for reasons of health and safety enforcement. In other words, the health and safety rationale around stress and wellbeing is in part now fused with notions of worker flexibility. Respondent from the Health and Safety Executive (HSE) in a report elaborated by the University of Cambridge, illustrates the point:

‘The high demands placed on zero hours workers, coupled with a low degree of control over their work and hours, and low support from workplace colleagues, makes them particularly vulnerable to damaging levels of stress’ (Wood et al. 2016, p.8)
Analysis of other actor reports finds a similar narrative advocating worker choice. For example, the CIPD reported issues of ‘flexible scheduling’ and ‘management control’ over working time schedules. While recognising there is ‘room for improvement’, they argued more forcefully the claimed benefits of zero hours contracts for both for employers and employees. The CIPD report on their own survey, citing levels of employee job satisfaction and making links that zero hours contract workers are happy (CIPD 2015). However, asking survey questions about job tasks and work satisfaction is not the same as reporting worker agreement with a particular type of contract status. Zero hour contract workers may enjoy their work, which is not an endorsement for precarious and uncertain working schedules and working time. There is an inference in the narrative here that flexibility is somehow crafted ‘for’ the worker, and not for corporate interests.

This voluntary and free choice narrative of health and safety regulation being wrapped-up with claims for flexibility was further evidenced in interview data from an ACAS respondent. This interview data stressed the importance of employer flexibility along with supporting new opportunities for students to gain employment on zero hours contracts. The ACAS discourse stressed not only the ‘bad vision’ of these work arrangements, but also to accentuate claimed ‘benefits’ for workers and employers from ‘flexibility’ (ACAS SeniorOfficer1).

The struggle between contractual arrangement and flexibility is another important issue emerging from the data and it will be further discussed later in the chapter also in relation to the discussion surrounding the regulation of the gig-economy.

6.3 Disruptive business models and regulatory space in the gig-economy

This section reports findings on the analysis of the agency around working time regulation in what is called a ‘disruptive’ business sector mediated by the
use of online platforms and so-called post-industrial work arrangements. Data is drawn from multiple agency and actor strategies commenting on how to regulate working arrangement and work schedules in gig-economy businesses: these include think tanks (e.g. RSA, IER, NEF), professional organisations (e.g. CIPD), a national employer (retail sector), trade unions (e.g. TUC, ETUI), and international regulatory bodies (e.g. ILO).

As reported in chapter 5, defining the legal status of gig-workers has shown issues of contestation, and similar patterns are found in the different strategies of multiple actors. A related issue reported by respondents shows tensions around ‘more’ or ‘less’ regulation, with different views on ‘how best’ to regulate work arrangements and working time issues. The policy level evidence suggests that there is a blurred area to how key actors seek to influence regulations of gig-worker contract status. For example, respondents from the employer-side praised what was regarded as the ‘innovative impact of gig-economy corporations’ and their ‘creativity in by-passing regulations’, while other actors (trade unions and some think tanks) objected to the ‘ambiguity, inequality and discriminatory impact on people and society’. For employer groups, ambiguity on matters such as employment contract definition help with a preferred ‘flexible’ regulatory view of rights and establishing new forms of work organisation. A respondent from National Employer forum (in the retail sector) praised such a strategy:

‘Uber is great! I love researching on Uber, they are the most fascinating company. And they are very brave! (…) it is an incredibly brave company that does stuff and then says ‘let’s just see what is the implication of it!’ (NatEmployer1 Manager 1).

In contrast, responding to the same questions about ‘how’ actors strategies influence regulation, a respondent from the New Economics Foundation (NEF) stated:

68 The NEF is a think tank, based in London, which has the aim of building a new economy from a people-based approach. Within their main themes of engagement
“This is a grey area in which labour laws have been exploited by huge companies in detriment of workers. (…) There are already laws in place that should be able to defend workers’ rights and they are not being applied at the moment; and what we see are cases of workers trying to get to courts to apply rights that they have already won in the past. It is incredibly worrying to see how hard is for workers to suit corporations to have recognised rights that essentially they already have” (NEF Respondent 1).

Similar concerns about employers using legal ambiguity as a way to marginalise worker voices and rights was articulated by other think tank agencies and union respondents. A particular tension found here relates to disagreements among actors between what is meant by ‘employment status’ on the one hand, and the opportunity for new disruptive business models to function ‘flexibly’ on the other. From the employers’ perspective, a perceived ‘rigidity’ of the law is blamed to be impeding flexibility for workers to get employment benefits while, at the same time, ambiguity surrounding the meanings of contract status can actually undermine workers’ interests for the benefits of company flexibility. Indeed, across all the content analysis of documents, press releases and reports for this thesis, it is employers who advocate that flexibility is beneficial for workers. It seems they don’t ever ask workers themselves. To illustrate, Will Shu, founder of Deliveroo, openly articulates the desire to influence legislators to ensure flexibility is seen as something that is advanced for the good of Deliveroo riders (emphasis added):

’Under our current employment law, if we offered benefits, the flexibility that is so important for you [e.g. riders] would be ultimately compromised (…) We will be campaigning with the..."
government to allow both flexibility and security so that you can have both and we know how important this is to you'.

Furthermore, the data does not confirm the idea of a trade-off between ‘flexibility’ and ‘security’: legal definitions and statutes are not found to be directly intervening in employers and workers’ ability to determine flexible forms of working time organization. Moreover, it is gaps in workers’ rights and uncertainties about regulatory enactment, transparency about standard setting and the enforcement of rules for workers, that is more recurrent in the data. The Taylor Review comments that there is evidence of abuse of working time flexibility within the gig-economy and stress what should be aimed for, which reinforces the preference for voluntarism to regulate employment:

‘While there is undoubtedly an important role for flexibility in the labour market, we believe that too many employers and businesses are relying on zero hours, short hours or agency contracts, when they could be more forward thinking their scheduling. We want to incentivise employers to provide certainty of hours and income as far as possible, and to think carefully about how much flexibility they can reasonably expect from their workers. Workers need to be able to make informed decisions about the work that they do, to plan around it, and to be compensated if arrangements change at short notice’ (Taylor et al. 2017, p.43).

A further content analysis criterion was to search for insights about ‘who’ should regulate, and ‘how’ actors might go about influencing regulatory space. In this regard the data offers some insight about an ‘empty space’ of regulation in the gig-economy. Issues of concern are noted with regard to ‘how regulation should be introduced’. The data shows that trade unions, gig-economy companies, and other bodies such as think thanks seek to play a role in the regulatory arena. For example, the RSA has stressed the importance of ‘soft’ regulatory instruments and lobbied government to provide guidelines for

69 Video available at: https://www.youtube.com/watch?v=JRzC-JllvYA (last access on 25th November 2018).
‘good’ employment practices for gig-economy companies on issues such as freedom, control, job autonomy, working hours clarity, and the promotion of work/life balance. The RSA argue an approach ought to be coupled with better clarification of the legal regulatory framework for gig-economy companies and workers. Of note, although Matthew Taylor is the CEO of the RSA, the recommendations in the Taylor Report differ in content and substance to those of the RSA. The Taylor Review advocate more for voluntary goodwill of companies to provide ‘good work’, on the assumption that companies in the gig-economy would be more receptive to voluntarily rather than mandated guidelines. In contrast, the RSA has sought to influence the agenda for wider and more inclusive ‘shared’ regulatory roles:

“We are also looking at different ways of regulating the gig economy. The RSA has this concept called ‘shared regulation’, where the government should be working with the platforms, but also the society and some of its workers, to put forward what different sort of vision on how the gig economy should look like” (RSA Respondent 1).

While TR and RSA differences add to the scope of tension and contestation over regulatory spaces, the dissonance may be about degree rather than actual type of regulation. The content analysis and interview data show a consistent preference to leave the setting and enactment of rules to the parties themselves (Balaram et al., 2017). The evidence also shows unions appear to be partly excluded from these spaces: in fact, during the interviews the perceived role of trade unions had to been expressly asked, as it did not come out spontaneously from those interviewed.

Trade union respondents would blame the ‘inactivity of official regulators’, represented by government, for minimal working time rights. They did stress the importance of sectoral collective bargaining and the role of collective representation in pushing for new regulatory rights as well as campaigning to keep existing rules in force. National regulators and enforcement bodies (Government, Labour Inspectorate and HRMC) are perceived by unions to be
'useless’ and to cede too much space to employers, who then impose their own interpretation of existing regulation (such as wages below the legal minimum wage). The role for trade unions in fulfilling the gaps in ‘who, how and over what issues’ could be regulated was articulately expressed by union respondents. For example:

‘So the regulators are really rubbish. I mean, for the minimum wage is the HRMC, which is having a lots of cuts and doesn’t really do anything anyway. I think it does something like 1% of all national minimum wage problems and so it is pretty useless… even though it’s meant to be the regulator. So most things are done by unions, but obviously not everyone has a union so I think what a lot of people are beginning to realize is that we need to have sectoral bargaining in this industry. That, essentially, is gonna be the big thing. We are trying to be the regulators, the unions should regulate the industry, not just the employers (…) I think Uber drivers need to have a national agreement that might have regional conditions in various places. But we should have a national agreement as well for delivery drivers or anyone working in the food delivery because if you do not have a national minimum wage applicable or real living wage applicable then all companies are undercutting each other’. (IWGB Official 1).

At international level, the data points to two important actions for the regulation of the industry of transport services via app. Firstly, a Spanish case brought before the Court of Justice of the European Union, which sought to clarify if transport service companies via an app (e.g. Uber) are to be considered as mere technological intermediaries, or transport services providers subject to the national regulations of the member state in which they operate. Importantly, the European Court found that:

“A service that connects, by means of mobile telephone software, potential passengers with drivers offering individual urban transport on demand, where the provider of the service exerts control over the key conditions governing the supply of transport made within that context, in particular
the price, does not constitute an information society service within the meaning of those provisions”.

This case has had the important role to define the regulatory boundaries that gig-economy companies have to respect when entering a market: by redefining the sector of activity in which the gig-economy company auto-defined itself, the European Court, accepting the demand of the individual workers, has upheld the boundaries of the regulatory space. This finding is also particularly important because it testifies (and confirms previous findings exposed in chapter 5) that the decision to bring and pursue legal cases against gig-economy companies, relies mainly on individual actors.

The second important action has been taken at the ILO Tripartite Sectoral Meeting on Safety and Health in the Road Transport Sector, which adopted the “Resolution on transport network companies – ‘Transporting tomorrow’”. The importance of the Resolution consists in the demands, from the part of employers, workers and the ILO, to guarantee a ‘level playing field which ensures that all transport network companies are covered by the same legal and regulatory framework as established for transport companies, in order to avoid a negative impact on job security, working conditions, road safety, and to avoid the informalization of the formal economy’. Coupled with the national cases presented previous in chapter 5, international level actors show the extent of the issue and explain the nature of the problems. Further, they are indicative of how and why many actors in the regulatory space are interested in having a say about rules and shaping gig-economy work and business rules for these types of companies.

However, the impact of the legal cases and unions actively seeking to influence gig-economy regulations is notably limited. Content analysis of the data shows a consistent recurring theme that attempts to ‘enforce’ regulation has been met by opposition, challenge and mainly rested on the individual. There have been

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70 Asociación Profesional Elite Taxi v. Uber System Spain, S. L., Case C-434/15.
71 Geneva, 12-16 October 2015.
very few reported cases that advance a collective regulatory space agency that shows impact on the enforcement of legal rights. Where unions and other agencies have made inroads to regulatory space, it appears these are as a counter-mobilising force against companies and aspects of the State and government bodies. It is to some of these strategies of various actors and if they have been effective any interest group that the data turns to report next in Section 6.4.

6.4 Regulatory strategies as the ‘manufacturing of uncertainty’?

At national and international level, the data collected shows that the actors differ in their approaches, strategies and objectives. Besides the institutional construction and the public sphere, the role played by private sector actors such as businesses is important in influencing regulation. For instance, through the exercise of power in negotiations and lobbying activity, and the framing of specific languages and narratives, the data offers some evidence of what may be termed the ‘manufacturing of uncertainty’ as a regulatory space. That is to say, the data analysed for this section shows some evidence that ambiguity has been manufactured or socially constructed to support employer regulatory space objectives. Furthermore, some other semi-private bodies, such as charities and think tanks, have a role to play in shaping the regulation agenda through research-informed policy-making activity and media distribution. This section reports actors’ strategies that emerge in relation to important issues connected with the regulation of working time and how actors influence their regulatory spaces. The data adds insight to the supplementary Research Question 3, namely ‘How do other (institutional) actors respond to and seek to influence working time regulation, both in general and in relation to gig-economy employment?’. 
6.4.1 Negotiating for working time

When investigating the regulatory objectives of actors at international level, tripartite ILO reports and meetings between workers, employers and government representatives were subject to content analysis. The reports provide policy guidelines that represent one of the three main ILO regulatory activities. The tripartite meeting of ‘experts on working time’ shows very different positions on regulatory approaches between the employer groups and employees’ representatives. The employers’ vice-chairperson advocated for a greater use of ‘soft forms of regulation’ for his constituency, arguing a preference for the parties themselves to agree and if necessary refine broad principles. The UK employers’ representative went further and aimed for greater space for individual negotiations, arguing this has been ‘effective in developing regulatory responses’, especially in times of crisis (ILO, 2012, par. 116).

On the other hand, the workers’ representatives advocated for better regulation through the means of legal intervention, in order to fill the gaps left by ambiguous and what was argued to be weak standards. They also pushed for stronger structures to support voluntary means of regulation, even in non-union settings.

The outcome of the tripartite meeting shows an evident divergence between the employers and employees’ regulatory preferences: if in one side employers express a preference for collective bargaining, voluntarism and forms of individual negotiations (which in the framework adopted in this thesis it is argued can potentially link to unilateral means of regulation), employees and trade unions stressed the importance of a strong legal framework that enabled a stronger and more clearly defined basis of rights with sustainable collective bargaining to correct for an unbalanced relationship that was felt to privilege employer negotiations.

The importance of an effective legislative framework to protect and ensure the right to collective bargaining, in particular for workers in non-standard
employment, is further evidenced in data from the ILO who support legislative action to increase collective bargaining coverage and trade union representation. Specifically, the ILO emphasized the role of collective bargaining as an effective tool to address issues of working time, such as securing regular employment (which seek to guarantee a certain duration of work) and a fair scheduling of hours (which addresses the issue of organization of working time, both for part-time and on-call workers, to guarantee a minimum number of hours, reasonable scheduling notice and regular shifts).

The impact of collective bargaining on working time scheduling is evidenced by examples of successful negotiations in other jurisdictions; in particular the hospitality sector in New Zealand between the union Unite and several fast food companies. By negotiation, these introduced regular shifts, sufficient notice on the hours of work, minimum shifts duration and the number of weekly hours to be worked. These interventions show how actors can leverage institutional support systems (e.g. international ILO guidelines) to shape voluntary regulation when the parties can access collective bargaining to impact both the ‘duration’ and ‘organisation’ aspects of working time rules. Furthermore, collective agreements led the New Zealand government to legislate to ban the use of certain types of zero hours contracts (ILO 2016).

In the UK, relevant actions by unions in relation to negotiations against precarious and non-standard forms of work gravitate at workplace level. In fact, if in the past it was easier to find sectoral-national level agreements, the current spaces have shifted towards a prevalence of workplace level dialogue, which further fragments the degrees of uncertainty about rules and regulatory rights. The TUC has stressed the increased need of ‘co-ordination between national and workplace trade unions’ actors, in order to align interests and strategies’ (TUC Officer 1). The TUC has campaigned to shift the issues from opposition on the opting-out provision, to newer concerns about underemployment, irregular work and how these affect health and wellbeing. To some extent the data analysis signals a shift, in part at least, in how union actor regulatory spaces are shaped and re-constructed: long-hours might not be the main concern at the current moment in time, and issues of precarious work and minimum hours
have become more relevant. The TUC interest is to tackle not only the abuse of zero hours contracts, but also new forms of employment in the gig-economy that may be disguised by rules which manufacture (bogus) self-employment status.

The respondent from the TUC explained that, besides their action at the top of the regulatory hierarchy (lobbying governments and pressuring on policy makers) one of their main activities has concerned the training trade union representatives to bargain more effectively over newer issues including working time and health and safety matters. While in the past union training courses were focused on ‘bargaining for flexibility’ to be more palatable to employer demands as well as union member needs, this aspect of working time regulation is currently less prevalent as forms of precarious work (e.g. zero-hours contracts) become important as central issues of concern to unions and their members (TUC Official 1). Evidence from a respondent from a national retail Union (NatUnion Officer 1) explained how the union was able to persuade employers (in retail) to negotiate quotas for the percentage of agency workers. Data from other unions (UNITE, UCU) shows campaigns in higher education to regulate fixed-term and hourly paid workers (e.g. ‘Justice for Cleaners’ campaigns). The activities point towards another recurring feature of regulatory space tension within the data, namely issues of ‘lobbying’ by actors, which is reported next.

6.4.2 Lobbying

The tactics associated with lobbying is another activity of regulatory space that actors reported on in various ways and different levels. Trade unions in particular explained about the challenges and power imbalances when seeking to lobby for policy or regulatory rule changes. For example, a respondent form IWGB commented:

>We are participating in a different kind of form [to the regulatory process/the Taylor Review] but I am somewhat sceptical that this is
going to result in much because there is a lot of talk but any action yet. But obviously we are going to put our points out there and participating’ (IWGB Officer 2)

The trade unions reported many difficulties and a continuous struggle to lobbying, pointing out that unions were only invited to comment on the debate in open meetings of the TR, and were excluded from participating in the review board itself. The IWGB respondent explained:

‘There was no official involvement of our union in a serious way [with the Taylor Review body]. Our union offered one to one sessions with Taylor or with the panel to discuss our position on the gig-economy as probably the single biggest institution that could be representative of people working in the gig-economy and that was repeatedly turned down in favour of appearing on a more open panel meeting. They never wanted to consider the position that we had, it was of no interest for them’ (…) ‘if a panel wanted to seriously consider the lived experience of people working in the gig-economy, when they made the review and the report’s suggestions to regulating the gig economy what they would have done is definitively sit down with at least a couple of unions and definitively the union that Is most active in that sector and find out what they have to say. That’s obvious. But I don’t find it surprising’ (IWGB Officer 4).

In contrast, the lobbying capacity from the employer’s side (especially Deliveroo) to the Taylor Review process, including its meetings (open and closed), show a clear link to the report and its recommendations, with a distinctively different more proactive level of involvement and engagement with government in order to shape new regulations. To illustrate, Dan Warne, managing director for UK Deliveroo, stated in a parliamentary inquiry at the Business, Energy and Industrial Strategy Committee.72

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72 Inquiry held on the 10th October 2017, video available at https://parliamentlive.tv/Event/Index/e1e66f5d-7a50-46d0-a0a6-b998f69d32c (last access 25th November 2018).
'One of the things that we are very happy to see with the Taylor Review is that, speaking with riders and people doing comparable work, it recognises the value of that flexibility and it found that it would be a real loss if for any reason we would try to force that type of work into traditional employment models'.

However, no openness is shown by the company to engage in negotiations or discussions with worker representatives and trade unions. Indeed, legal reports and case data show the company to have a consistent strategy to opposed trade union recognition or bargaining in court cases. The findings further show that gig-economy companies and think tanks lobby for ‘flexibility’ not entirely for commercial or market gains, but premised on the idea that flexibility serves workers’ interests. These findings indicate a further twist in how employer actors manufacture or re-craft unilateral forms of regulation as a preferred process rather than negotiations with trade unions and collective bargaining. Reviewing how this occurs next is through an examination of discourse, narrative or agenda setting, and language as influences on regulatory spaces issues.

6.4.3 Discourses and narratives: re-regulation as a force of persuasion

A third criterion in the content analysis for this chapter is the potential impact of a narrative of persuasion, and thus as a form of intervention within the regulatory space. This section explores the use of language and narrative setting both in the general context of employment regulation and then in the specific case of the regulation of working time in the gig-economy, presenting recurring themes identified during the analysis. Both interview data and a scrutiny of documentary reports shows a threefold dynamic to the impact of discourse on regulatory space among actors: i) the use of ‘research to communicate an impression of expertise’; ii) the idea that ‘gig companies are technical intermediaries and not employers’, and iii) is setting a narrative that ‘cultural change’ is shaping new demands for flexibility according to a younger
generation. These are all communications, which narrate a persuasive message there has been a shift away of employer obligations to ensure employment rights, to the responsibilities of the individuals working in the gig-economy. The net effect is further evidence of manufacturing ambiguity as a form of employer unilateral regulation.

First is the persuasive impact of research-led papers as a source of influencing the regulatory agenda, not only for employers or union, but also institutional agencies. As an illustration, the ILO explained:

“The Office has really worked hard in recent years to strengthen the empirical basis of our policy oriented research and that has in fact strengthen the power of our policy suggestions, even when it is just a research report”. (ILO Officer 1)

Although reports do not constitute official regulations, linking policy agenda issues to evidence-based research appears to portray a *de facto* argument to either undermine criticism from an opposing party (e.g. union criticism of employer action or state policy) or to reinforce the preferred strategy of a vested interest (e.g. preference for individual voluntary rule-making over collective or mandatory regulations). For actors to show evidence from national and international agencies helps to build credibility on a particular regulatory rationale. Examples include actors seeking legitimacy by citing the likes of the RSA, ILO, OECD, IER, Taylor Report, NEF and NE (New Economics) ACAS, CAC, CIPD, CBI, parliamentary committee reports (among others).

However, the intervention of connecting to research activity to support a preferred regulatory position or space signals more than an interest in the conclusions reached by research reports, but also becomes embedded in the politicisation to manipulate the vocabulary used to express concepts. The power of persuasion here is thus addressed both to the substance and the structure of the discourse. Interview data confirms the discourse of persuasion
by employers utilising reports of others to promote a particular narrative or to censor research that reports a different outcome to that of a preferred regulatory strategy. An ILO respondent commented:

“Back in the 2000s the employers were very effective in silencing the ILO in the use of the ‘precarious work’ terminology: we have to write things very nuanced and be very careful in how we write because otherwise we get attacked by the employers” (ILO Officer 2).

The ways in which employers effectively ‘silenced’ discussion of a regulatory agenda was to activate alliances of employer groups and government agencies to create a narrative research positions to underline policy options. The same ILO respondent continued:

“They (the employers’ representatives) make the general director’s life difficult, and of course there is a political consideration. If you have right wing governments in power, they all align themselves with those governments that share their views and that make things difficult as well. So, if it was just employers on their own being difficult would not be so much of a problem, but they will build alliances. Just to give an example, when we pulled out a report, we were very careful in writing that report, everything was fact-checked, many times over. We had something like eleven hundred references and I think our bibliography had 750 studies to make sure that there were not going to be problems, because we knew they would attack it. Two days after it came out, they managed to get the communication department to take down the press release on it. The press release had to be re-written and softened and finally it was put out a week later, and that was absurd because they should not have the authority to micro-manage the work of the Office” (ILO Officer2).

The intervention of employers on the research agenda of the ILO shows how the evidence-based research is managed and manipulated as a persuasion tactic to construct narratives that underpin a prevalent discourse or to undermine
alterative options (spaces) favoured by other actors. Overall, the use of the discourse and persuasion is also evidence of the lobbying activity of employer groups, which in this case is not directed at the content of the regulation per se, but to the ways in which a discourse is manufactured to suit a given set of interests.

The second feature found in the data cornering regulatory space as a discourse of persuasion is how gig-economy companies define themselves within the language of disruptive business models. The evidence shows that companies such Uber and Deliveroo fiercely deny to be ‘employers’ at all, and claim to be ‘technological intermediaries’. The divide between what is claimed from the employers’ side and what other actors argue is sharp: among others, Uber and Deliveroo repeatedly claim the technological nature of their business model, which it is argued has no room to accommodate a standard employment relationship (SER). Content analysis of legal cases and reports shows how these companies present flexibility as something new that they offer to workers. The CEO of Deliveroo strongly affirmed such a narrative in a message in a video communication directed to workers:

‘Deliveroo is a technology company: part of what we do is delivery and that’s executed by you, the riders, so you are at the heart of our business.’

Comparable evidence is noted from the content analysis of parliamentary inquiry reports, where both Uber and Deliveroo stressed that ‘self-employment contracts with riders and drivers supports the guarantee for working time flexibility’ for the individuals. They further argue such a guarantee cannot be offered within the traditional SER contract. From this it can be inferred that working time ‘ambiguity’ is a socially constructed narrative which, in part at least, masquerades employers’ true regulatory subjectivity.

73 Video available at: https://www.youtube.com/watch?v=JRzC-JlvYA (minute 0.28). Last access on 25th November 2018.
The language and discourse from the Taylor Review report recognises that ‘the gig-economy adds new challenges’; however at the same time, the TR and the gig-companies talk-up technology and digital innovation as alternative arrangements. In contrast it was found in the data that it is union actors who point out traditional tensions exist as part of the employment relationship, such as issues of control over the organisation and timing of work and pay.

An extended quote from a national employer testifies to both the realisation of such employment tensions, while at the same time capturing the narratives of a new disruptive business models rationalising regulatory change using language of freedom, flexibility and claiming to understand what young people want. It is worth quoting at length (emphasis added):

‘The millennials are going through life being told that they can do anything, and everything is perfect because they look on Facebook and everything is filtered (you see picture of friends on Friday nights having a great time!), and there is so much pressure in life for them, and then they end up in workplace that are very traditional, with very traditional values and ways of working; and all of a sudden, you have been in this pedestal and it is not your on fault, is the fault of everybody around you and you find businesses that do not know how to deal with this population of people’ (…) ‘it’s a all new way of managing people, but actually people like to be managed that way. They say ‘I work with Uber because it suits me’ (…) and that’s the thing: younger people like more freelance work and stuff like that and that’s where our businesses are behind, because we have seen the damage that this does. It is not that zero hours contracts are terrible (…)It is not really fair on the younger generation, because actually they are looking for a better work-life balance and actually is where the government is coming in saying ‘actually we get Uber, we get the Uberization, it is pretty much self-employment, it is pretty much zero hour contracts, let’s
look what is great of it and regulate it and then move forward”.
(NatEmployer Manager 1).

So an employer, in retail, narrates the virtues by claiming to know what young people want (without ever asking young people). They also espouse presumed market freedoms and an upbeat de-regulatory image of so-called ‘Uberization’; yet do not operate in the gig-economy. It further claims to know the government understanding and is somehow doing the ‘right thing’ for people in the gig-economy with a narrative that workers demand freelance status. On the one hand it is easy to debunk all this as symbolic of rhetoric and discourse over substance, evidence and critical analysis. On the other hand, however, it carries a cultural language that actors can find attractive and it is this cultural dynamic that can shape regulatory spaces.

The above connects with a third aspect of employer-led discourse about ‘cultural change and demands of a new younger generation’. It is noted here that the rationale was found to be couched in a language that companies need to fit with a presumed cultural change for more flexibility demanded by new generations of young workers (the so-called ‘millennials’). It is presumed rather than clearly evidenced that these expectations and demands are widespread. The language is presented in an upbeat tone for workers, even though flexibility gains accrue to the corporate world, the communicative discourse does not always make this clear.

The thesis that gig-companies and (some) policy agencies manufacture a degree of ambiguity is further traced in vague and hazy wording in policy recommendations, much of which opens a space for actors’ voluntary and unilateral interpretation. An RSA respondent pointed out:

’Sof we say that the gig economy should be fair, what does that actually mean? Fairness in what sense? Is it just about guaranteeing workers basic rights? (So for instance, should the working time directive apply? Or should they have the opportunity to train and develop?). We believe
all these things need to be much more specific, and the government need to take a stance. So even if the government was saying: ‘this is what our conception of good work looks like’ that would be a start but for that to be a reality we need to have platforms and civil society on board on that as well’ (RSA Respondent1).

Trade union discussions, on similar issues captured in the RSA quote above, pointed out that the Taylor Review has been limited to very general conclusions, often couched in a language to ‘help firms make the right choices’ and ‘individuals to exercise their rights’ (IWGB 2017). The recurrent reference to ‘good work’, ‘good management’ and ‘right choices’ is consistently prominent in the evidence in the TR. Arguably, the use of a ‘soft’ wording in policy recommendations is deemed to be weak in regulatory outcomes. Furthermore, it does not help clarify ambiguous terms and as such is very much open to alternative interpretations, especially when it comes to the voluntary execution of policy ideas or suggestions without specific regulatory rules.

With regard to the data about internal management practices within gig-economy companies, a terminology is found that differentiates from the usual language used to explain employment relationship issues such as working time, health and safety (among others). From both content analysis of reports/media coverage and interviews with gig-economy workers, it has been found that particular words and phrases are used which distance gig companies from the idea of ‘standard employment relationship’ (SER). In Deliveroo, for instance, workers are required to confirm that they do not work ‘for’ Deliveroo, but they work ‘with’ Deliveroo. The recruitment process is termed ‘on-boarding’ instead of ‘hiring’; and riders are asked to refer to the branded clothes as ‘equipment’ and not ‘uniforms’. A further illustration of this type manufacturing ambiguity of terms and the language discourse created by the company is noted from the following fieldwork anecdote. When interviewing a rider on the job in the street and asking if he/she worked for Deliveroo, the rider promptly answered:
'I don’t work “for” Deliveroo. I work “with” Deliveroo. That what I am supposed to answer, isn’t it?'. (Deliveroo Worker7)

In this section the data has shown there is a struggle for the ideological affirmation of the legitimate ‘disruptiveness’ of these new businesses (on the companies’ side) and the affirmation of old tensions and traditional employment relations patterns (on the workers’ side), the discourse, lobbying activity, the vocabulary and the narratives of research expertise all appear to be an important tool for influencing the regulatory space.

6.5 Conclusion

The chapter reviewed data to help answer RQ3 about how actors’ beyond the State can influence working time regulatory issues. The different rationales for regulating working time showed an evolving and to some extent fragmented set of challenges concerning how and why different actors and agencies seek to influence their regulatory spaces. The evidence shows that the focus on working time duration is not as main an issue as in the past: other issues entailing a broader definition of working time, health and safety, well-being, flexibility, unsocial working time duration and the lack of guaranteed working hours were found to be more present in actors’ regulatory objectives. However, these issues are contested between actors, with some favourable to the maintaining of the status quo, or opposed to stronger means of regulation, while others are keen to see more specified and clearer institutional response to clarify ambiguous rights.

By looking in detail to the particular situation of the gig-economy phenomena and the debate around the future of work and its regulation, evidence points out that the innovation brought by new forms of work organisation do not only entail arguments on the nature of the employment relationship, but it encompasses also the way in which the discussion about these innovations are shaped and socially re-constructed. The chapter has added new insight concerning how employer actions serve to manufacture (that is socially construct) a level of uncertainty and ambiguity about what can or cannot be
regulated in gig-economy employment. Three features of manufacturing ambiguity were noted: voluntary negotiation; active lobbying; and a communicative discourse of persuasion and cultural change.

Furthermore, the chapter pointed out the role of Trade Unions, in particular for what concerns their representation and regulatory functions (Ewing, 2005). Both traditional and emerging grass-root Unions have been found to affect debates on working time regulation and the gig-economy. In the attempt to contrast the employers’ occupation of regulatory space, trade unions have defended their members’ interests by providing legal support and representation in courts to ensure employment protections for gig-workers; besides this ‘service function’, Trade Unions have also entered the regulatory debate and attempted to expand (out of necessity) their representativeness outside the boundaries of traditional employment, in the effort to reach gig-workers and mobilize collectively to obtain visibility and increased bargaining power (however, the collective regulatory aspect will be further discussed in the next chapter). The trade unions’ claim of ‘being left out’ from the regulatory process (and in particularly from that of the TR) was found to weaken the unions’ function towards the direction of services, governmental and administration functions, paired with a diluted regulatory role (Ewing, 2005).

Looking in particular at the workers and unions’ experiences, the next chapter reports workplace level data concerning managerial and workers’ strategies and discourses in the regulation of work and working time within the gig-economy.
Chapter 7

The regulation of working time: a gig-economy workplace level study

7.1 Introduction

The present chapter is the final empirical research chapter conducted on working time regulatory space in the selected company operating in the gig-economy. The company, Deliveroo, operates as an on-demand service via mobile application via riders that deliver food from restaurants to customers using their own bicycles and motorbikes. The research has been conducted in three English cities: Manchester, London and Brighton over a 9 months’ time frame (December 2016 - August 2017).

Deliveroo was founded in 2013 and it is now operating in approximately 150 cities worldwide (12 countries). The spokesperson for Deliveroo, during a Parliamentary inquiry, revealed that the company employs in the UK 921 staff, and it contracts work with 15000 self-employed riders across the country.

The presentation of findings is structured as follows. First, the contractual and work organisation arrangements of riders in the three cities are reported. In order to do so, content analysis of the Supplier Agreements (e.g. the work contract) between riders and Deliveroo across the three cities were analysed and compared. The legal data analysis of contracts and agreements, as explained in chapter 4 as part of the legal methodology, allows for the scrutiny of

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Figures given by Deliveroo spokesperson in the Parliamentary inquiry previously reported (available at https://parliamentlive.tv/Event/Index/e1e66f5d-7a50-46d0-a0a6-b998f696d32e), numbers are estimated.
of the ground rules that regulate the workers’ relationship and the organisation of their working time. In section 2, interview data is presented which captures the subjective experiences and realities of riders working for Deliveroo and how their working time is managed, organised, controlled and perceived (including the themes of working time duration, organisation and utilisation). Next, in section 3, the findings report on how employment relationship processes influence working time regulation at the workplace; such as, for instance, managerial actions, riders’ adaptability and agency to shape their conditions and working time, unilateral rules, and aspects of labour resistance and collective mobilisation in response to Deliveroo employer changes.

7.2 Contracts in the gig-economy in three UK cities

The data collection shows that, in the UK Deliveroo applies contracts that differ across the locations studied in some key aspects of work organisation and terms and conditions of the service. Technically, there is no ‘employment contract’ that considers riders as employed staff: neither as a worker or an employee. Deliveroo as a company ‘choose’ to utilise UK law that differentiates people as an employee, worker or independent contractor: Deliveroo opt for the latter, which means riders have few if any employment statutory rights regulating their working time or other conditions of employment.

The findings are from the analysis of Deliveroo contracts in three different cities (Manchester, London and Brighton). In each city, contracts issued by the company to regulate riders’ terms and conditions of work were found to differ by location, and had been modified by the company over time. Reference is made to ‘old contract’ to indicate the contracts that were collected at the beginning of the research; and ‘new contract’ refers to replacement contracts issued by the company during the period of data collection.

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76 The ‘old contract’ timeframe is as follows: in Brighton the contract dates September 2016; in London, October 2016; in Manchester, May 2016.
77 The ‘new contract’ timeframe is as follows: for Brighton and London, May 2017; for Manchester, June 2017.
Section 2.1 presents first an analysis of substitution clauses of both the old and new contracts, reporting how terms and conditions have changed over time; then by comparing the three cities by looking at local terms and conditions for working time regulation, followed by analysis of the contract status of riders as defined by the agreements of service. Section 2.2 reviews pay variations by contract and location in relation to working time.

7.2.1 The Supplier Agreement: substitution clauses, employment status and key contractual issues

As previously discussed in chapters 5 and 6, riders are not considered as employees or workers. The contract between the riders and Deliveroo is called ‘Supplier Agreement’ and, as a key element for its validity as a commercial contract, is provided with a ‘substitution clause’, which does not make the performing of the service a strictly personal obligation between the rider and the company, but allows instead for the involvement of third parties (substitutes that the riders could appoint, under certain circumstances, to deliver the service).

The presence of the substitution clause in Deliveroo contracts means the company define the riders as ‘independent’ providers of services, namely Deliveroo is a platform provider where riders deliver food from restaurants to end-user clients (who are customers of the restaurant).

An important finding in this respect is that the substitution clause appears to have become more elastic over time. By that is meant Deliveroo has found the space to unilaterally introduce new agreement terms and new contracts for riders, which significantly modified the terms of the substitution clause from previous contracts (issues in London, October 2016). Importantly, these did

78 The company appears to put significant effort in using a particular and specific language, for instance: the riders are working ‘with’ the company and not ‘for’ the company; they are not ‘hired’ but they are ‘on-board’. Evidence of this peculiar language has emerged during the qualitative interviews, but it has also been documented in the media, see Butler (2017), available at: https://www.theguardian.com/business/2017/apr/05/deliveroo-couriers-employees-managers (last access on the 5th August 2018).
not mention the right of a rider to appoint a substitute in their preambles. However, new contracts (issued in London, June 2017) added clauses that concern the substitution right, both in the preamble and in their specific sections of the agreements. The new contract sets out a bolder right to appoint a substitute for riders, in essentially two sections. First, in the preamble (‘Background’), point B, it states:

‘You are free to supply the Services either personally or through someone else engaged by you in accordance with clause 8. For ease of reference (…) “you” should be read as meaning either you personally, or procured by you in relation to any person engaged by you. Should you choose to provide the Services through a third party in this way, you remain responsible for ensuring that the obligation set out in this Agreement is complied with’.

Secondly, the specific section in Clause 8, the ‘Right to appoint a substitute’ in the new contract, in comparison with Section 9 of the old contract, introduced a more detailed specification which consists of two points (8.1 and 8.2). The new clause details the responsibilities and obligations that the rider holds with the company when he or she decides to appoint a substitute. Furthermore, the wording has been made more explicit about the independency of the rider in the decision of appointing a substitute. For example, the old formulation stated (point 9.1):

‘While as a general rule you are expected to perform the Service personally you do have the right, without the need to obtain Deliveroo’s prior approval, to arrange with another registered Deliveroo driver/cyclist for them to perform a particular delivery or deliveries on your behalf’.

In contrast, the new formulation states (point 8.1):

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79 ‘Background’ Section (points A and B).
‘Deliveroo recognises that there may be circumstances in which you may wish to engage others to provide the Services. Deliveroo is not prescriptive about this and you therefore have the right, without the need to obtain Deliveroo’s prior approval, to arrange for another courier to provide the Services (in whole or in part) on your behalf’.

The evidence shows that the wording has been made more direct, with the elimination of the presumption that, as a general rule, the courier has to provide the service personally. Furthermore, the new contract does not require the substitute to be registered with Deliveroo, but can be employed or engaged directly by the rider (with the exclusion of couriers that have been previously had their Supplier Agreement terminated by Deliveroo for a serious or material breach of contract or those that could have engaged in conducts that may had brought to termination). The same changes in the wording of the regulation around the substitution clause have been found also in the analysis of contracts applying in Brighton and Manchester. Very interestingly, the new formulation could potentially fit in a compatible ‘substitution clause’, in light of the indications provided by the Supreme Court in the recent Pimlico Plumbers case.80

However, qualitative interview data, as will be shown further in section 3 below, portrays a very different interpretation to legal analysis of contract texts. In the CAC legal decision, for example, while Deliveroo defended the substitution clause by providing evidence that riders made use of the option to use someone else; data from riders’ working experiences contested the company’s claims that in practical reality such substitution is difficult to operationalize.81 The substitution clause in Deliveroo’s contracts is contestable and is the subject of debate about ‘sham contracts’. Riders would explain how difficult it is to apply the clause on a day-to-day basis in practice. An IWGB respondent explained:

80 Pimlico Plumbers Ltd and another (Appellants) v. Smith (Respondent) [2018] UKSC 29; on appeal from [2017] EWCA Civ 51.
81 See for instance the issues raised by John Hendy QC on the low control of the company on substitutes, which, without effective control, could also be people with unspent criminal convictions. See http://hrnews.co.uk/problems-deliveroo-substitute-driver-scandal-hits-headlines/
‘A substitution clause is a clause which says are you are the contractor and you have the right to send anyone to do the job on your behalf and even if they don’t mean to have this done in practice and it’s very difficult to do it in practice, we need to force that that right doesn’t exist. So part of the legal process is to demonstrate in the tribunal as we did in my tribunal that the clause was intentionally inserted to the contract to be a barrier to employment’ (IWGB Officer 1).

Another focal point in the general terms of the Supplier Agreement is the definition of the status of the person providing the delivery service. Deliveroo management have changed the specification of worker (rider) contract status over time, evidenced in the old and new contracts. The old contracts (with the same formulation in the three cities) included a specific ‘Status’ section, which as a first point expressly recognised that (Point 2.1, in old contract):

‘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’.

Furthermore, the ‘Status’ section terminates with a clause that appears to have the clear aim to disincentive any legal action against the company in front of an Employment Tribunal (in point 2.4):

‘If, despite clause 2.2. above, either you or anyone acting on your behalf (or your substitute or anyone acting on your substitute's behalf) presents any claim in the Employment Tribunal or any civil court which would not be able to proceed unless it was successfully contented that you (or your substitute) are an employee or a worker within the meaning of any employment rights legislation, you undertake to indemnify and keep indemnified Deliveroo against costs (including legal costs) and expenses that it incurs in connection with those proceedings, and you agree that Deliveroo may set off any sum owed to you against any damages,
This clause represents a re-wording and easing of an older formulation contained in a previous version of the contract that had raised many concerns for its legality and even had led to parliament inquiries publicly questioning Deliveroo about the terms in its Supplier Agreements. While the previous agreement sought to prevent riders claiming worker or employee status in front of a tribunal, the formulation in the older contract added the responsibility of costs and reimbursement in case of a challenge by a rider against the company at an employment tribunal. The new contract changed this part of the agreement, by eliminating any reference to the 'status of workers', or to the possibility of starting a case for the recognition of employment rights. In fact, the only provision of the new contract that concerns riders’ status is contained in the ‘Background’ section, in which it is stated that (Point A):

‘You are a supplier in business in your own account who wishes to arrange a provision of delivery services to Deliveroo subject to the terms and condition below’.

The Background section information appears to be the same in both the old and new contracts, therefore the substantive legal modification in the passing from the old contract to the new one was the elimination and refinement of

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82 Frank Field, Labour MP and Chair of the Work and Pensions Committee commented: *Quite frankly the Uber contract is gibberish. They are well aware that many, if not most, of their drivers speak English as a second language - they recently lost a court case trying to escape TfL’s new English testing rules for private hire drivers - yet their contract is almost unintelligible. And it, like Deliveroo’s, contains this egregious clause about not challenging the official designation of “self-employed”, when the way they work looks in most ways an awful lot like being employed. These companies parade the “flexibility” their model offers to drivers but it seems the only real flexibility is enjoyed by the companies themselves. It does seem a marvellous business model if you can get away with it* (see at https://www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/news-parliament-2015/gig-economy-evidence-published-16-17/, last access on 26th November 2018). See also Booth, R. (2017) https://www.theguardian.com/business/2017/may/11/deliveroo-bows-to-pressure-to-change-contracts-for-british-couriers.
reference to the contract status of riders. These findings reinforce the data in chapter 6 that pointed to how employers (and other agencies) ‘manufacture ambiguity’ around contract status, which can limit workers regulatory capacity.

7.2.2 Pay and working time

The first and most important provision that regulate the responsibility of working time between the riders (of all locations) and Deliveroo is clearly stated, both in the old and the new contract, in the section that regulate the conditions of the supplier service. Indeed, point 3.1 (old contract) states:

‘Deliveroo is not obliged to make available any minimum level or amount of work to you, nor are you obliged to perform any minimum level or amount of work’.

Similarly, the new contract formulation, which further add the riders’ side to the equation, recognises (point 2.3):

‘You are not obliged to do any work for Deliveroo, nor is Deliveroo obliged to make available any work to you. Throughout the term of this Agreement you are free to work for any other party including competitors of Deliveroo’.

The data analysis thus shows how the relationship that is in place between the parties has no obligation of providing actual work, or availability in terms of certain working hours. This provision makes the contracts potentially similar to a ‘zero hours contract’ situation, and makes for longer and more sustainable employment very difficult for people.

In the analysis of working time regulation it is necessary to link the payment arrangements with other work and organisational practices: in fact, the payment system is key in order to understand how working time is valued and regulated in the three different cities. In London and Brighton pay is similarly regulated, while arrangements differ in Manchester, although changes have
been introduced in this city as well. In fact, in Manchester the payment arrangement provided workers with an hourly rate of pay, plus a delivery fee. This system allowed riders with a guaranteed minimum pay of £6.50 per hour, even in case of no delivery available. In contrast, riders in Brighton and London are only paid when they undertake a delivery, with a delivery fee of £3.75 (London) and £4 (Brighton).\(^{83}\) In this situation, the working time experience appears to be very different, as riders could potentially wait for hours for a delivery, without earning any money, while in Manchester an hourly rate regulates working time payments in a relatively more systematic and structured manner for riders. However, in line with the payment regulation adopted in Brighton and London, also in Manchester Deliveroo has chosen to switch to a delivery fee payment model, by the imposition of a new contract on June-July 2017 (New Contract Manchester). However, this contract differs from the contracts introduced in London and Brighton on the aspect of hours’ allocation and riders’ freedom to choose when and how much to work. These aspects will be better explored in section 3.1 when analysing the three dimensions of working time and the regulation of duration, organisation and utilisation in the three cities.

Furthermore, the system of ‘time scheduling’ was found to be different in the old arrangement: in order to better organise the service due to the hourly pay, in Manchester riders are required to ‘book’ through an online application (Staffomatic) a slot (or more slots) of work available, in addition the majority of riders used to have also a minimum guaranteed set of shifts every week. On paper, this operation needed to be done also in Brighton and London, as the old contracts clearly mentioned the need of riders to communicate their

\(^{83}\) The reasons behind the pay difference between Brighton and London was never fully addressed by the interviewers and unfortunately the Management decided not to participate to the research to provide explanations. However, IWGB Officer 3 explained that to its view the higher amount given in Brighton was to compensate the lack of job availability (as in London it is easier to get delivery assigned). On the issue of work availability riders in Brighton organised and protested to have a recruitment freeze by the management and a pay rise to 5£ per hour. The pay rise was not obtained, but riders gained the promise of a recruitment freeze from the management in order to stabilize job offer. See also https://road.cc/content/news/217887-deliveroo-given-union-ultimatum-over-pay-after-rider-influx.
preferred working time slots and availability. However, evidences from the qualitative interviews conducted have revealed that in London and Brighton there was no system of hour allocations, and riders had the complete freedom to log on and off at any time, with no commitments with the company to set shifts and no competition with other riders for the allocation of working hours.

The key summary differences between new and older contracts, and across locations, are summarised in Table 7.1 next. The data reports to some extent ‘unilateral’ shifts in terms and conditions based on employer prerogative. In addition, the agreements, while offering some hierarchical and technical specification about ‘substitution clauses’ and ‘pay arrangements’, do not remove tensions and challenges associated with regulating working time and employment rights in the gig-economy. Therefore, data that reports the working experiences of riders is showed next in Section 3.
Table 7.1 – Summary comparison of working time arrangements between old and new contract agreements across the three cities

<table>
<thead>
<tr>
<th>Contract Terms</th>
<th>Manchester</th>
<th>Brighton</th>
<th>London</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Old Contract</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Pay</strong></td>
<td>Pay per hour + delivery fee (£6.50 per hour + £0.50 or £1 delivery fee);</td>
<td>Pay per delivery (£4);</td>
<td>Pay per delivery (£3.75);</td>
</tr>
<tr>
<td><strong>Time scheduling</strong></td>
<td>Use of Staffomatic to manage working schedule and availability.</td>
<td>Use of Staffomatic to manage working schedule and availability.</td>
<td>Use of Staffomatic to manage working schedule and availability.</td>
</tr>
<tr>
<td><strong>Substitution Clause</strong></td>
<td>Presumption to perform the Service personally, but right to appoint a substitute.</td>
<td>Presumption to perform the Service personally, but right to appoint a substitute.</td>
<td>Presumption to perform the Service personally, but right to appoint a substitute.</td>
</tr>
<tr>
<td><strong>New Contract</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Pay</strong></td>
<td>Pay per delivery (delivery fee not mentioned);</td>
<td>Pay per delivery (delivery fee not mentioned);</td>
<td>Pay per delivery (delivery fee not mentioned);</td>
</tr>
<tr>
<td><strong>Time scheduling</strong></td>
<td>Matching system to regulate and manage working schedules. Authorisation to work needed through the App.</td>
<td>Freedom of choice when and where to log in and work.</td>
<td>Freedom of choice when and where to log in and work.</td>
</tr>
<tr>
<td><strong>Substitution clause</strong></td>
<td>Presumption of providing the service personally removed. Easing of the requirements and obligation for the right of appointing a substitute.</td>
<td>Presumption of providing the service personally removed. Easing of the requirements and obligation for the right of appointing a substitute.</td>
<td>Presumption of providing the service personally removed. Easing of the requirements and obligation for the right of appointing a substitute.</td>
</tr>
</tbody>
</table>
7.3 The realities of working time in a gig workplace: formal and informal regulatory spaces

This section provides the illustration of how working time is regulated from formal and informal dynamics at workplace level, drawing from riders’ shared experiences in the three cities of Manchester, Brighton and London. The data shows how management unilateral regulate aspects of working time duration, organisation and utilisation. However, the evidence also shows important insights about the how workers manipulate formal regulatory structures through inter-personal relationship and also the technological applications to help re-adjust time allocations to their own interests.

7.3.1 Duration, organisation and utilisation of working time regulation

The realities of working time regulation appear to be different in the three cities because of the different business arrangements that exist in the company. Aspects of the three elements of working time were found to overlap; in particular, the dimensions of time ‘duration’ and ‘organisation’ were often interconnected. Issues about the amount of hours to be worked are linked to how time is organised and the way hours are distributed across the working week. For example, the duration of hours for riders depends on both the organisational structures for allocating working time and when workers are available to work. Therefore the quantity and scheduling of hours are interconnected and will be reported as such for explanatory purposes. Because of the nature of riders’ time spent waiting to be allocated deliveries, ‘working time’ incorporates both time spent completing work tasks, and also the time spent ‘on call’ waiting for work.

The aspect of waiting for work was found to be more important in the London and Brighton regions, and less of an issue in Manchester, at least until the new contract based on pay per delivery was introduced in the Manchester area in July 2017. This is explained because in London and Brighton riders were paid per delivery rather than hourly, and therefore their waiting time is not remunerated. It was evidenced that riders could spend a number of hour a day
with no delivery assigned (and therefore no pay) if the demand is low or if the supply of labour is high (i.e. the number of riders available to work). These aspects will be further investigated under the ‘utilisation’ of time dimension (3.1.a below), which will explore the experience of riders on the rhythms, pace and intensity of work. This dimension was found to be especially contentious in some situations; particularly in Brighton and parts of London, although less in Manchester.

7.3.1.a) Working time ‘duration’ and ‘organisation’

The amount (duration) of time spent at work is heterogeneous and fragmented between riders and across their working spaces. As expected, working time duration depends mainly on the type of contractual arrangements Deliveroo issue, and it was previously reported how management change contract terms according to the area considered. In addition to contract variability, working time duration was also found to differ due to other factors, including personal preferences such as commitments as students or carer responsibility, the period of the year (i.e. students working in term times or during holidays), or on the availability of other jobs in the local labour market (i.e. other jobs or riders working for multiple platforms). The range of hours respondents worked varied considerably. At the maximum end of the spectrum riders declared to work was 80, and one rider averaged 72 hours per week. As it is possible to see from the riders surveyed (see Appendix 3) at the lower range other riders declared that they do very few hours and few riders said they worked on average 8-10 hours per week. (14.3%). Between these two extremes, the average hours declared from most riders was in the range of 20-40 hours.

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84 Data from a rider met in the street of Manchester, during the data collection period. When asked about the possibility of an interview the rider was initially positive, however when contacted a week later by phone as agreed, he said that he was very busy at work, but also happy, because he had more shifts assigned; for this reason he apologized with me, explaining that it was difficult for him to find time for the interview due to the new schedule. After few months (April 2017), during an afternoon session of fieldwork interviewing riders in the area of Spinningfields (Manchester), I met him again, between one delivery and the other, and he revealed he was doing 80 hours per week and earning very good money.

85 Data from survey.
The overarching message from this data, while not reporting a generalised pattern for Deliveroo as a whole, is that most respondents reported they feel they have to be logged-on and available for work for a long period of time over a week in order to make ends meet. One rider pointed out that while Deliveroo portray itself as an opportunity for students who want to work for a few hours or other people who might want a second job, the reality is that most of Deliveroo riders ‘need’ to work full-time and many workers regularly seek more hours than typically offered by the company:

‘A lot of people, a lot of the riders are all young, that’s the image that they want to show as well, you know “all young people that work part time, studying”… when the actual fact is that the majority the people do full time work, lot of them have families, people who they care of, so they have to work. Some of them used to do 12 hours, 13 hours a day every day in the week and some of them still do it just because you can earn a lot of money if you do many hours’ (Manchester rider 7).

Manchester stands out in terms of how working time duration was regulated (according both to the old and the new contract), in particular the organisation of hours worked related in part to the riders’ ability to influence aspects of their working time space. Crucially, this dynamic was found to be a function of both the type of contractual arrangement and the technological app. The contract provided riders with hourly pay, and the allocation of working time slots (in the old contract) issued through an online platform for the scheduling of time called ‘Staffomatic’. Furthermore, in the new contract a ‘hybrid’ version existed, which was on a pay per delivery model that required riders to

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86 Data from survey.

87 The term ‘hybrid’ is here intentionally used to underline that this model combines two features of the different ‘old contract’ models of Manchester, Brighton and London. In fact, while adopting a pay-per-delivery system, the working time allocation is found to be similar to the one adopted in the pay-per-hour model (therefore through the use of assigned shifts instead of freedom to log in and log off to work at riders’ preference).
be authorised by management to work in specific slots of time through a ‘availability matching system’.  

To some extent the technology for scheduling is woven into how time duration is formally applied by management. However, it was also found that riders can mediate some of the formal aspects of working time duration for themselves. For example, under the old Manchester supplier agreement, riders used to have a weekly minimum amount of fixed hours, which might increase week after week upon riders’ requests and job availability. This was true for many riders, but not for all of them: in fact some riders did not have guaranteed hours and had to apply for shifts on competitive basis every week. This mechanism to have shifts assigned required riders to apply for shifts via the ‘Staffomatic’ platform: those hours and shifts need to be approved by the Company, and the schedule is usually displayed to the riders the weekend before. Interestingly, a rider explained the impact of this system on the organisation of hours worked:

> ‘Every week you have to go on a website for the riders and they release the schedule for the whole week, and you have to apply for the hours that you want to work, and when you apply basically you have a ‘question mark’ and that means that you have to wait for Deliveroo to approve that time that you are going to work, it means also that until they don’t approve you don’t know if you are going to work and usually it takes 4-5 days for them to approve so you know when you are going to work basically 2 days before when you are going to work’ (Manchester rider 10).

Also, it was found that management choose which rider they assign extra shifts, on the basis of perceived performances. A worker explained that riders

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88 See points 2.4 and 2.5 of Manchester New Contract.
89 Which for the first week of work it usually did not exceed 10 hours, as riders reported.
who had good delivery records and were well known to local managers were advantaged in getting more hours:

‘The whole way your shifts are displayed - it’s called staffomatic - is like an online website … so every Sunday a new schedule gets posted for two weeks or a week … so every time it came out I just used to apply for absolutely everything. If they know you, if they know you are a good driver you are more likely to get them over someone they don’t know’.
(Manchester rider 7)

Similarly, from a discussion with another rider, it emerged that the management had explicitly told riders that the allocation of hours depended both from hours’ availability and demand, and delivery standards, which are known to the company through the information collected by the mobile application:

‘So they said we cannot give you a full day session as we don’t have the demand from our customers, outside lunch times or evening peak times. He [the manager] said that they did not have a lot of hours for many cyclist and until there is no availability and my delivery standards were better, they were not able to extend my sessions’ (Manchester rider 1).

Similarly, during the data collection in London Spitalfields area a fragmentation of working time arrangements emerged: in this area some riders were working on a pay per drop basis and others on a pay per hour basis. This division was the result of a change of contract during 2016, which was not signed by all riders and many stayed in the per hour regime. A rider explained that, despite other riders were working with the per delivery regime, he was still working fixed hours with regular schedule from week to week and pay per hour. On the point he argued:

90 The next paragraph will explain how riders are measured in terms of performances and work completed, also it will illustrates policies that the company adopted in order to reward the best riders and encourage them to do faster deliveries.
‘That never changes [the amount of hours, ndr.].... (laughs) is not real. Because Deliveroo has changed the way they are working, because Deliveroo is thinking about this work and about changing to this "job per drop". So, many drivers changed to shifting their hours to working per job. They think is better. I think no. Because you have to work more hours and receive the same money. For Deliveroo is better because they have more drivers in the streets for more hours’ (London Spitalfields rider 16).

When investigating if the riders were satisfied with the amount of hours that they received some issues and tensions emerged. In Manchester, the controversy appears to be that many riders would like to get more hours than they are able to get initially from the company and through the online website (Staffomatic). The outcome is that many of them are left with less than the hours desired. Furthermore, riders seem to express discontent in regard to the unilateral power of the company to determine working hours. As riders generally commented in the survey:

‘Nearly impossible to get more hours. But very easy to get less’. (Rider from survey)

‘Deliveroo changes hours as they wish, the drivers have very little influence on the hours we are offered and most people are offered significantly less hours than they want’. (Rider from survey)

Furthermore, there was found to be two types of riders in terms of working time duration, and this appears to be created by management in order to regulate the supply of riders on streets, depending on managements’ view of peak demand from customers (e.g. particular time or days of the week, etc.). One rider (a ‘driver lead’\footnote{A driver lead is a rider who holds a team leader position in the company: s/he has some managerial responsibility and in particular is in charge of the training and the provision of equipment to new riders (this procedure is called ‘on-boarding’ by the}) from Manchester explained the company have two
categories of workers to support management’ interests: those that are called ‘full-timers’, and all others that are called ‘part-timers’. It is noteworthy these perceived workforce divisions were expressed by riders themselves based on their experiences of management actions. An interviewee explained that a small number of riders (30-40 people in the Manchester context) used to do the majority of the work, and this was purposely created by the company in order to have a group of regular reliable riders who would be satisfied with their hours and thus highly committed and loyal, which in turn ensured a degree of stability and continuity for the company:

‘So we had I think maybe 30 to 40 people who did the majority of the work, you know these are all the ‘full timers’ who maybe make up at least 50% if not close to 60-70% of all of the workload’ (Manchester rider 7).

Importantly, these regular and so-called reliable full-time workers were identified as those riders who started work with the company at the very beginning of Deliveroo activity in Manchester. They worked under a very different arrangement, with no formal contract, no technological scheduling system of their time, wide flexibility of work availability, and much closer interpersonal relationships with management. This informal arrangement appears to have evolved into a privileged status for selected groups of workers known locally as the ‘elder riders’ who are more readily assigned work. A long established rider in the Manchester area commented:

‘So there was a few of us that we were there the longest… because now you have to apply for hours but we did not at the beginning, I always had accepted set hours, they kept giving me how many hours I wanted so like 38-40 hours a week’. (Manchester rider 2)

company). This position has a different pay arrangement (flat rate instead of pay per hour and delivery fee).

92 Because of the refusal from the management on taking part in interviews, it is not possible to investigate how this strategy is effectively organised and how the management refers to it.
These responses also highlight another and nuanced inter-personal dynamic which was found. On the one hand managerial action was used to unilaterally award some riders with ‘full-timer’ status. On the hand, however, worker capacity to leverage change along informal lines also served to manipulate or ameliorate managements’ unilateral control over the allocation of hours on some occasions. Outside the allocated hours riders do not get paid but they can still receive deliveries as the mobile Application is switched on, in this case however, they can decline the deliveries and not incur in any consequences.

‘If I access the App outside my assigned hours I do not get paid, however I can still decline the delivery and nothing happens’ (Manchester rider 3).

During the interviews, the possibility to get more hours or to achieve the desired ‘full time status’ was reported by other riders as a function of managements’ power. When asked if it was easy to get more hours in Manchester, a rider explained why it was difficult, yet also how some riders could sometimes manipulate the system to regulate hours to suit their own interests without managements’ full knowledge:

‘Well… no. There used to be a way around it. When I started working for Deliveroo they [management] weren’t as clever. So we could… so if I applied to work full day on Saturday and I wasn’t supposed to be working on a Saturday, me and some others we figured out that if they haven’t approved it, but if I worked that shift I would still get paid and Deliveroo [management] didn’t know. If Deliveroo found out they would have not paid for it. Because you are just logging in the app and it was an automatic system it automatically paid you. But once they discovered that, they stopped it. And so now it is very hard to get extra shifts’ (Manchester rider 1)
Several other riders in Manchester explained that it was very difficult to get more hours, besides some guaranteed ones, pointing out the unilateral power of the company in deciding the shift allocation:

’S... it's very much up to them [management], if they are in need of you to do more hours they will give them to you. Whereas if you are in need to do more hours and they don’t necessarily have them or it is not a busy time, it’s nearly impossible to get any sort of answer or get any sort of extra time off them because they just don’t give it out’. (Manchester rider 7)

Conversely, in the pay per delivery system in London and Brighton, the experience of working time duration was significantly different. Here, riders could spontaneously decide when to work and to stop to work just by switching on and off the mobile application. In these cities, working time was regulated to a greater extent by market demand data reported by the platform’s technological algorithm: riders prefer to work in busier times when they can maximize earnings. However, interpreting market demand to supply labour is not a neutral factor but was found to be related to the recruitment decisions by management that led to an over-presence of riders, which in turn lowered demand and thus the availability of work. One rider remarked:

‘In Brighton we don’t have hours per se. I can log in when I want. When I say I want to work more hours, I want there to be more hours when there’s enough orders floating about that it would be worth my while working’. (Rider from survey)

‘I definitely work more hours than I get paid’ (Brighton rider 26)

Another similarly commented:

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93 However, as explained in Chapter 4, the regulatory pattern in the city of London is also highly fragmented, with areas that fell under the pay-per-delivery system (i.e. Camden and Kentish Town) and others that apply the pay-per-hour (old model in Spitalfields).
In practice I need to work when it is busy - I can’t choose to work during quiet periods if I prefer, because there is no work’ (Rider from survey).

The peculiarity of London Deliveroo regulation is that the city has been subdivided into additional geographic zones, which have different contractual arrangements (i.e. some zone have pay per delivery and others pay per hours) and different situations in terms of work demand. Riders are assigned to specific zones and they are told they cannot work in other zones without the company approval. However, a rider from the Camden and Kentish Town zone explained that he/she used to work also in other zones close to the Camden area when demand in its zone was very low, and he/she would often be left waiting for work to be allocated. He reported that sometimes the company did not realise, although when they did they would threaten to deactivate the riders’ account.94

On the organisational aspects of working time, riders from a pay-per-hour zone lamented the fact that often the assigned shifts might be split during the day, fragmenting working time into chunks which workers did not get paid for but still had to be logged-on and available which meant they could not go home. A rider commented:

‘The biggest problem I have is the split shifts. I have a long unpaid break between shifts but work is too far away to go home during that time. It’s a real pain. It’s a really long day for me with hours of not earning any money in the middle’. (Rider from survey)

In contrast, workers in the pay per delivery system lamented that the organisation of working time was basically constrained by the payment arrangement and the market conditions (availability of other riders and number of orders placed by costumers): these factors led to riders working unsocial hours:

94 Rider 37, fieldnotes.
The hours I work depend on when it will be busy. As I get paid per delivery it means that when it's quiet I might get 0/1 order an hour, which is well below the minimum wage. Therefore if I want to survive I need to work really unsociable hours like Friday/Saturday and Sunday evenings'. (Rider from survey)

7.3.1.b) Non-working time organisation: time-off and workers’ holiday

The organisation and duration of working time has important effects on non-work time, such as holidays and time-off for other reasons. As previously reported, riders are not entitled to paid holidays as they are excluded from the provisions of the WTR. However, riders still need or wish to take some time off work for many legitimate reasons, as the status of independent contractors allows. While contract data did not reveal prescriptive measures to take time off, important information was drawn from the interview data, and interesting issues emerged from these findings.

Regarding the duration and organisation of working time, many riders lamented the fact that when they requested time off (for instance one or two weeks for holidays or to recover from an injury) their hours were considerably less when they returned from a period of leave. This problem seems to affect in particular the Manchester area, more than Brighton or London. In Manchester riders described the loss of hours as a ‘punishment’ from the management for having taken and requested time off, even for those riders that had been working since the beginning and who had enjoyed the privileged status of ‘full-timers’. A long established rider in Manchester (a ‘full timer’) emotionally explained his experience and argued that because of this event, he decided to move to another delivery company not in the gig-economy (DHL):

‘Eventually this Christmas they really mess me around and that’s when I decided enough was enough (…). During the end of the year when I was cycling downhill I hurt my knee and I asked to take the shifts off to recover because it is not good to have so many hours with a bad knee. For some reason I got punished about that, I don’t know why. I sent emails
and the reply I got was “we are very disappointed” and they made it very
difficult after that Christmas to get my hours back’ (Manchester rider 2).

Evidently, a consequence in Manchester of taking holidays or requesting time
off led to a further loss of working hours and shifts, with difficulties in getting
the ‘usual’ hours back and workers reporting a sense of punishment by
Deliveroo management. Other riders similarly commented:

‘I came back from a festival and I have gone from having a secure
working hours of 40 or even more hours a week to then just nothing’
(Manchester rider 7)

‘I went on holidays for two weeks in Mexico and they knew I was going
on holiday and half way through my holiday I sent to them an email
saying “look, I am back on Monday so please can you schedule me the
same shifts as before I went on holiday?” (…) I kept saying “please can I
have more hours?”. They only gave me 16 hours after my holidays
whereas before my holidays I was doing 40… so they would say “we are
going to check it, we are going to check it”, every week they would say they
were going to check it…” (Manchester rider 1).⁹⁵

Also, in connection with the fact that some riders seem to have a privileged
status because of tenure, in comparison with other newer riders, a driver lead
rider from Manchester explained that:

‘I know a lot of drivers have had problems when they had to take some
time off (like 2 weeks off) then when they come back they found it more
difficult to have their regular shifts back. (…) But because of my position
and because I am always talking more with the people in the office I don’t

⁹⁵ In relation to this quote the rider provided a written evidence from an email
exchange with the management, which further testify the diverse hours allocation
within groups of riders and the criteria used by management (work demand and very
good delivery standards) for getting shifts assigned.
have problems with my hours. I work always the same hours every single week’ (Manchester rider 9).

The regulation of rest or holiday time in Deliveroo appears thus fragmented in many ways: there is a ‘geographical’ difference, where issues of requesting time off appear problematic in the pay per hours area and not in the pay per delivery system. Well-established riders had problems in terms of hours allocation after having taken holidays. There was also evidence of the privileged position of the ‘rider lead’, which is differentiated from other riders. Written evidence from riders in Leeds, presented to the Parliamentary Inquiry lead by the Work and Pensions Committee96, also testified detrimental treatment that lead to their ‘firing’ (deactivation from the platform) after taking an absence requests according to the online procedure required.97

7.3.1.c) Working time utilisation: pay and riders’ performance

On the dimension of working time utilisation, further issues were reported by riders, which varied on the basis of the contractual arrangement and the organisation of work that was implemented in different areas. The rhythm of work set-up by the mobile application for the delivery did not vary between the three cities, however differences emerged in the organisation and waiting time being available for work. Issues of working time utilisation were radically different between the ‘pay-per-delivery’ and ‘pay-per–hour’ zones. In Manchester, riders were generally more satisfied with the rhythms and pace of work because it did not depend too much on the number of deliveries made, as a minimum amount of pay per hour was guaranteed. On the contrary, in London and in Brighton, riders experienced a different ‘pressure’ in regard to the utilisation of time: as their waiting time was not remunerated, riders had to


97 The text of the published evidence can be found at https://www.parliament.uk/documents/commons-committees/work-and-pensions/Written_Evidence/Submission-re-evidence-given-by-Deliveroo-gig-economy-session-redacted.pdf (last access on 27th November 2018).
complete at least two deliveries per hour in order to gain at least the hourly national minimum wage. Under the pay per delivery arrangement their remuneration relied on the number of deliveries made per day, and this translated to added pressures for an efficient utilisation of working time. The effect was a greater dependence on management and the technology to allocate tasks efficiently. When asked about the amount of deliveries that riders usually do on average in one hour, a rider from London Spitalfields explained:

‘That depends if it is busy or not. If it is busy can be like 5, 6, 7. My record is 8 deliveries per hour, but it is hard. From 5 to 6 deliveries is fine, you can do it when is busy (...) but that is only in the lunch time from 12 to 2 o’clock and in the night time from 6 until 9’ (London Spitalfields rider 17).

Another rider from Brighton similarly explained:

‘Friday, Saturday and Sunday you can make money, good money. Because is 4 pounds per drop and I can do 5 drops in an hour, which would be 20 pounds in an hour, which is really good when you talk about it but when you also sit there for two hours and you don’t get one single job, then you do one hour and you do 5 jobs, that’s how it evens out, some hours are really really busy, some not’ (Brighton rider 26).

Riders explained that the procedure of completing a delivery is marked by a series of company control measures. The company monitor the amount of time that is necessary, or rather deemed acceptable, to complete each task. In fact, when receiving a notification of a possible delivery via the mobile app, riders have to respond within a few seconds (if not, the delivery will automatically be re-assigned to another rider). After having accepted the delivery, riders have window of time to get to the restaurant and pick-up the food, reach the client to make the delivery and complete the task, and then return to be available for further work. When each of these tasks is completed, riders have to mark the step as done on the mobile application. Data of ‘time
performances’ are stored by the company and used to monitor riders’ performance statistics, including the award of prizes for the ‘best’ performers. One rider explained:

‘If at the end of the two weeks you have not met their standard times they will tell you (...): for instance, the time that you on average took to reach the restaurant after the acceptance of the order. Some times are easy to meet but others are very brief and it usually happens that you do not respect them, for instance the time of acceptance of a delivery, which is 30 seconds, it often happens that you do not realize and it takes 40 seconds (...) because 30 seconds is very little time’. (Manchester rider 3).

The same rider also reported how such performance monitoring is easily circumvented by workers:

‘It is the little times that are the most useless and the easiest not to respect (...) what I do now is that I flag all the operation at the same time, even if I have not actually delivered but I am going to, so I avoid not respecting the times’ (Manchester rider 3).

Another respondent commented how Deliveroo used the technology of the app to record and regulate the performance of working time among riders:

‘[Working time] It is very very very rushed. So everything it is recorded, because it is an app, everything is timed. They know exactly where you are and when you logged in, and they know exactly how long it took it, when you collected and delivered, how long before you accepted and before you get to the restaurant. And so every week they would send you surveys on how you are performing (...) And they would say they actually use this so they can determine whether or not you can get more hours or less’ (Manchester rider 1).
In addition, data showed that the numbers of deliveries received on the mobile app was not something riders could control, but was regulated by the company and managements’ interpretation of client demand. This created an uncertainty for riders about the availability of orders resulting in waiting time frustrations, especially in those areas with no hourly pay guaranteed.

“We do not have real control over the orders we receive as they can be constant at times, and very exhausting, but at other times we can be sat around for over an hour with no orders’. (Rider from survey)

Many riders experienced unilateral change from the ‘per-pay-hour’ to the ‘pay-per-delivery’ system. As some respondents had worked with Deliveroo for a long time and encountered the company change their contracts in different areas, they were able to give insights about the comparison between different regimes. Interestingly, some riders stressed the effects on working time, while others put emphasis on the pay effect. As a rider in London commented, when asked about the preferred system and the possibility to return to the per hour contract:

‘I can’t complain. I am here for too long to complain. The thing is: I used to complain before when we changed from the “per hours”. I used to stay like that [sitting outside] for 5 or 6 hours with no jobs and I was starting to get a bit bored. But on the other hand, now I have to work more, I have to be faster, to earn most of the time the same money that I used to earn (...). If it is busy, yes; if it is not busy, no. If is not busy I prefer to stay like that [pay per delivery]. If is not busy sometimes I go home and I come back when it is busy’. (London Spitalfields rider 17).

Similarly, a rider in Brighton explained:

‘It was definitively worse before because we were just sitting down not doing anything and just one person going and coming back. And now we get
paid per drop and that works much better, but you cannot do it as a full-time job, you can only work part-time. If you are trying to do this full-time it does not work, because there is too many riders, they employ too many people, they have no way of stopping people from joining’. (Brighton rider 26)

One rider was in a unique position to compare the organisation of working time in both London and Manchester:

‘I found work in London more dynamic, it is busier,. Here [in Manchester ndr] sometimes is very quiet. (...) In my case at the beginning in London [pay per hour system] it was ok for the money, but I was allowed to work only 6 hours per day. When it changed with the per drop I could work as long as I wanted, I could work eventually for 12 hours a day, so for me it worked better this way. (...) When I came to Manchester I was a little bit disappointed because here you get paid 50 pence per drop for four days a week, which I think is not enough (...) here I could set my schedule for 40 hours but then I could not be so flexible to choose when I want to work’. (Manchester rider 10)

On other aspects of pay, riders explained that the ‘per-hour’ system appeared to be more reliable, as time spent waiting for orders would be less insecure.

‘We are often staying around waiting for orders and not getting paid, so now I think that to be paid hourly is better because no matter what you do you are still getting paid, I think it is more reliable’ (Brighton rider 27)

7.3.1.d) Working time organisation: communications, technology and the (over) supply of labour.

The data shows that the organisation of working time was in part affected by issue of communication, the uses of the technical/mobile app, and the way labour was recruited and supplied. Interestingly, in the ‘pay-per-delivery’ system, the company usually communicates to the riders (through emails and
the times of peak demand, when riders could actually maximise their time at work and get a high number of deliveries. However, riders actually lamented the fact that often the system was not reliable, as riders often ended-up with fewer deliveries than usual, because of the high number of riders that suddenly showed up for work:

‘When they started with the per drop they changed the App. They let me know when it is busy or when not. Sometimes it does not work. It is not reliable’ (London Spitalfields rider 17).

‘They don’t have any good mechanism to tell us when to work. (…) Sometimes you went to work on a day and time that was predicted as extremely high demand and you would be just sat there doing nothing. (…) People want to work when there is lots of orders and they don’t do really a good job informing us when that is” (Brighton rider 14)

Alternatively, the company has been used incentives to stimulate riders to work in times where the work offer was lower (for instance riders have reported that in exceptionally rainy days promotions were common). In a similar way, the promotions appears to be counterproductive for riders, as a rider explained:

‘Sometimes Deliveroo they do some promotions, they add 1 pound for delivery. When they do that a lot of riders come and we start to earn even less, because we have less jobs because there are more riders’ (London Spitalfields rider 17)

Furthermore, in Brighton and London, the issue of waiting time appears to be strictly connected with the recruitment policy made by the company and the control of the number of riders on the streets. Because in Manchester riders needed to be authorised in order to be able to work, the issue of ‘over population’ of riders was less common, as the company could easily control and limit the amount of riders available for work.
Riders in Brighton reported over-supply of labour concerns during certain times of the year due to massive recruitment by the company. The huge availability of people to work meant more riders ended up sitting outside for hours with no delivery to complete. This resulted in no income and long hours spent waiting for work. Furthermore, it was found that this was a key trigger for riders to unionise in Brighton. A number of collectively represented demands ensured by workers: changes in the working time organisation, a recruitment freeze, and requests to augment minimum delivery rates. The issue of working time utilisation and the problems connected with the lack of work and the over-supply of riders by the company was found to be one of the reasons that pushed Brighton’s riders to ask the help of the union to channel their demands and voice their frustration.

During the first organised ‘strike’ action\(^8\) in Brighton (February 2017), a group of 40 riders met in the streets to talk and manifest their dissent with the company operations. The IWGB union from London sent representatives to talk to the riders, to explain the issues that were raised in other cities, and to consider the steps that the union could take. As a rider illustrated:

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\text{We always had our little community within the riders. Since I started we had our social media chats to keep connected. But by the beginning of 2017 we have started to talk about whether we should think about the union idea, because the unions were in Bristol (…) and then something funny happened, a completely different group of people, mostly motorcyclists, just became frustrated because of the way things were working at the time and the reason behind it was largely because it was a very quiet period, there was not much work, but Deliveroo was using quite an aggressive hiring strategy, they were always promoting with the claim “we need more riders” but at the same time the people actually working were not getting enough work (…). So this different group of people just}\]

\(^8\) Because riders are not considered workers or employees, the action cannot be legally classified as a ‘strike’ by law. Here, the expression implies the voluntary collective abstention from being available for work as a means to obtain changes towards the company regarding the organisation of working time.
became so frustrated that said “ok, we should strike” and they organised that within the space of few days (...). When they came down [the IWGB] and talked to people the majority of us raised their hands and were in favour of joining the Union’ (Brighton rider 12)

Another important issue that emerged during the data collection in Brighton concerned the discriminatory utilisation of time between different types of riders. Because of the geographical landscape of the Brighton territory, with many hills and areas where cycling demands a strong physical effort, many riders use motorcycles and scooters in order to do the deliveries. The riders that use bicycles were few in number compared to those that use motorcycles; however, the former experienced discrimination in the assignment of orders. For example it was reported by cyclist respondents that, when waiting outside restaurants at the same time and in the same position as motorbike riders, the latter always received the delivery first, leaving the cyclist with less opportunity to work and earn.

The technological use the mobile app was organised by an ‘algorithmic control’ of work that created a degree of discontent among riders towards the company, which further fragmented the organisation of working time for different groups of riders. For example:

‘There is a bit of a split between cyclists and scooters. It is not a personal split, it is a technical split. The way Deliveroo allocates orders to riders: they have a clear preference for motorised vehicles. So while it is not very busy but it is still ok, for the scooters they are still making a living but it is really really difficult for cyclists’ (Brighton rider 12)

7.3.1.e) Working time utilisation: rider competition and performance monitoring

One of the controversial aspects of working time utilisation related to the monitoring of the riders’ work effort by the Company to incentivise
productivity by rewarding the fastest and most reliable riders. These practices were found to be controversial, both for practical and contractual reasons. Riders claimed on the negative effects of the monitoring in terms of health and safety on the streets:

“The monitoring stimulates me to be more productive however to do this it means I have to take more risks while cycling to meet Deliveroo’s deadlines.” (Rider from survey)

Also, riders’ testified how the monitoring of performances was occasionally used as leverage by the management, to threaten riders with a potential deactivation from the platform:

“If Deliveroo sees you have got a lot of orders unassigned or some orders has taken you longer they often threatened you with deactivating. So every week someone would send on whatsapp: “They said that I have one week to improve standards or they are firing me”; a lot of the times it is just silly things, is just really bullying’ (Manchester rider 1).

Furthermore, on the contractual aspect, managements’ monitoring of performance was used by the union to argue for the ‘subordinated nature’ of the work. Significantly, the company changed their policy during the time of the CAC hearings to orchestrate self-employed and independent contractor status of riders, even though management maintained a high degree of control over work allocation and time utilisation of riders’ work tasks. A rider explicitly argued for a clear technique in order to win over the riders’ and the union’s claim.

“They used to give us our stats on performance but they stopped in the interest of trying to defeat our (the union’s) claim against riders being independent contractors. They still measure our performance but we don’t see it. They will fire you if you don’t meet the standards. We don’t have a
good chance of challenging any discipline without knowing what our stats are.’ (Rider from survey)

7.3.2 Dynamics of agency capacity: management strategies and riders’ responses in regulating working time space

This section explores processes of change, from riders’ responses, about managerial control strategies. In all the cities considered in the study, Deliveroo implemented changes to the supplier agreements (aka, work contracts), and these changes were received by the riders in different ways, with different responses, depending on the environmental context.

7.3.2.a) Management by absence: regulating by union avoidance and worker manipulation

When first looking at the ways Deliveroo implemented new terms and conditions for riders in the three cities, different practices and timeframes emerged. Brighton and the area of London Kentish and Camden Town were the first to experience the change to the pay structure, in early 2016. Later, changes were made in London Spitalfields, and lastly in Manchester, both over the summer of 2017.

Of importance is the different ways that management introduced the changes. Most common was the tactic by management to circulate the new agreement to riders, giving a specific timeframe to sign or alternatively to terminate their contracts.

The situation of the contractual history of riders in Manchester appeared to be slightly different, as testified by workers’ experience: riders explained that the first approach with the company was very informal, with no written terms and condition of the service provided. Only after a few months from the opening

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99 For the purposes of this part of the analysis the changes considered were those affecting pay (from a pay per hour system to a pay per delivery) and working time. It is important to highlight however that the new versions of the supplier agreements affected also other terms and conditions of the relationship.
of the Manchester branch, riders were ‘required’ to sign a contract. It emerged from the data that in Manchester the management switched from a more informal and ‘open’ approach, to a one of increased distance and ‘formality’:

> When I started I did not signed a contract or anything, so then it was just 6 months after they sent a contract out to everyone and if you did not sign this contract then you were out of Deliveroo. So we did not really had a choice, it is either you sign the contract and you are allowed to work or not’ (Manchester rider 9).

In fact, it emerges that the accessibility of the management office and the informality of the relationship have changed over time in the Manchester area: not only newcomers, but also ‘senior riders’ have experienced the closure of the office doors and increasing difficulties of contacting the management to discuss working time issues, particularly about hours and shifts. For instance, a ‘senior rider’ testified the change from personal texts messages to general emails as a way of communication, especially after the first six months of Deliveroo operating within the city. However, besides the communication aspects, which are currently managed through emails and platforms, it appears that in the three cities the management is generally avoiding the contact with the riders, and IWGB representing them. As a rider described:

> ‘The general consensus between all the riders is that we are not allowed in the office because the management is sort of hiding from the riders. They know there are a lot of problems within the riders and they hide from us and they often ignore us. We have no way of getting in touch with the management. If we have a problem it is really hard to get solved and it will normally take 10 days or 2 weeks. However if the office has a problem with you, for example you are supposed to start working at 5 and you are late (…) they ring you straight away and you know they can contact you and get in your back and breathe on your neck, but if you need help they are just not there’ (Manchester rider 1).
Another rider described how an ‘absence’ of management served as a form of employer regulation and control:

“They don’t even let you, they won’t let you go to the office because there is no adjust, no phone number to ring the office, so no contact by phone. And if you want to talk about schedule or working hours or anything really you have to email (...) so problems with scheduling and working hours often take a good week or a week and a half to even have a reply from the office’ (Manchester rider 1)

Similarly, the same approach was found in Brighton, in respect to the Union’s agency:

“In Brighton the relationship between the management and the union is one of avoidance. Deliveroo does not recognise the union, of course they know they exist but they won’t negotiate with the union. And if they are going to say anything and put themselves out they are going to say that the union does not represent riders’ (Brighton rider 12).

The strategy of avoiding the union and bypassing (or ignoring) worker voice was found in London, and this appears also supported by the position held by the company in the dispute with the IWGB in front of the CAC. The role of management seems to manifest as a form of active ‘counter-mobilisation’ in response worker solidary and riders’ collective organisation to resist the change of contract (old contract) in Manchester. As a rider explained:

“They [the management] purposely put barriers in place to stop us from forming unions and, around at the same time of the contract, it is when there was rhetoric from the office saying: “no Whatsapp groups”, basically they were trying to ban forms of communication to try to stop us from organising’ (Manchester rider 7).
A further aspect to this data is how management appeared to manipulate riders with changes introduced to the ‘pay-per-delivery’ systems, both in London and Brighton\(^{100}\). For example, one respondent in Manchester explained that the reason that s/he started to work for Deliveroo, and left the previous job with another gig-economy company (Jinn), was the guaranteed ‘pay-per-hour’, instead of the system of ‘pay-per-drop’, as with her former employer and other competitors (e.g. UberEats and Jinn). However, Deliveroo introduced the new system of ‘pay-per-drop’, asking riders to sign up the new contract, with very little notice. It is the way in which Deliveroo implemented the new contract in Manchester that is insightful, in comparison with the other cities. Riders were informed that if they accepted the new terms straight away (within one week from the receipt of the contract), they would have the option to return to the old contract terms and conditions in case they did not like the new arrangements. If riders did not sign the new contract, their agreement would have been terminated. All these communications were given to riders by email, and the guarantee of the possibility to come back to the old ‘pay-per-delivery’ system was not included in the terms of the Supplier Agreement. A rider commented:

‘I really thought that it was manipulative from them to be honest. Because I think they were really afraid of what happened in London with that huge and they didn’t want it, so they pretend to let us think that it is our choice. But they are like forcing us to do it, indirectly. So there was no kind of communication from management, of course you would get emails, like “Roo’s community”, competitions, like “send us your pictures”, and thing like that. But there is nothing like “we are a company, we got these values, we want you to represent these values”. There is nothing like that’.

(Manchester rider 11).

\(^{100}\) The pay per drop in London and Brighton was already in place in 2016, instead changes in Manchester were implemented in 2017.
7.3.2.b) Riders’ responses and trade union organising activity

Although similarities of practices where found in how management sought to regulate and impose change, there was also a fragmented pattern over time and space across the three cities with regard to the reactions of riders. Differences were found depending on the presence of trade unions to support riders’ claims (in London Camden and Kentish Town and Brighton) or not (Manchester).

At one level, the riders’ attempts to resist contract changes were ultimately defeated, and in Manchester especially, riders failed to collectively mobilise with the appearance of a more individualistic attitude. In Manchester, were trade unions were not present, riders tried to organise by themselves not to sign the ‘old contract’, but eventually single riders started to accept and this eventually created a chain effect, where day by day, riders scared to be left out, started to sign the new agreement.

‘As the ultimatum that for when you should sign the contract was closer and closer there hadn’t be much progress made, we wanted to do strikes like in London but it was difficult to organise. In the end it was starting one by one, when were meeting up people were saying: “Oh I have signed the contract” and then when the people heard: “Oh they had signed it so I will sign it as well because other riders may have my job at the end of this”. Then by the end it was just instead of going with the: “Ob we can all oppose this, if we all don’t sign they have got nothing, they cannot just suddenly release all of the majority of their drivers” to slowly one by one “oh well, it is over, we have signed the contract” ‘ (Manchester rider 7).

The diminished protest emerged in some of the riders’ comments on how to deal with the management. The consequence of such a wider individualistic attitude underscores the fragmentation of solidarity among the workforce, with a divide-and-rule barrier appearing between ‘elder’ and ‘newer’ riders (or between ‘full-timers’ and ‘part-timers’), as this quote exemplifies:
‘I think I am getting more from the managers purely because I have been longer, and just because I know them. I can just go in the office anytime and speak to the managers, speak to the staff in there and they usually help me out. But then as other people just started they are not really given much guidance, they don’t really know what to do, they are left on their own and not told the best way to take advantage of the system, which is what I like to tell everyone because I don’t care that much about the company as a whole, for me it’s more about the individual trying to make a living kind of thing’ (Manchester rider 7).

The same rider explained that, because of the absence of management, and the lack of effective communication and resolution of problems, riders were actually competing against each in search of a solution for their problems:

‘The reason why a driver has this problem it isn’t necessary the managements’ fault, it is the structure itself. There is just not enough people to deal effectively with every single concern, and you know, it is a fight to get that attention from them’ (Manchester rider 7).

However, workers in Manchester were not all passive recipients of the management by absence approach. Riders in Manchester started to create groups and discuss how to respond to the company in response to contract, pay and working time changes. One main point of discussion challenged the extent of power of the company, explicitly stated in the contract, to discontinue the arrangements set out and move to a delivery fee model. While riders had little choice but to accepted coerced contract changed, they were articulate and unhappy with ceding the regulatory power to the company. A

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101 Section 5.2 of the Old Manchester Supplier Agreement states: ‘Deliveroo reserves the right, upon notice to you, to discontinue the arrangements set out in 5.1 above and move to a delivery fee model. In such event, you will no longer have any entitlement to an hourly fee but you will instead be entitled to a delivery fee in an amount to be notified to you for each delivery you complete’. 

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rider active since the beginning of Deliveroo in Manchester explained how Deliveroo forced riders to accept the new terms and conditions.102:

‘The contract reaffirmed the fact that we are in the control of these people, we are doing what they say. (...) They had set a time limit on the contract, so if you had not signed by a certain date our relationship was over. It was more like an ultimatum given out than a “hey come on guys sign this contract so we can make our relationship a bit clearer!”’. They may have made it seem it was not only one-way, when it totally was! The initial email was saying “we spoke to our communities of riders all around the country and this is what they have said they want: they want security, so we drafted for you guys this contract to sign”. I have never heard of everyone actually been consulted on it, anyone taking any worries or concerns to be taken in account’ (Manchester rider 7).

Changes to contracts in Brighton and London were similar, although responses and organising tactics differed by the riders and the union. The actions of the IWGB led to the organisation of riders, in particular in the area of Camden and Kentish Town in London, where protests and strikes were held. Importantly, riders in this area asked to be represented by Union in order demand the recognition of the legal status of “workers” in front of the Employment Tribunal.

Respondents in Brighton explained that one of the main changes between the Suppliers Agreements has been the clarity and readability of the contract, which then had an impact on riders’ perception of the changed terms and conditions. Similar to the Manchester situation, the data from riders reports the extent of unilateral power of Deliveroo to change or terminate working relationships:

102 It must be highlighted that, in contrast to the London and Brighton situation, in Manchester there has been no active trade union trying to organise riders.
‘Because they made this newer contract clearer to read, I think people got disturbed by the fact that Deliveroo could now terminate the contract in 7 days for no reason at all. And the interesting part is that it was the same in the old contract, but the old contract was written in such a way that most people did not read it’ (Brighton rider 12)

In other areas it seems that a number of factors underpinned union mobilisation against Deliveroo: the leadership qualities of those in the IWGB to articulate riders’ grievances, the proximity of London (in which IWGB was based), and the critical mass of riders in Brighton all helped the union to engender a degree of solidarity among riders that was not found in Manchester. Interviews with IWGB reported that a lack of union resources constrained rider mobilising and campaigning in other cities. Union responses focussed raising awareness on the streets where large groups of riders would congregate, along with campaigning via media, costumers and restaurant publicity. Issues actively publicised by the union in Brighton included arguing for a recruitment freeze, and immediate pay rise for each delivery completed, which were successfully achieved.

7.4 Conclusion

This chapter has illustrated the findings from the scrutiny and comparison of the Suppliers’ Agreement used to regulate the relationship between the riders and Deliveroo in the three cities, at workplace level. By exploring the contractual provisions of the ‘Suppliers Agreements’ the chapter has shown how employers in the gig-economy are using contractual arrangement to exclude the application of the protections deriving from employment law. These findings are in line with previous literature that outlined how employers generally tend to ‘achieve higher flexibility by liberating contractual arrangements from interference by [employment] status’ (Streeck, 1987, p. 293). The use of contractual ambiguity will be indeed further discussed in the next chapter as part of employers’ unilateral regulatory strategies.
In the analysis of empirical qualitative data deriving from fieldwork interviews, the chapter reported the ways in which working time was regulated across its three dimensions of duration, organisation and utilisation. The analysis allowed for a comparison of the different responses of management, workers and union and their regulatory strategies. The analysis of working time regulation in the three cities has been divided into themes and sub-themes: at first, the chapter has considered the substantial aspects of working time regulation (duration, organisation and utilisation); secondly, the analysis has focussed on the dynamics of agency capacity, looking at management strategies and workers and trade unions’ responses.

In conclusion, the chapter provides important information to help answer the research questions and advance a distinctive contribution of the thesis.
Chapter 8
Discussion

8.1 Introduction
The chapter provides a discussion of the themes that emerged as result of research for this thesis. The purpose of the discussion is to conceptualise the findings in the light of the theoretical and analytical frameworks previously presented in chapters 2 and 3, with the aim of synthesising the contributions of the research, using the data reported in chapters 5, 6 and 7.

The analysis of working time regulation in a specific sector, across different national and transnational jurisdictions and within a company of the UK economy has been used to contribute to the regulatory space debate. A summary of the overall contribution of the thesis, along with answers to the specific research questions, is provided next in chapter 9. In this chapter, a discussion of the findings point to an inherent fragmentation of regulatory features found in the study. The chapter is structured as follows. Next, the fragmentation of agency power is discussed, which further argues about the importance of worker agency in disrupting the pattern of unilateral regulation. Then, in the second part of the chapter in section 8.3, the multidisciplinary and multilevel approaches of regulation are discussed, to provide a better understanding of both the legal and the informal aspects of working time regulation.

Overall, the discussion presents a consideration of the interplay between dominant dimensions (such as unilateralism) with other facets of regulatory power (such as formal legal intervention). Indeed, evidences of space
occupation are not only found at the micro-level (the workplace) but it is consistent across levels (national and international).

8.2 The fragmentation of regulatory space: dominant agency, sources and disruptive actors

The present section synthesises the data to discuss the notion of regulatory fragmentation. It does so by addressing three main points. First, the fragmentation of ‘agency’ includes an analysis of disconnected spaces that are left or ceded for occupation by different actors. Second, the fragmentation of regulatory ‘sources’ is considered, reflected in a manufactured degree of ambiguity by employers (Streeck, 1987) and other agents along with a competition between dominant regulatory sources that affect the dimensions of working time regulation in the gig-economy. Finally, the section advances the idea of ‘disruptive capacity’, which includes a counterbalancing mobilisation among labour against the aforementioned dominant regulatory.

8.2.1 Fragmentation of ‘agency’! context, discourse and the role of the State

An inherent feature of the research has been the focus on a wide range of agencies that intervene within the regulatory space. Besides the important role of the State analysed in chapter 5, other actors have also been considered as bearer of different or contrasting and competing interests, as outlined in chapter 6. Overall, the findings contribute to an intricate web of inter-relationships affecting employment regulation of the gig-economy, and working time in particular.

One key debate is the importance of understanding the context and historical legacies that shape the current socio-political situation (MacKenzie & Martinez Lucio 2014). The national and international level data in this study reflects an on-going tension already noted in regulatory space theory, concerning the effects from the transposition of the WTD and the WTR under a permissive voluntary labour market (Rubery et al. 2005; Doherty 2008; Dobbins 2010). In turn, the voluntarist approach opened the space for businesses and employers
to have a greater say in the regulation of working time at workplace level. Furthermore, tensions were also found when looking at the necessary connections between national actors and the international regulatory context: the British State appears to be historically opposed to international interventions on the regulation of working time, and simultaneously, not particularly interested in engaging at international level in the discussion around the regulation of the gig-economy, which has had much relevance, for instance, within the ILO. The sceptical attitudes revealed by international actors towards the collaborative voluntary participation of the British State towards international (European and broader) hard and soft regulation confirm previous literature claims, which identified the United Kingdom as belonging to the liberal market economy tradition (Hall & Soskice 2001), with a neoliberal free market narrative (Ackers et al. 1996; Jackson 2014) and typically hostile to international hard-law interventions on employment regulation in general, and working time in particular (Rogowski 2015).

The data in this thesis, it is suggested, therefore adds a new contribution about the patterns of the State (and other State agencies) affecting employment regulation. For example, as reported in chapter 5, the role played by the government has been to some extent manipulative in supporting a predominately ‘light-touch’ and ‘explorative’ regulatory approach. The data reported for instance the tactics deployed to avoid intervention or the enactment of new laws and regulations on the subject of working time in gig economy. Governmental action in particular was found to be ‘explorative’ in the measures that it has preferred to delegate to bodies of experts (e.g. the Taylor Review, among others), whose composition were contested in terms of balance of interests represented. The ‘explorative’ dynamic allowed the State to show at surface level it was collecting information and suggesting strategic points for action for possible new policy revisions. However, no legislative outcome or substantial policy action emerged. 103 Indeed, the government itself

103 With the only exception of the work undertaken (which has resulted in a draft Bill) by the BEIS and WP Committees on the ‘Framework for Modern Employment’ discussed earlier in chapter 5.
appears to be ceding space by giving-up at least some of its legislative prerogative through active delegation of the regulatory agenda to external actors, without the guarantee of balanced representation of interests in newly constituted fora or review groups. As part of the State machine, enforcement agencies have not been found successful in monitoring the application of existing rules and tackling new forms of business that are trying to circumvent traditional regulatory regimes. The latter was specifically reported in Section 5.2.3 in chapter 5. In contrast, a greater role has been played by the judiciary when it came to determine the application of employment rights for gig-workers. The content analysis data in chapter 5 revealed that the role of Courts has been to check compliance with the legal framework against contract terms manufactured by companies to explicitly disguise nature of working relationships as being self-employed.

The argument is not just an extension of permissive voluntarism in regulatory space that have been reported by Dundon et al (2014) for employee voice, with added application to working time in the gig economy. Significant here is the contribution about the manufacturing of ambiguity, which adds to the fragmentation of regulation by the actions of the State (and other State agencies): that is government ceding regulatory space to other actors. This active ceding - or manufactured ambiguity - has been found to be of two forms. First, from the government and delegated actors (notably by the proponents of the Taylor Review) there has been a clear and active ceding of regulatory authority to employers. Consistent with the evidence from content analysis of documents and policymaking reports in chapters 5 and 6, businesses have enjoyed a relatively high degree of freedom to self-regulate and deploy their managerial prerogative in new business (gig economy) models.105 These tendencies are to some extent counterbalanced by the judiciary power when it intervenes to enforce employment regulation and labour protections for the grey area of atypical casual work and bogus self-employment (CitySprint, 104 See section 5.2.3 on the enforcement of national level regulations for the gig-economy.
105 The positions of the TR towards regulatory strategies can be found in section 5.1.1.
Uber and Pimlico Plumbers cases amongst others). However, although the judiciary appears to be part of the State, it does have powers of independence even if its role was at times it was found to be limited to the enforcement aspects of regulation (Gunningham 2010). Furthermore, the enforcement procedure has to be initiated by individual workers or trade unions, and therefore cannot be representative of a judiciary acting as a fully autonomous ‘State agent’: the agency is thus fragmented and regulation emerges as the combination of actions shaped by different interest groups (Scott 2004). As it has been pointed out from the findings in chapter 5, employers in the gig-economy have been able to play a ‘wait and see’ game with the application of employment protection,\textsuperscript{106} with the power to unilaterally impose regulation and wait for the eventual legal challenge activated by interested actors (Fudge 2017).

In contrast, workers, with the help of trade unions, have been able to challenge the agreements set out by gig-economy businesses and achieved have some individual adjustments to the features of working time in the gig-economy.\textsuperscript{107} For what concerns the company taken in consideration in the case study ( Deliveroo) however, the first enforcement procedure in front of the CAC has reached a different conclusion from the previous decision of the ET and EAT in similar gig-economy trials, depriving delivery riders from the application of basic labour rights, and in particular from the application of the WTR. In this sense, the decision of the CAC, although recognises the genuine representation of riders’ interests through the trade union (IWGB), it is found to continue to leave decision making power to the employer in setting the terms and conditions of the supplier agreement and to qualify the riders as independent contractors instead of workers, retaining the prerogative of technological control through the ownership of the application, and consequently the realities of organisation of work (i.e. working time organisation, pay and labour supply) and the regulation of the terms of the service.

\textsuperscript{106} See in particular the quote at page 163, chapter 5.
\textsuperscript{107} See decisions: Uber, Pimlico Plumbers, Citysprint etc.
The second form of ceding space to actors specifically to gig-economy businesses and employers has been found to be of a more passive nature and mediated indirectly through the dissemination of a particular discourse of regulatory meaning. For instance, this is revealed by the use of language to persuade actors of alleged advantages of voluntarist or self-regulating approaches. As reported in chapter 6, examples of the extent of the influences of certain actors (and in particular employer groups) in delaying or derailing the publication of research that may otherwise support enhanced regulatory rights was a conscious ploy, such as the work by the ILO. The avoidance of terminology that could refer to an employment relationship (such as ‘hiring’ or ‘working for’) in discourses by the company was evident in chapter 6 and 7. The use of a persuasion narrative by employers and other agencies was also evidenced in chapter 6, where a retail employer respondent portrayed in a very positive and upbeat way the virtue of ‘Uberisation’ as source for employment rights to both younger workers and as a potential future business strategies for companies outside the gig-economy; in this instance, possibly retail outlets and their potential use of bogus self-employed labour arrangements.

8.2.2 Fragmentation of ‘sources’: contract status, employer actions and technology

The results contribute to a number of debates and themes that help understand the extent of the fragmentation of ‘sources’ affecting regulatory space for working time in the gig-economy. It could be argued that the lack of legal certainty around gig work can be assimilated to other forms of precarious work, such as zero hours contracts (ZHC) (Adams et al. 2015; Howcroft et al. 2018). What makes ZHC and gig-economy work similar under the profile of working time regulation is the lack of guaranteed hours and an uncertainty of available work (and therefore income). However, as research for this thesis has shown (chapter 7 and see also Dundon & Inversi, 2017), gig-economy employment conditions could be potentially worse for employees in terms of

108 See in particular subsection 6.4.3.
working hours unpredictability than for those labouring under ZHC. In one way this may be a moot point, in that one really bad working arrangement (ZHC) is somehow not as bad as another even worse working experience (gig economy rider) can quite circular. Nonetheless, the situation as reported for Deliveroo riders in Brighton showed that when riders are available of work, they are kept waiting for jobs, owing to management control systems using technology (e.g. the mobile App) to regulate peak periods that resulted in an over-supply of labour (Howcroft et al. 2018). But for ZHC some forms of protection can apply: it is suggested that workers could still claim compensation if they were called in for work by the employer and then sent home due to the actual lack of work demand (Adams & Deakin 2014b).

Contract status and working hours’ accessibility therefore become sources of regulation and fragmentation. It is possible to notice how the fragmentation of contractual rules creates different categories of precarious work, having not only different rights and protections, but also very different organisational control structures. The fragmentation of the work rights at a macro level has been shown in this thesis to have the effect of weakening the capacity of workers to organise collectively as agents to counter managements’ prerogative (De Stefano 2018); furthermore, it directly affects the institutional nature of representation, where trade unions find difficulties to reach and represent the most precarious tier of workers, and thus sources of regulation also contribute to the fragmentation of agency, described earlier (Simms et al. 2013).

At the company (micro) level, it is important to point out various elements of unilateral regulation that testify the fragmentation of regulatory sources to discuss the dimensions of working time regulation outlined in chapter 2. In fact, findings show a strong unilateral power from the employer side to shape and determine aspects of riders’ working time, and more generally the contractual and organisational relationship between the provider (Deliveroo) and the supplier (Deliveroo riders) of the service. For example evident unilateral power is shown by management in the ability, in zone under the pay-per-hour system, to determine working time duration of riders, or schedule
allocation; contractually, the unilateral power of the employer is evidenced also by the ability to change fundamental terms and conditions of supplier agreements, without the need of consultation; finally, the punitive power of reducing or limiting access to work to riders that takes brakes also testify the degree of the unilateral regulatory agency (Inversi et al. 2017).

From the analysis of legal contractual sources and the de facto situations of riders in the three cities examined, how practices and regulatory sources became fragmented is another important contribution. For example, it was reported in chapter 7 that Deliveroo does not apply the same rules across the country; instead, the company varies contractual terms and conditions at different times in the three cities and even across areas of the same city (as in the case of London). This first type of fragmentation entails difficulties for workers and unions to organise, as riders do not have all the same issues at the workplace and their interests are thus different and less easy to coordinate and convey. For instance, the procedure initiated by the IWGB in front of the ET (and then moved to the CAC) was to represent only the riders of the London area of Camden and Kentish Town that were under the pay per delivery contract, and not those riders of London that were under a hourly based agreement and/or worked in another area (as did some riders in the Spitalfields area of London). The contractual arrangement set in place by Deliveroo determined then a fragmentation across the company’s workforce by dividing riders in two main categories: those working agreed shifts on an hourly base rate, and those working with no fixed hours on a pay per delivery rate. It is possible to recognize a form of control exerted at-distance, through the technological media, with the vested interest of weaken workers’ solidarities and colonize regulatory space (Cingolani 2018).

But furthermore, even in areas where the same type of contract applied, the most evident example being the city of Manchester, other forms of fragmentation emerged in terms of the managerial prerogative and organisation and scheduling of working time arrangements (Wood 2016). As showed in chapter 7, Manchester riders were divided in two categories in relation to the
nature of their working time: some riders experienced a ‘full-time status’ with guaranteed hours and a certain degree of security in terms of working time arrangement; other riders, the ‘part timers’, had to compete for fewer hours on a weekly basis, with higher degrees of uncertainty in terms of work availability and working time organisation compared to their full-time counterparts. Some riders enjoyed more favourable treatments from the management, which further fragmented workforce cohesion. In Manchester, for example, favours in terms of better hour allocation were found to be the result of good performances and also localised informal social relations with certain managers (especially for those riders that had longer employment tenure). In Brighton, in contrast, the fragmented social relations and cohesion was found between riders with motorised scooters compared to riders on bikes, with privileges afforded to the former.\(^{109}\) As it will be better discussed in the next section,\(^{110}\) riders and unions were only partially able to address issues and contain the extent of employer’s unilateral imposition of working arrangements. These findings are in line with recent literature on working time issues in the context of UK retail sector and within the global gig-economy (Wood 2016; Wood 2018; Lehdonvirta 2018).

Employer strategies and actions also become important sources of regulatory space influence over the working time dimensions considered. Managerial strategies were found to differ and of importance was the timing of introducing new terms and conditions which leveraged change favouring the managerial prerogative. In all three cities, practices of unilateral decision-making and imposition of work terms and conditions were found from the employer side. As it can be seen from the findings presented in chapter 7, the extent of the managerial control over schedules and shifts assignments (working time organisation) is quite important and facilitated by the use of technology (the mobile application and the Staffomatic platform). As reported in chapter 7, riders in Manchester describe the extent of unilateral regulation over shift allocation as an extensive function of management control, and the

\(^{109}\) See chapter 7, p. 229 (printed version).
\(^{110}\) See 8.2.3.
difficulties of getting hours assigned. In Manchester in particular, working time duration was found to be regulated by management, rather than left to riders’ choice. Also, elements of unilateral control on working time connected with rests and holidays (see section 7.3.1.b): it was evidenced here that riders perceived to be ‘punished’ with diminished working time duration, or less power on determining their shifts after having had a holiday break or time off due to sickness or injuries. Furthermore, issues of working time utilisation emerged in all the three cities, in connection with the problem of waiting times, lack of availability of work and managerial organisation of peak times.

Overall, the findings contribute to an intrinsic disconnection between corporate claims about being an IT intermediary rather than an employer in the food delivery sector, versus an active business model that regulates employment terms and conditions of workers. The evidence thus far suggests that the extent of control and decision-making powers appear to transcend the boundaries of the mere ‘IT service intermediary provider’, with direct and stringent effects on the workers’ ability to determine and influence their working conditions. It is arguable that the space left out by the law to other regulatory agencies, review bodies and primarily the employer are all able to impose forms of unilateral regulation; in synthesis this is achieved by the use of non-employment contract status and modifications imposed without consultation or negotiation, and through control facilitated by IT technologies able to store and provide useful information from which the company can maximise the efficiency of its decisions (Prassl 2018).

Thus far the argument has advanced a conceptual discussion about the features of fragmented regulatory spaces, incorporating the dimensions of ‘agency’ (e.g. in 8.2.1 the State and other relevant agencies), and ‘sources’ of regulatory fragmentation (e.g. contract, employer strategy and technology in 8.2.2). However these do not exist in isolation, and there is another important feature to consider, namely the counter-mobilising forces of organised labour and union actions that serve to disrupt the flow of unilateral employer-imposed rules. This is discussed next in Section 8.2.3.
8.2.3 Disruption of unilateral regulatory space

It has already been commented how the relations between workers and the local management were different from town to town in the selected case study, Deliveroo. This geographical divergence of practices imposed and the strategies used by the company were found to impact workers’ responses. Because of the presence of the union in London, riders were able to organise and start a lawsuit against the company over the legal status of workers and rights such as the WTR and minimum wages. In Brighton, the expansion of the London branch of the IWGB, probably due to proximity and to escalation of riders’ issue with the company, lead to manifestations, strikes and campaigns being held from riders. Importantly, the form of union mobilisation here united both bicycle and scooters riders. This form of mobilisation can be found to be organic in nature, primarily bottom-up and led by workers themselves, which is quite different to organising campaigns promoted say through official Organising Academy models, such as those of the TUC (Heery et al. 2000; Melanie Simms et al. 2013) or other union drives led from above, as reported by likes of (Simms et al. 2013).

In the absence of the trade unions, worker mobilisation tactics were evident in other ways. In the Manchester area for example, informal relationships between the management and some riders were important (e.g. access to the office, communication with direct emails or text messages), as reported in chapter 7111. From these findings, it emerged that riders were able to have a closer and more informal relationship with the management (usually those that were present since the establishment of the Company in the city). This arrangement meant selected workers could obtain better working time allocation, along with access to privileged roles such as ‘driver lead’. Individual attempts were also suggested by riders that had experienced ways of ‘getting

111 See in particular Section 7.3.1.a), and the quotes at page 216.
around the system’, mainly by using loopholes in the technology\textsuperscript{112}, and forms of unilateral resistance (Lehdonvirta 2018; Wood 2018).\textsuperscript{113}

In all the three cities riders used forms of coordination or sharing knowledge through social media groups, the main tool used being ‘WhatsApp’. Through these forums riders where often able to discuss issues related to work, working time and also coordinate forms of protests and resistance to managerial demands (Lehdonvirta 2018). The latter objective was attempted during the introduction of a new contract in Manchester in 2016: at that point riders, without the help of unions, tried to organise themselves and decided not to sign the new contract altogether, but at the end the “common front” was eventually defeated and riders started to individually sign the new agreement. Importantly, the management in Manchester was found to try to ban WhatsApp groups during the time when riders were asked to sign the new contract.\textsuperscript{114} The entrance of the managerial control in the autonomous riders’ communication system was especially directed to control forms of resistance to the unilateral power of management to change terms and conditions of work and connects to debates about the use of IT and digital technologies for gig worker and union organising (Lehdonvirta 2018; Wood et al. 2018; Wood et al. 2018b). In short, workers showed episodic capacity to organise and consequentially disrupt the logic of employer unilateralism.

In contrast, riders in Brighton and London were more effective in making their voices heard (not only by the company but also by the media) and causing Deliveroo a service disruption: several ‘strikes’ and protests were organised in both cities with the help of the union and interest groups, comparable to protests that happened in other part of Europe as well (Tassinari & Maccarone 2017). Strikes were unofficial, as riders are not under employment status and do not have to comply with the laws on industrial action: the unregulated

\textsuperscript{112}See for instance page 217 (printed version), where a rider explained how to get more hours paid by working outside the allocated schedule.

\textsuperscript{113}Such as, for instance, working via two telephones and two different accounts to be able to receive more deliveries.

\textsuperscript{114}In this thesis the cited contract is called in the previous chapter ‘Old Contract’ to differentiate it from the very last contract that was being introduced by Deliveroo during the Summer months of 2017.
nature of the work made it easier for riders to abstain from work, in particular for those under the pay per delivery system, who had just not to switch on the mobile application. The self-employed status of riders also permitted to circumvent the great amount of procedures and restrictions on the right to strike that are in place in the United Kingdom (Schiek & Gideon 2018), especially after the legislative interventions under the current Tory government with the Trade Union Act 2016 (Bogg 2016).

At national level the action of unions and especially the IWGB is an important issue relating to labour protection debates and policy considerations for workers in the gig-economy. The evidence in this regard reinforces something of a ‘physical space presence’ in the regulatory debate, with unions utilising the presence of riders on public streets to challenge government policy, engage the media as a source of campaigning, and connect with new or alternative industrial relations actors such as civil society organisations (Stewart 2005; Heery et al. 2012). As chapters 5 and 6 have reported, the IWGB developed diverse organising tactics by actively lobbying government and parliamentary review committees and fora to contest the status of incumbent regulations of work. The activity of this small union (in terms of overall membership size and resources) has brought much attention in the literature to new forms of trade unionism (the so-called ‘grass-root unions’) and strategies to organize workers at the edge of the labour market, such as self-employed care workers, outsourced workers and gig-economy workers (Tassinari & Maccarone 2017; Cattero & D’Onofrio 2018; Johnston & Land-Kazlauskas 2018). These categories of workers have often been left outside the agenda of traditional trade unions, and this lack of engagement with the most precarious working realities has been one of the main criticisms towards trade union strategies over the last decades (Simms et al. 2013). The organising campaigns brought by the IWGB in support of gig-economy workers adds knowledge to debates reflecting collective mobilisation among atypical workers and those facing increased precariousness of modern work.
In summary, the data in this thesis, at least in part, demonstrates a disruptive capacity inspired by those who challenge espoused orthodoxy of so-called new business models for technological regulation of gig work, to uncover the bogus nature of self-employment and that the unilateral power of pay determination and working time allocation are contestable spaces that workers can influence. These are on-going points of interest and debate for scholars, policy-makers and practitioners. The next section shifts the discussion to a broader theoretical and methodological template developed for the thesis, namely that of a multi-level and multi-disciplinary approach to the capture of regulatory space of working time and employment in the gig economy.

8.3 Multidisciplinary and multilevel approach to regulatory space

The research also informs, empirically, the analytical framework presented in chapter 2 (Table 2.1), which developed three different approaches to examine regulatory space (e.g. the law, negotiations and unilateralism). These dimensions have been crucial in order to understand the dynamics and the agency of actors within the regulatory space to answer the research questions of the thesis. All the research questions outlined needed to clarify what was the extent or the importance of each dimension to regulatory actors. While investigating actors’ strategies in how to occupy and influence the regulatory space, the dimensions were indirectly tested as tools to understand agency and processes within the regulatory space.

Second, the framework in Figure 2.1 synthesised multiple levels by looking at diverse spaces where regulation occurs and is often coordinated. These levels were identified as the international, the national and the workplace levels. The methodology and the report of findings have been reflecting the empirical investigation of levels, with broader connections between the national and international levels of intervention and a more ‘isolated’ analysis of the workplace. In this section the discussion will analyse the utility (or otherwise) of the framework as an analytical tool to advance regulatory space knowledge (Hancher & Moran 1989). The section introduces Table 8.1, which is the
reproduction of Table 2.1 from chapter 2, showing where and how the data lends itself to support and/or critique the framework.

8.3.1 Multidisciplinary perspective
One tendency in legal scholarship is to adopt a technically legal account of laws and regulations, as explained in chapter 4. It may be recalled this was considered, on its own, as a limitation as an approach to fully address the research questions in this thesis. Thus the approach developed instead the concept of regulatory space theory, which by definition incorporates different regulatory dimensions and disciplinary paradigms. The latter notwithstanding, the legal sphere when approaching studies on regulation is very important and taken as a starting point for the analysis of the institutional elements within the regulatory space, discussed next in section 8.3.1.a. The second sub-section (8.3.1.b) will focus on the importance of the integration of legal analysis with related approaches such as analysis of political economy, labour sociology, institutions and the role of the State, and especially the empirical understanding of informal employment relationship practices within a workplace setting (Hancher & Moran 1989; Scott 2001; MacKenzie & Martinez Lucio 2014).

8.3.1.a) The legal sphere
The legal framework on the regulation of working time goes beyond specific laws, regulations and statues on the subject. The present research has showed that in certain contexts, such as in the case of the gig-economy, underlying discussion about the very nature of employment and its legal status are at the core of the issue before starting to look at employment protections (Aloisi 2016; Cherry & Aloisi 2017; Fudge 2017; Prassl 2018). An investigation of employment regulation is underpinned by specific historical and contextual legacies of the UK and how these shape the necessity to regulate for working time (e.g. as a health and safety rationale, as a tool for business flexibility, or for labour market protections for workers and citizens). These legacies inform issues such as contemporary legal categories/definitions as to who is and is not a ‘worker’, the political preferences of a nation State advocating for voluntary forms of regulation, especially if compared with the experience of other
European countries (Fudge 2017). At the same time, political and historical insights show how and why counterbalancing forces, such as trade unions, have been able to adjust and disrupt regulations to advance protections.\(^{115}\) As previously discussed (in 8.2.1), permissive or neo-liberal oriented laws help employers (and State agencies) cede harder legal decisions to voluntary spaces that promote minimalist intervention, which, as found in this thesis, lead to a concomitant fragmentation of approaches that then favour self-regulation and managerial prerogative (De Stefano 2018) rather than institutional constraint (Hancher & Moran 1989; MacKenzie & Lucio 2005; Dobbins 2010; MacKenzie & Martinez Lucio 2014; Martínez Lucio & MacKenzie 2017).

A key legal issue arising from the research is that of the status of gig-workers into the legal categories of ‘limb (b) workers’, or ‘employees’. Of the majority of cases brought in front of the Employment Tribunal, the first category of protection of ‘limb (b) worker’ was recognised (for example, in cases of Uber, Pimlico Plumbers, Addison Lee, etc.). The Deliveroo case presented to the CAC, however, is an exception. The CAC found riders to be genuinely self-employed, and thus not covered by WTR or NMWR. In this latter case the importance of looking at regulation beyond the simple application/non application of the law is evident. Looking at the contractual relationship and at the practicalities of work has indeed complemented the comprehension of how the relationship between gig-economy businesses and service providers is shaped, to uncover the balance (or the imbalance) in decision-making power and enforcement of rules.

In terms of legal application of knowledge, the research builds on insights from law scholars. The legal contract is certainty crucial to any employment relationship, regarded as the ‘cornerstone of the edifice’ in British labour law, according to (Kahn-Freund 1967). The necessity to look at the contractual relationship between employer and employee was discussed in chapter 3.\(^{116}\) However, and as Kahn-Freund (1972) also informs us, the contract is an

\(^{115}\) See section 5.5.3.
\(^{116}\) See section 3.5.1.a).
inferior tool to analyse power in traditional or conventional employment relationships, arguing it exists ‘as a figment known only to the legal mind’: the contract “in its inception it is an act of submission, in its operation it is a condition of subordination”. To explore these issues empirically, therefore, the contractual arrangements in Deliveroo were subject to critical scrutiny of content analysis and through interview data, in chapter 7. From these it has been inferred that the contractual relationship for gig economy workers is substantially different to earlier conceptions of the legal employment contract. To begin with, it is not an employment contract as such, but a ‘Supplier Agreement’ between the company and riders which has been shown to be the manifestation of extended employer power to unilaterally dictate (and change) terms and conditions of the work arrangement. It is in many ways a new and deeper ‘figment of illusion’, applied in the context of the gig economy, to which workers have not been able to effectively challenge and have ultimately become coerced into precarious bogus self-employment status.

Importantly, analysis over the timeframe of more than one year for this research has revealed to some extent that gig rider contract status has been manipulated and contested. Specifically, the company strategy to implement new working practices, with a comparative outlook through the experience in three different cities, unpicks the complexities of work relationships. Findings have shown that changes over the ‘language’ and the ‘content’ of agreements have been shaped by Deliveroo in order to further circumvent legal challenges brought by workers and trade unions. Changes in the supplier agreements had the effect of socially engineering a degree of ambiguity which made the status of riders increasingly precarious, as reported in section 7.2.1 of chapter 7, and will be further discussed later in this chapter (section 8.3.2.b).

However, a strict doctrinal legal approach to contracts is not sufficient to reveal answers about how regulatory spaces are occupied or contested about working time in the gig economy. As it has been shown in chapter 7 (section 7.2), to some extent riders were able to circumvent imposed contractual arrangements as a way of influencing their working time, its utilisation,
organisation and the rhythm of work. At the same time, the impact of business organisation, management strategy and the role of State agencies all shaped in various ways the sources for the regulation of working time, opposing the claimed ‘freedom’ and ‘flexibility’ that, according to dominant narratives and discourses pointed out in chapter 6, offered workers new choices as some sort of equal party to a contract. In reality, a more complicated web of spaces becomes important alongside and in addition to doctrinal law analysis. These added approaches are discussed more fully next.

8.3.1.b) Beyond the law

The research offers a contribution concerning the utility (or otherwise) of the analytical framework presented in chapter 2. In addition to the law, Figure 2.1 proposed a negotiation dimension (mandatory and voluntary), along with possible unilateral regulation by employers, covering the different transnational, national and workplace levels. The qualitative data gathered through interviews with riders and other actors has testified to the presence of multiple influences on regulatory dimensions; some of which were shown to be more informal, while others were covert in nature, especially when workers circumvented employer rules to protect or defend their working time spaces. It has also been evidenced that unilateral intervention in the regulatory space has been most prevalent owing to employer power, followed by other areas where the State effectively opted-out of the regulatory arena in favour for self-regulated spaces. Consequently, the negotiation dimension was found to be wanting, especially at company level. In other words, there was little if any formal union recognition for collective bargaining or union-management partnership arrangements.

The explanatory reasons for this are important. First, the reported lack of the negotiated regulated dimension is more a unique feature of the gig economy business model and the nature of workers contracts therein, than a shortcoming with the conceptual utility of the framework per se. Indeed, Deliveroo do not consider itself as an employer and therefore it has adopted a

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117 See in particular section 6.4.3.
strategy of ‘intended distance’ with the riders. Second, the evidence shows a pervasive pattern of management control over worker performance, efficiency, work time and pay rate systems, all of which were unilateral imposed but also contained some informal interaction among riders as an influencing dynamic on the working time experience of riders: for instance, the company criteria to allocate more hours to riders predicated on tenure, longer service, riders’ continuous availability, social relations with some local managers, and riders’ delivery performances.118 Furthermore, while the thesis reported no formal collectively negotiated agreements, that finding is not the same as concluding a complete or total absence of negotiation. To be sure, the likes of the IWGB and other unions have persuaded actors to leverage change, advanced campaigns through the courts, and raised awareness among the public and other agencies. Indeed, the informal worker-manager social dialogue noted above has been itself an important regulatory space arena for some riders. To that end, such dialogue and informal regulation may be classified as a rudimentary form of negotiation (such as influencing hours, pay, accessing better deliveries, or manipulating the mobile app because of social relations with a particular manager) (De Stefano 2018).

Another important intellectual development in this thesis is the inclusion of a broader definition of working time, as discussed chapter 3,119 and this integrates with legal scholarship the industrial relations and sociological literatures (Adam 1990; Rubery et al. 2005; Noon et al. 2013; Genin 2016; Rose 2016). The effect of this has been to broaden the spectrum of comprehension of working time knowledge and its nature. The encompassing definition, which seeks to analyses multiple aspects of time ‘duration’, ‘organisation’ and its ‘utilisation’ goes beyond the traditional legal meaning of working time. Furthermore, although the organisational dimension has been recognised to be relevant for legal purposes (see cases Jaeger and Tyco), in the recent case law of the CJEU, the utilisation dimension has been left out from the legal definition of working time. In the recent case Ville de Nivelles v Rudy Matzak indeed, the

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118 Examples and citations can be found in sections 7.3.1.a) and 7.3.1.b).
119 See section 3.3.
CJEU has encountered the issue of entering into the utilisation dimension when considering the case of Belgian fire workers. The Court held that the time spent by workers in ‘stand-by’ time with the obligation of being available in 8 minutes in case of employers’ request was to consider working time; however the Court also stated that Member States are not required to determine the remuneration of periods of stand-by time.

Nonetheless, for the research in this thesis, the analysis of working time ‘utilisation’ has had utility and revealed deeper aspects of influence on issues of working time regulation, management control and pay, as was reported in section 7.3.1.c when considering the variable pay determination methods for riders, for instance. Here, pay was shown to affect the utilisation of time at work for riders: the pay per delivery system set-up by Deliveroo pressured riders to be constantly available for work, claiming they could maximise their earnings during high customer demand, which in reality led to an over-supply of riders. On another issues, managerial control over the use of working time (e.g. delivery measurements) through the mobile technology was found to be a direct instrument of decision-making over working time ‘duration’, and also a factor of stress of riders, which can potentially impact on their health and safety and wellbeing at work (Lehdonvirta 2018; Wood et al. 2018).

Overall, the multi-disciplinary approach therefore adds to wider scholarship and deeper knowledge base to answer the research aims of this thesis. The value of a multi-disciplinary approach, able to combine methods and interests of different research traditions has been particularly important to investigate the regulatory space under the rubric of multiple sources and different actors and dimensions, all affecting different regulation spaces. The section has pointed to the potential for the development of ‘regulation in employment’ as a multi-disciplinary field of study. Further to this suggestion is the possible value of multiple levels of analysis, also specified in Table 2.1, and considered next.

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120 See case C-518/15, 21 February 2018.
121 See for instance quotes at page 230, in section 7.3.1.c).
The table reproduced in the next page (Table 8.1) reproduces the analytical framework exposed at the beginning of this thesis (see chapter 2) and applies it to the findings obtained from the collection of data in the specific area of working time regulation and the gig-economy. Table 8.1 lists some of the sources and regulatory strategies adopted by actors in the context of gig-economy work under the dominant dimension (legal, negotiated, unilateral) and level (international, national and workplace). As it is evident, and as anticipated by the discussion, the unilateral/working dimension appears to be highly relevant and ‘occupied’ by employers’ action.
Table 8.1 - The analytical framework applied to the regulation of working time in the gig-economy, some example

<table>
<thead>
<tr>
<th>Level</th>
<th>Law</th>
<th>Negotiated Regulation</th>
<th>Unilateralism</th>
</tr>
</thead>
<tbody>
<tr>
<td>International Level</td>
<td>- ILO: research, official reports. - Tripartite sectoral meetings (ILO) - EU case law (Uber Spain) - EU attempts to revise WTD (Interpretative Communication)</td>
<td>The State ignoring ILO decisions - Opting-out clause and voluntary narrative</td>
<td>- UK disengagement with international level discussion and ILO work - UK opposition to WTD - Use of opt-out in WTR</td>
</tr>
<tr>
<td>National Level</td>
<td>- Case law (i.e. Uber, Pimlico Plumbers) - Draft Bill (A Framework for modern employment) - Possible implication of Brexit - WTR applied to 'limb b) workers' and not only employees.</td>
<td>- Taylor Review (mandated source request) - A Framework for Modern Employment</td>
<td>- Employers’ opposition to adopt Courts’ decision to all workers (Hermes, Citysprint). - Use of discourse and narrative (employers) on flexibility and workers’ interests</td>
</tr>
<tr>
<td>Workplace Level</td>
<td>- Amendment in Suppliers’ Agreement ‘adjusting to the law’</td>
<td>Informal relationships riders-management (i.e. full-timers Manchester)</td>
<td>- Employer choice of contract and self-employment status - Unofficial strike action (riders) - Employer control over technology and WT utilisation - Employer choice of working times duration/organisation - Employer punishment for riders’ holidays - Manufactured ambiguity - Employer fragmentation of workforce</td>
</tr>
</tbody>
</table>
8.3.2 Multilevel approach

An important determinant of the analytical framework is the allocation of regulatory sources at different levels, or different spaces. In order to simplify the discussion and to provide a comprehensive outlook on regulatory sources and actors, the conceptual framework considered three levels: international, national, and workplace (see Table 8.1).

When completing Table 8.1, it turned out that the data did not neatly lend itself to a straightforward structuring of findings along these separate spaces. For instance, the nature of the Taylor Review can be contested: it represents the output of a governmental request (therefore ‘mandated’) and at the same time a voluntary action, as its findings and recommendation are not binding and will be just the blueprint for further (voluntary or mandated) negotiations on the content of new regulation. In summary, it was found that a more ‘dynamic’ and ‘fluid’ analytical framework capturing sources that overlap across levels and dimensions was developing, as reported in Inversi et al. (2017).

For this same reason, it was also deemed appropriate to report findings on both international and national level sources in both chapter 5 and 6. In other words, on some key dimensions, a clear-cut division between national and international level sources of regulation was somewhat false in reality and considerable overlap was evidenced. Nonetheless, the workplace level was distinct and analysis here was kept separate to capture more detailed and specific social relationships collected in the case study in contrast to higher level’s actors and agencies active in both national and international regulatory spaces. From this, two distinct themes emerged from the multilevel approach: the first relates to the concept of ‘manufacturing of ambiguity’ as a regulatory space contribution (discussed below in section 8.2.3.a). The second is related and considers ‘coordination across regulatory spaces’, specifically issues and themes transcending the workplace, national and international levels (in section 8.2.3.b below).
8.3.2.a) manufacturing ambiguity

The concept of ‘manufacturing ambiguity’ has, in part, been evidenced across levels. The State and other bodies (such as Taylor Review) have espoused a certain narrative about defining people employed in the gig economy as independent contracts and not employees or workers, which has a degree of uncertainty for the status of those working in gig economy jobs. This thesis contents such ambiguity has had a degree of active social construction; that is the conscious manufacturing of the ambiguity is a part of the regulatory space affecting worker rights and protections. Employers also capitalise on the ambiguity with uncertain terms and conditions in the supplier agreements (comprehensive of the changes implemented over time) with the purpose to avoid the application of labour protection. It appears that employers in the gig-economy have effectively used and challenged the pillars of labour law and argued for changes in the law that could make voluntary compliance easier with a greater space for flexibility.

The idea that employers help manufacture ambiguity supports the claim of this thesis about fragmentation and marginalised worker voices and rights, evidenced not only at workplace level and by trade unions, but also by think tanks agencies at national level. 122 Furthermore, it appears that the manufacturing of legal ambiguity has been done not only through the use of legal loopholes, but also through discourses and narratives (as reported in chapter 6), which were found to be an instrument of persuasion connected with regulatory space occupation through the lobbying activity of employer groups over new attempts to regulate forms of modern work.123

The effects of the ambiguity have implications on working conditions not only because of uncertain legal contractual dimensions, but also affecting the employment relationships within the organisation. Important examples were reported in chapter 7: for example, riders kept unaware of which criteria were

122 See section 6.3.
123 See criticisms over employers’ discourses at chapter 6 and issues of influence over the Taylor Review, chapter 5.
used to allocate deliveries between riders (e.g. in Brighton). On a second point, there is evidence of managerial strategies of avoidance of direct contact with riders and unions: the lack of communication has the effect of increasing the level of uncertainty around the relationships between the parties. As the data showed, riders found it very difficult to get in contact with the company but at the same time they knew that every aspects of their work was controlled and if the company wanted to reach out it had the ability to do so. The communication channel, typically via the mobile App or the call centre, was a one-direction voice mechanism from management to worker, which was also used as a form of control for work task allocations and time utilisation. The unilateral power of decision-making role of management leaves riders with diminished agency and reinforces the company goal of distancing itself from worker concerns. Furthermore, the avoidance of trade union recognition impedes voluntary negotiation and social dialogue which enhanced unilateral employer authority to regulate working time that further reduced the workers' spaces for voice and influence.

The analysis thus shows that a manufactured ambiguity around gig-economy work is used as an employer strategy across multiple levels and dimensions of regulatory spaces. In summary form, the evidence on this issue is given in Figure 8.1 above. Moreover, uncertainty around the legal contract status allows companies to avoid the application of employment protections. In addition, at a micro-level of analysis, ambiguity sustains employer unilateralism by minimalizing (or narrowing) spaces for workers and their unions to influence the overall regulation of work.

8.3.2.b) Issues of coexistence: formal rules and informal relations

It could be argued that existence of ambiguous terms and conditions in the supplier agreement can serve as a double-edged sword for companies: it raises doubts around the compliance of the relationship established by the contract, with the reality of the de facto situation that occurs between workplace actors on a day-to-day basis. The reality of uncertain standards can leave space for the

124 See for instance evidences at page 215, section 7.3.1.a).
discretional roles evidenced at different levels: between workers and managers at company level; between workers themselves when circumventing unilateral control; and even by the judiciary in classifying categories of worker or contractor status under the legal system (Cherry 2016; Cherry & Aloisi 2017; Prassl 2018). In this sense, the action of employers around the refining of the terms and conditions of contracts over time (with the modification of those clauses that could have potentially lead to a favourable interpretation towards the recognition of the employment status for gig economy workers) has testified the worries around the power of the judiciary (Dundon et al. 2017). Arguably, the uncertainty created by gig-economy employers does not have to be considered as a ‘regulatory void’, instead, it appears to be a regulatory tool subject to continuous crafting and re-shaping, in order to respond to external challenges and pressures, as also argued by Prassl (2018). The legal system has been proved effective in responding to the unilateral legal occupation by gig-economy employers and rule against their use of independent contractors, which was depriving workers with basic labour protections such as WTR and the NMWR, in particular through the decisions of cases against Uber, Pimlico Plumbers and CitySprint (between others), with the notable exception of the Deliveroo case.

However, it is argued here that the regulatory pattern appears too complex and formed by many more elements than just the legal dimension: although the judiciary has found greater space of intervention for the law, as also discussed by Bernhardt (et al. 2013) and Prassl (2018), its effects are still limited to single cases and companies, without a broader and more equal impact in terms of protection for similar precarious work, and employers are still able to play a ‘wait and see’ game with state regulators. The importance for regulatory studies and research to take account of workplace regulatory processes and the combination and cohabitation of different kind of rules and agencies, which might be formal or informal, is deemed of key importance of the advancement of the field. In particular, a regulatory space analysis of actors’ occupation is important when considering the imbalance that the research has shown, with

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125 See section 5.2.3.
the balance of power still pending on the employers’ side at the detriment of labour.

8.4 Conclusion

The chapter has discussed the themes emerging from the research in relation to a number of literature debates around regulatory space, employment regulation generally and working time specifically. Through a discussion of these themes and issues, this chapter has applied empirical data in Figure 8.1 to the analytical and conceptual framework that was first introduced in Chapter 2 (Fig 2.1). Important findings have been advanced and discussed on the regulatory processes and agencies that are shaping the regulation of working time within the gig-economy. The main points of discussion have focussed around: the role of the law towards the formation of regulation and regulatory processes; the fragmentation of regulation across multiple levels; the power of agency, including labour resistance and counter-mobilisation; and variable dimensions and forces that shape the opportunities to occupy regulatory space. Furthermore, the originality of the thesis has been argued in terms of the methodological development for regulatory studies and the need for labour law scholarship to draw from wider multi-disciplinary and social science paradigms (e.g. sociology, industrial relations and political discourse research).

In the next and final chapter of the thesis, a summary is provided of the key thesis contributions, a summary answer to the research questions, limitations of the methods and data in the thesis, and possible areas for future research.
Chapter 9
Conclusions and Implications

9.1 Introduction
The present chapter outlines the conclusions and implications that can be drawn from the doctoral research undertaken. At first, it summarizes the main contributions that the thesis has pointed out. Then the chapter addresses the research questions, providing a summary outline to the answers as a result of the data in the thesis. At the heart of the chapter, implications from the results and their application are discussed, followed by some limitations, and finally areas for potential future research outlined.

9.2 Summary of contributions: theory, knowledge and practice
Engaging with regulatory studies and theories and empirical work of discovery of regulatory realities at multiple levels of investigation, there are five main contributions that have emerged through this doctoral research:

*Building on regulatory space theory and multi-disciplinary work*: first of all, the thesis provides an analytical framework that has helped to investigate and conceptualised the working time regulatory space related to the specific reality of gig-economy work (Inversi et al., 2017). The framework advances and sustains socio-legal multidisciplinary work and contends that the analysis of formal regulation combined with workplace practises, strategies and broader regulatory dynamics of agency are key in order to understand the complexities of regulation. The framework demonstrates its fit in answering ‘how’ regulatory space is occupied and influenced by various actors: as it has been elaborated in Table 8.1, it facilitates the understanding of the dominant dimensions that affect the chosen area of employment regulation.
Fragmentations of regulatory space: the research investigated the contested space of working time regulation: findings show that agency and sources of regulation appear fragmented under many aspects. Actors are found holding conflicting interests and positions in regard to preferred regulatory strategies and the modelling of standards and enforcement procedures for the regulation of the gig-economy. The research highlights the role of the State (and of the government in particular) as a facilitator of voluntarist and unilateral forms of regulatory intervention (rather than proactively endorse new formal and legal regulation) in a regulatory space dominated by legal uncertainty. In parallel, the State is found to detach itself from spaces (arenas) of regulatory engagement (such as the international level) or dimensions and actors (such as mandated negotiated regulation with trade unions and social dialogue).

Narratives of persuasion: the data showed how employers use narratives to persuade employees that flexible working time arrangement may be good for worker interests. Yet such discourse of claimed benefits of self-employment (on the employers’ side) in terms of flexibility and working time freedom appear to clash with counterarguments of increased precariousness of working conditions and bogus self-employment (employees and trade unions’ sides). The discourse and the use of specific terms appear to be part of the actors’ strategy in order to influence and occupy regulatory space.

Manufactured ambiguity: the thesis advances the concept of manufactured ambiguity as a regulatory strategy and as a consistent feature crafted by powerful actors. The case of the gig-economy appears to be paradigmatic to illustrate how business have power to create new types of commercial relationships, making use of regulatory loopholes and ceded authority, in order to gain advantage over other actors. Indeed, the ambiguous nature of contracts used in the gig-economy (and the frequent changes over a relatively short timeframe) exemplifies the use of regulatory power over workers.

Fragility of management strategies: finally, the empirical research conducted contributes to the understanding of the realities of local work in a
specific business of the gig-economy (on-demand food delivery business). Findings from a comparative study of three UK cities show a degree of geographical fragmentation in terms of managerial strategies and workers’ responses. These fragmentations allow for a discussion around fragile management regulation and diverse forms of resistance and responses from both individual and organised workers.

9.3 Summary and general conclusions: answering the research questions

9.3.1 The four supplementary research questions
The main research question asked about a problem concerning ‘how employment relations actors influence working time regulations’, with a particular focus on the gig-economy. In order to address the main research question, four specific additional subsidiary questions were devised (presented in Chapter 1 and explained further in Chapter 4). The data to address each subsidiary question helps to provide a structured and systematic answer to the main research question of the thesis. These supplementary question answers can thus be summarized first as a way to build a coherent and general answer to the main research question.

The first supplementary question was ‘what is the regulatory space and how is it related to the regulation of working time?’. Information to address this question was captured from analysis in Chapters 2 and 3. In particular, Chapter 2 explored the theoretical understanding of the concept of regulatory space (e.g. Hancher & Moran 1989; MacKenzie & Martinez Lucio 2014; among others), helping to develop an analytical framework as a tool to organise a systematic study of the issues and to conceptualise employment different and contested spaces affecting regulation from an actor-sources perspective. The framework identified levels and dimensions that had also methodological implications for the data collection and the analysis of findings. Following the theoretical discussions and the
analytical framework, Chapter 3 subsequently discussed the definitions and issues pertaining to the regulation of working time, in the light of existing literature and legal scholarship on the subject. The literature review has confirmed the fit of the academic debates into the dimensions outlined by the framework, providing insights of legal, negotiated and unilateral regulatory spaces at multiple levels of the discussion. To this end, information to answer supplementary research question 1 has provided a platform to advance subsequent empirical analysis in the thesis. The later empirical details and data specification requirements were detailed in Chapter 4 when reviewing methodological considerations. These discussions in Chapter 4 helped to further embed the analytical framework into a research methodology, providing a guideline on how to look for information and how to make use of it in the context of a multidisciplinary and multilevel regulatory space approach.

The second supplementary question was ‘**how does the State influence formal regulatory processes in working time regulation, both in general and in relation to the gig-economy work.**

Data to answer supplementary question 2 was presented in Chapter 5, providing the presentation of the findings emerging from the analysis of data gathered at national and international levels. Chapter 5 showed the extent of the existing ‘contestation’ of regulatory space among various actors at national level, with evidences of intra-governmental agency. Elaborating the findings, Chapter 8 discussed the arguments around the fragmentation of State agency and its active role of ‘ceding’ regulatory space to other actors, specifically employers and other related State bodies (such as Taylor Review in the UK), emphasizing the facilitation of forms of manufactured ambiguity within legal regulation and the room for manoeuvre left to employers to self-regulate the employment conditions of their workers (contractors). The data addressed with research question 2 has further pointed out the complexities of the State as a regulatory actor, transcending the main legislative activity and considering
also issues brought by the pre-regulatory activity (such as research and gathering of information) and enforcement.

The third supplementary research question was ‘how do other (institutional) actors respond to and seek to influence working time regulations, both in general and in relation to gig-economy work’.

This question was addressed from data presented in Chapter 6. These findings pointed out the rationales for different actors to intervene in the regulatory arena, outlining fragmented interests and agencies, in particular between employers and other level actors, including workers’ representatives. Evidences showed a shift on the prevailing working time regulatory issues brought by institutional and structural changes within labour markets; such as, for instance, the growth of use of ZHC and precarious forms of work, along with specific challenges of disruptive business practices within the gig-economy. In this context, Chapter 6 showed how agency capacity mobilised actors to the spaces specific to advance their objectives, regulatory preferences, and narratives that tended to sustain dominant and more power actor groups (employers, State agencies, lobbying bodies, the judiciary). Chapter 6 also outlined inherent features of actors’ agency that are then pivotal for the discussion in Chapter 8, which developed further the argument about the fragmentation of regulatory sources: e.g. differential agency mobilising capacities, lobbying responses, and the use of particular strategies to normalise voluntarist patterns of regulation and re-regulation. Furthermore, the concept of a ‘manufactured ambiguity’ was highlighted as a consistent strategy in order to influence ‘what, how and by whom’ working time can be regulated in the gig-economy, and also at a more general and broader level as multiple regulatory spaces.

Finally, the last supplementary research question was ‘how do workplace relations influence the formal and informal processes of working time regulation in the gig-economy’.
Information to answer this part of the research was presented in Chapter 7, through the empirical investigation of working conditions of workers operating for the same company (Deliveroo) in three different English cities. Chapter 7 reported on both the formal regulatory sources (the Supplier Agreement, or work contract) and the daily working practices around working time, through the information provided by riders and trade unions (if applicable in the area considered). Unfortunately, the employer did not accept to take part to the research (despite requests to do so). The analysis of findings pointed out important themes that were fundamental in order to understand the complex regulatory pattern at workplace level and to investigate the strategies and the techniques used by the employer in order to manufacture the uncertainties around the legal entitlements of riders, avoiding riders’ representatives and requests of different working conditions and employment rights. Interestingly, the data also showed working practices characterised by control and unilateral imposition of terms and conditions that could potentially help the understanding of the nature of working relationship and legal status of riders.

9.3.2 Main research question

It is the above four supplementary questions which, when taken together, provide a more coherent and systematic answer to the main research question of the thesis, namely: ‘how do employment relations actors influence the regulation of working time’, with a particular focus on the gig-economy.

From the insights to each subsidiary question, the depth and scope of the answer to the main research question can be presented. First, from a methodological and disciplinary perspective, one of the key contributions that this thesis advances is a more comprehensive approach to aspects of employment regulation generally, and for working time in the gig-economy specifically. It is argued these regulatory dimensions can be useful for legal scholars and other social scientists when approaching regulatory studies. In order to do so, the research developed an analytical framework (Chapter 2; and also Inversi et al., 2017) that considered multiple dimensions (legal, negotiated and unilateral) and different levels (international, national and workplace). In
particular, the framework has demonstrated utility and allowed understanding about ‘how’ regulatory space specific to working time in the gig-economy was occupied and contested by various actors, along with evidence on dominant actor actions and regulatory dimension influences. This points convincingly to both multiple and contestable regulatory spaces shaped by agency capacity and structure. In Chapter 8 it was shown that the framework provided the possibility to develop a multidisciplinary and multilevel approach. The qualitative study conducted at workplace level on the realities of working time regulation for Deliveroo riders evidenced how businesses in the gig-economy gravitate to a dominant ‘unilateral’ form of control over labour and this powerful actor in the regulatory space for working time.

Furthermore, a more holistic approach towards the conceptualisation and the definition of working time has been advanced, drawing from sociology and industrial relations scholarships. The broader conceptualisations proved useful in order to discuss regulatory challenges and implications on the topic of working time regulation. This adds to current on-going debates around the definition of working time, where the common traditional legal definition appears to be unsatisfactory in addressing the issues brought from new working practices considered throughout this thesis. In fact, the research advances the importance of looking at issues of working time ‘utilisation’, which might not be considered relevant at a legal level of analysis, because of the narrow doctrinal legal approach.

In summary, an important generalizable thematic that emerges from the analysis is the processes of fragmentation of working time, specifically in terms of duration, organisation and utilisation; but also more generally in terms of employment conditions between sources of regulation. This fragmentation entails uncertainties about the effective realities of work and its regulation, and it is found to be steered by employers in order to maintain control via practices of unilateral rule imposition, using spaces ceded by other (institutional) actors (such as the Government and other State review bodies), through a variety of methods that favour more permissive forms of voluntary regulation (i.e.
contractual ambiguity avoids harder employment law; arrangements supporting employer self-regulation; bogus self-employment; discourse narratives; and voluntary patterns of negotiated order that privilege managerial prerogative over joint collective regulation.

9.4 Implications and insights for future research

In this section five specific suggestions about possible fruitful future research issues are outlined, drawn from themes that have emerged throughout the data analysis and which build on the contributions of this thesis.

First is an area related to working time as an element of ‘workers’ health, safety and wellbeing’. The data analysis pointed out information regarding important issues that were concerning Deliveroo riders. In particular, the issue of health insurance and compensation in case of accidents occurred while working in the streets was a major worry for them. Additionally, riders often commented on the high risk of violence and robbery that many have experienced, either directly or indirectly. These challenges represent new avenues for future research neglected in employment and regulation studies, with potentially important new policy impact agendas on health, safety and wellbeing needs for a growing economic sector of gig economy workers.

A second interesting point that deserves further attention in the debate on the regulation of employment is the changing notion of ‘new working and labour organising spaces’. The case of the food delivery in the gig-economy has brought particular challenges in terms of how workers perceive and experience their spaces of work, in connection with new forms of collective organisation and demand for labour rights. The boundaries of the workplace are changing: besides a ‘virtual space’, which may be regulated through technologies and mobile applications, riders have to perform work on the streets and in an urban environment, mainly in cities. Interestingly, union organisers and activists pointed out that these workers may represent the new form of working class identity, fighting for better working conditions not in and outside factory gates, as blue collar’s workers did in the last century, but by
mobilising on the streets which is, simultaneously, both a public space and the location of the means of production for a growing and emerging sector of the economy. Evocatively, riders claim that ‘la rue est notre usine’, pointing out the similarity in the struggle for obtaining better working conditions and the change in terms of switch of the battle for workers riders outside the factories’ gates. Thus the spatial dynamics of work and collective labour organising are much more physically transparent, visibly contentious and personally dangerous, while also being immediately present across complex sprawling urban spaces with ‘no fixed employment abode’ in the traditional sense.

Picture 2: Deliveroo and Foodora riders protesting in Place de la Bastille (Paris, 2017)

Source: Smoke - Collectif LaMeute

A third important theme that emerged through the data analysis is connected to what may be defined as the ‘working biographies of people operating within the gig-economy’. During the interviews, riders’ life visions and career

126 Translation: ‘The street is our factory’. Evocative pictures can be found on the blog of a collective organisation of riders in France https://laruestnotreusine.wordpress.com/page/1/ (last access, 31st October 2018).
progressions were often pointed out as relevant to their working experience, albeit not specific to working time. For instance, riders would comment they subjectively perceived working for Deliveroo as a 'stepping stone' and a temporary (precarious) condition, in the hope for a career progression in which the main objective was being able to buy a car and become an Uber driver. Working as a driver was perceived as a better job because of security, safety and working conditions, and therefore a more safe way of working was seen as a sort of 'promotion' owing to the perception of a gig-worker hierarchy status. Future research could therefore be connected with a more longitudinal analysis of careers in gig-economy work, which could also provide information on the duration of working time in a job perspective (how long people stay in the job and why do they leave or change job).

A fourth avenue for possible future research, noted in part in the data during this thesis, is the new forms of ‘collective solidarity and unionisation’, with possible international organising links. Recent evidences of this have emerged in particular in Europe and are particularly useful to add knowledge to the regulatory space debate and to the understanding of contemporary trade unionism.

A fifth and final emergent theme that offers potential further research revolves around the ‘relationships between work and new technologies’ that enable new forms of organisation. The extent of control over work organisation emerged in various area of the data analysis (see in particular Chapter 7) and it could be related to the discussion around new and old systems of capitalist control. A new look at how these patterns emerge and evolve across and between gig-economy companies, with different typologies of digitalised control over labour effort and time, would be an area ripe for further research on the topic.
9.5 Limitations of the thesis

Although academic work has the aim of being insightful, explanatory robust and theoretically informed as possible, there are always some limitations that come with any research work.

Regarding the theoretical limitation of the thesis, it has to be recognised that the research has a lack of engagement with the concept of power, which for instance other research on regulation and regulatory space has engaged with (Dundon et al., 2014). The decision of not engaging with this area of study (Pfeffer 1981; Korpi 2006) was a practical one owing to what can and cannot be addressed in a single doctoral thesis. Thus there is always a need to simplify the theoretical engagement that otherwise would have been too large, in particular when considering the research as multidisciplinary and investigating multiple regulatory levels. Therefore, the decision has been a pragmatic one driven by the consciousness of timeframes and workload limits. Notwithstanding this limitation to exclude power as a theoretical lens, it can be noted however that power has been emergent in the data and the discussion throughout the thesis, particularly dominant narratives, discourses and actions of employers and the State as more power actors groups.

There are a number of limitations that have already been accounted for in chapter 4 on the methodological aspects of the thesis. First of all, due to the refusal of Deliveroo management to take part in the research, the employer perspective has been restricted to those materials that were publicly available (such as YouTube videos, press releases and official declarations). Secondly, the thesis considers one gig-economy business, which is Deliveroo, which has been classified as an on-demand local based type of platform business belonging to the wider gig-economy (ILO 2016). The present study can be generalized for those businesses that provide similar local-based gig-economy services and not other forms of businesses (such as, for instance, Amazon Mechanical Turk), which represent part of the gig economy but are organised and structured in a significantly different way (i.e. crowd-working). Thirdly, the case study approach can potentially restrict the possibility of generalization of
findings, however this limitation has been counterbalanced by triangulation, through the use of multiple sources (documental, legal and policy) and a variety of actors interviewed and considered. Finally, limitations related to the timeframe and the scheduling of the data collection need to be taken in account. Because of time constraints, the research was not able to take in account changes in contracts and working conditions after the summer period of July 2017 in Manchester and of August 2017 in London and Brighton. This meant that only limited data was available on the changes occurred after those dates: in particular, the research does not take account of changes in the suppliers’ agreements made in more recent times, likewise might not comment on recent judicial developments, as the very recent decision by the High Court on the Deliveroo case.127

9.6 Summary and conclusion

In conclusion, the research has produced a number of themes that are important for contributing to regulatory theory, knowledge and debate. Findings from the research conducted at all levels can be useful for policymakers, research bodies and trade union organisations in order to inform discussions, acknowledge issues and features of contemporary forms of work and new business organisations. The research supports the advancement of workers’ rights in the context of the gig-economy and, by taking the issue of working time, it outlined the fragmentation occurring in terms of agency and sources of regulation which favours employers’ action and influences over the action of other actors; notwithstanding evidence of the capacity of workers (and unions) to organise to protect or advance their interests at times (e.g. the regulatory spheres of importance to them).

This final Chapter has provided summary answers to the research questions. It has advanced theoretical and analytical contributions to the regulatory

literature. Finally, it has outlined a number of potential areas of further investigation that could drive future research, and it has also took account of the limitations of the study, suggesting possibility for improvement in future work.
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## APPENDICES

### Appendix 1

#### A. Table of Interviews’ Participants

<table>
<thead>
<tr>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
</table>
| ILO                                                                         | ILO Officer 1  
ILO Officer 2 |
| ETUC                                                                        | ETUC Officer 1                               |
| TUC                                                                         | TUC Officer 1                                |
| New Economics Foundation (NEF)                                              | NEF Respondent 1                             |
| Royal Society for the Encouragement of Arts, Manufactures and Commerce (RSA) | RSA Respondent 1                             |
| National Employer Representative                                           | NatEmployer Manager 1  
NatEmployer Manager 2 |
| Retail Employer Management                                                 | Retail Manager 1                             |
| ACAS                                                                       | ACAS Senior Officer 1                        |
| New Economy Manchester (NEM)                                                | NEM Respondent 1                             |
| Independent Workers Union of Great Britain (IWGB)                          | IWGB Officer 1  
IWGB Officer 2  
IWGB Officer 3  
IWGB Officer 4 |
| National Union 1                                                           | NatUnion Officer 1                           |
| Deliveroo Riders (Manchester)                                              | Manchester rider 1  
Manchester rider 2  
Manchester rider 3  
Manchester rider 4  
Manchester rider 5  
Manchester rider 6  
Manchester rider 7  
Manchester rider 8  
Manchester rider 9  
Manchester rider 10  
Manchester rider 11 |
| Deliveroo Riders (Brighton)                                                | Brighton rider 12  
Brighton rider 13  
Brighton rider 14  
Brighton rider 22  
Brighton rider 23  
Brighton rider 24  
Brighton rider 25 |
| Deliveroo Riders (London) | Brighton rider 26  
| | Brighton rider 27  
| | Brighton rider 28  
| | Brighton rider 29  
| | Brighton rider 30  
| | London Spitalfields rider 15  
| | London Spitalfields rider 16  
| | London Spitalfields rider 17  
| | London Spitalfields rider 18  
| | London Spitalfields rider 19  
| | London Camden and KT 20  
| | London Camden and KT 21  
| | London Camden and KT 31  
| | London Camden and KT 32  
| | London Camden and KT 33  
| | London Camden and KT 34  
| | London Camden and KT 35  
| | London Camden and KT 36 |
Appendix 2

A. Set of interview questions and participants information materials

a) Interview questions: trade unions

Introduction
Brief Introduction about the Research and the Researcher
- Please introduce yourself: who you are, what role do you cover in the Union? How long have you been a Trade Union Officer?
- Can you tell me about your experience of being a trade union Officer?
- Do you actively participated in campaigns regarding working time issues (workers wellbeing, contractual arrangements, work-life balance...)? Can you talk about what you did? Where you an organiser?

Working time Duration
Explaining the meaning of working time duration (numbers of hours, long hours, short hours)
- How would you describe working time duration regulated in the workplace?
- Are you been able to influence the determination of working hours for workers?
- Do you know if there is use of ‘opting out’ clauses? What is your experience on the use of these clauses?
- What do workers think about the regulation of working time duration?
- Can you talk to me about the degree of flexibility that is required to workers?
- Are employees able to influence how much they work?
- Are trade unions able to influence and address the same issues as above? If you are not able, why?
- What is your experience in trying to influence the way working time is set at the workplace?
- What is your experience in work-life balance issues of the workforce?

Working time Organisation
Explaining the meaning of working time organisation (scheduling, shifts, night work)
- How would you describe working time organisation regulated in the workplace?
• Do workers generally know their schedule in advance? How much advance notice do they get?
• What is their experience on working on flexible schedules?
• Are workers able to influence when they work?
• Are trade unions able to influence when they work?
• What is your experience in trying to influence how of working time is set?
• How does the organisation of working time fit the workers’ work life balance?

Utilisation
Explaining the meaning of working time utilisation
• From your experience, do you think that for the pace of work at the workplace, in relation to the time that employees work, is equitable/satisfactory?
• Have workers experienced changes on the pace/speed of working time? Or in the way ‘inactive’ time spent in work-related activity are considered?
• Are workers able to influence the rhythm of their work? How? If they are not able, why?
• Are trade unions able to influence the rhythm of work within the workplace? How? If they are not able, why?
• What is your experience in trying to influence the pace/rhythm of working time?

Context factors
• Do you know if there are technologies at work that measure or manage the duration/organisation/pace of working time?
• How the gig-economy model of business influences the regulation of working time?
• Do you use social network for communicating publicly about the workplace or to campaign?
• Do you think that ‘Brexit’ will have an impact on working time (in terms of new regulations, economic or organisational impact)?

Conclusion
• Would you like to tell me anything else about working time issues?

b) Interview questions: managers (company level)

Introduction:
Brief Introduction about the Research and the Researcher
- Please introduce yourself: who you are, what do you do and who you work for, for how long?
- Please, tell me about the organisation that you manage: how many employees do you have? How working time is organised for the core workforce? Which type of contracts do you use (if you know)?
- Do you have a HR policy on working time, work life balance, health and safety seen as workers wellbeing connected with working time?
- Is the company unionised or not?
- Do you have work councils? Other forms of employee involvement?

Context and Work
- Can you tell me about how you manage working time within the company?
- What are the HR policies in managing working time, Work Life balance, Rests?
- Is working time considered as a health issue? Do you have experience of problems or issues in managing working time/schedules of employees?

Duration
Explaining the meaning of working time duration
- What is the company arrangement on working time duration? How many hours on average do employees work? Do employees work overtime? Is overtime paid at premium rates?
- Do you generally use the opting-out clause (explaining opting out in labour contracts)?
- Are employees consulted for flexibility? What do you think about it? Is it valuable?
- Do you apply any smart working policy? Do you discuss smart working with the employees?

Organisation
Explaining the meaning of working time organisation
- How working time is organised in the workplace? How do you schedule time at work?
- Do you have flexibility?
- How and when do you give notice to your workers about changes to their hours?
- Do you consult the employees on working time changes?
- If yes, how do you find this process? How does it work?
• If no, why?
• Are you finding difficult to organise roasters? What are the main issues that you identify?
• Are you using any technology that helps you to organise working time?

Utilisation
Explaining the meaning of working time utilisation
• Would you say that the workplace is structured strictly in terms of how time is set? Do the employees have their own discretion over pace of working time?
• Do you think that the pace of work has increased in recent years? Why? Could you give some example?
• Do you think intense working pace could have effects on workers’ wellbeing? Do you consider it in your work-life balance policies?
• Do you consult the employees on working time organisation?
• If yes, how do you find this process? How does it work?
• If no, why?

Context factors
• Do you have technologies at work that measure or manage the duration/organisation/pace of working time?
• Regarding on the issues of working time, do you involves employees in decision making? And How? Why?
• Do you use social network for communicating publicly about the workplace (with your employees, society in general?)
• Do you think that ‘Brexit’ will have an impact on working time regulation (in terms of new regulations, economic or organisational impact)?

Conclusion
• Would you like to tell me anything else about working time regulation in the company?

c) Interview questions: employees/workers/riders

Introduction
• Please introduce yourself: who you are, what do you do and who you work for?

Context and Work
Can you tell me about your work? What is your role? How long have you been working for this company? What type of contract do you have (if you know)?

How is the work organised?

What is your arrangement? Do you work on hourly based pay or piece rate?

Is your workplace unionised? Are you part of a Trade Union?

What is your overall experience of working for X? Is working for X convenient for you in terms of time arrangement?

**Duration**

Can you describe your working time arrangement? How many hours do you work on average per week?

Are you happy with the amount of hours that you work?

Would you like to change this arrangement? Do you think you could change?

Can you talk to me about the degree of flexibility that you have in modifying your working time?

Are you able to influence how much you work? How? If you would like to have your hours changed (work more hours or work less), what could you do?

If you are not able, why?

What is your experience in trying to influence the amount of hours you want to work?

What is your experience in conciliating work and life activities?

**Organisation**

Can you tell me about the organisation of your working time? When do you work? Do you do shift work? Which shift do you work?

Do you know your schedule in advance? How much advance notice do you get?

What is your experience on working on flexible schedules?

Are you able to influence when you work? How? Are you consulted or involved? How consulted/involved?

If you are not able, why?

What is your experience in trying to influence how of your working time is set?

What is your experience in balancing the working hours with your social activities?

How does the organisation of your working time fit your work life balance? Did you have any issues of scheduling flexibility?
Utilisation

- Do you think that the pace of your work, in relation to the time that you work, is equitable/satisfactory?
- Have you experienced changes on the pace/speed of your working time since you have started working?
- Are you able to influence the rhythm of your work? How?
- If you are not able, why?
- What is your experience in trying to influence the pace/rhythm of your work?
- Do you think that the pace of your working time should be discussed with your manager? Did you have experience of discussion about this topic? How did you do it? And why?

Context factors

- Do you have technologies that measure or manage the duration/organisation/pace of working time? (ask for examples; stories)
- Regarding on the issues of working time, did you organised with other workers? And How?
- Do you use social network for communicating publicly about the workplace (with other employees, society in general or management?)
- Are you aware about your legal entitlement on working time? (ask about levels depending on answer)

Conclusion

- Would you like to tell me anything else about working time issues?

d) Interview questions: policy advisors/policy makers

General context

- What are the 5 priority issues in which your organisation (foundation, association…) as policy advisor it is interested in influencing/regulating?
- What are you doing about it? How do you go about seeking influence?
- Why these issues (and regulation) are important for your association?

The policy making process

- How do you go about promoting your policy suggestions?
- What are the (NEF, TUC, etc.) strategies of to influence policy makers?
• Who are your keys allies in supporting your agenda?
• Can you tell me details about the process of policy making?
• Who are you trying to reach in delivering your message and why them?
• Do you have any formal or informal link with Trade Unions and Employers groups?
• Do you have any formal or informal link with Governments, civil servants or international bodies?
• How are they interested in what you are doing?
• Who are they trying to influence and why?
• What outcome did you have in the past on regulation that you promoted?
• What has been your imprint in the new regulation? Could you provide some example?

Working time
• Are you looking at working time or working time related matters?
• In this respect could you tell me about your activity in promoting your agenda?
• Does ‘time’ feature or relate to other areas of interest? (i.e. Health and Safety, Technology, Gig Economy, flexibility, etc.)

Conclusion
• Would you like to tell me anything else about working time issues?
My name is Cristina Inversi and I am a doctoral research student at the Alliance Manchester Business School.

I am writing to you in order to invite you to participate in my doctoral research project that is focused on working time regulation in the UK workplaces. A key aim of the project is to understand how workers, and their unions, may influence working time arrangements. These questions are particularly important in light of the current political environment, and the uncertain labour law regulatory pattern of the UK following the results of the EU Referendum.

The research is particularly interested in understanding how organised workers can effectively respond to regulatory changes and new working practices. Your experience in these areas would greatly assist the project and help to support the future of workers’ rights.

The research will involve interviews with key union officials as well as union members and elected representatives. Your participation would be very important in order to provide insightful information about the TUC role and activity, workplace negotiation processes, in order to improve the regulation of working time.

All interview information will be completely anonymised and the confidentiality of all participants, including unions, is guaranteed. I appreciate that you must be extremely busy, but I would be very grateful if you would agree to participate in this process at some stage over the coming weeks. Naturally, I would be delighted to answer any queries you may have, or to discuss any issues arising out of the above.

I very much hope that you will be in a position to assist with my research and I look forward to speaking with you.

Yours sincerely,

Cristina Inversi

cristina.inversi@manchester.ac.uk
**Explaining employment regulation: the case of working time**

**Participant Information Sheet**

You are being invited to take part in a research study PhD project conducted at the Alliance Manchester Business School of the University of Manchester about working time hours.

Before you decide it is important for you to understand why the research is being done and what it will involve. Please ask if there is anything that is not clear or if you would like more information. Thank you for reading this.

**Who will conduct the research?**

Cristina Inversi, PhD student at the University of Manchester, AMBS East, C1 Office, M13 9SS, Manchester

**Title of the Research**

*Explaining Employment Regulation: the case of working time regulation*

**What is the aim of the research?**

The main purpose of this research is to investigate how working time is regulated, according to peoples’ needs or their preferences.

**Why have I been chosen?**

The participants chosen have been considered as important who can provide insight and information about policy advisory and policy making activities.

**What would I be asked to do if I took part?**

Participants will be asked about the priority issues that their organisation is considering when advising and making policies. In particular, questions will be asked in relation to the past, the present and the future of employment regulation and policies in the area of working time.

**What happens to the data collected?**

The data collected will only be used as evidence for the research. Any quotes will be anonymous and you will not be identified.

**How is confidentiality maintained?**
No names or personal data will be stored. Data will be securely stored by the researcher in an encrypted hard drive that will be always kept safe and only used for the purposes of the research. Data will be anonymous and names will be replaced with ‘fantasy’ names (or an ID code).

What happens if I do not want to take part or if I change my mind?

It is up to you to decide whether or not to take part. If you do decide to take part you will be given this information sheet to keep and be asked to sign a consent form. If you decide to take part you are still free to withdraw at any time without giving a reason and without detriment to yourself.

Will I be paid for participating in the research?

You will not be paid for your participation in the research. The researcher may cover the costs of public transportation if needed, and coffee and tea.

What is the duration of the research?

The interview will be taking approximately 30 to 40 minutes.

Where will the research be conducted?

The research will be conducted in a public place agreed with the participant: it could be the workplace, a trade union office, the University or a café, according to the participant preference.

Will the outcomes of the research be published?

Yes, it is likely that the outcome of the research will be published in a Scientific Journal and all confidentiality and anonymity assurance above will be maintained.

Contact for further information

Email: cristina.inversi@manchester.ac.uk; Tel: 07427067706.

What if something goes wrong?

You should contact the researcher immediately in order to explain the issues. The research will be available to discuss concerns and problems that might arise before or after the interview.

If a participant wants to make a formal complaint about the conduct of the research they should contact the Head of the Research Office, Christie Building, University of Manchester, Oxford Road, Manchester, M13 9PL.
g) Consent form

_Explaining employment regulation: the case of working time_

**CONSENT FORM**

If you are happy to participate please complete (tick the boxes) and sign the consent form below.

1) I confirm that I have read the attached information sheet on the above project and have had the opportunity to consider the information and ask questions and had these answered satisfactorily.

2) I understand that my participation in the study is voluntary and that I am free to withdraw at any time without giving a reason and without detriment to any treatment/service.

3) I understand that the interviews will be audio recorded.

4) I understand that the interviews will be safely stored and used by the researcher only.

I agree to take part in the above project.

<table>
<thead>
<tr>
<th>Name of Participant</th>
<th>Date</th>
<th>Signature</th>
</tr>
</thead>
<tbody>
<tr>
<td>......................</td>
<td>......</td>
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</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name of person taking consent</th>
<th>Date</th>
<th>Signature</th>
</tr>
</thead>
<tbody>
<tr>
<td>......................</td>
<td>......</td>
<td>...........</td>
</tr>
</tbody>
</table>
Appendix 3

A. Survey Template

Working Time Survey

Q0 - Introduction
Thank you for agreeing to participate in this research. The current research project is conducted by Cristina Inversi, PhD Student at the Alliance Manchester Business School. The research seeks to explore how working time is organized at the workplace.

The survey should take less than 15 minutes to complete and is completely anonymous. At no point will you be asked to provide your name or any other identifying information.

Only the researcher will have access to the data. If you are interested in finding out more about this research project, or have any further questions please do not hesitate to contact me at cristina.inversi@manchester.ac.uk and I will be more than happy to answer any queries you might have.

Once again, thank you for your participation.

T1 Section 1 - General information

About yourself

Q1 Your Gender:

- Male  (1)
- Female  (2)
- Other  (3)
- Prefer not to say  (4)
Q2 Specify your age range:

- Under 16 (1)
- 16 - 24 (2)
- 25 - 34 (6)
- 35 - 45 (7)
- Over 45 (8)

Q3 Most recent level of study:

- Primary education (1)
- Lower secondary education (5)
- Upper secondary education (6)
- Post - secondary non tertiary education (2)
- Bachelor Degree (3)
- Masters Degree or other Postgraduate Course (4)
- Other (Please specify) (7)
- I don't know (8)

Q4 Are you still in education?

- Yes (1)
- No (2)
Q5 Are you from:

- UK (1)
- Other EU country (2)
- Non-EU country (3)

T2 About your work:

Q6 Do you have more than one job?

- Yes (1)
- No (2)

Q7 For which food delivery company do you work? (You can select more than one option if you are working for more than one delivery company)

- Deliveroo (1)
- UberEats (2)
- Jinn (3)
- Other (Please specify) (4)

Q8 If you work for more than one food delivery company, please identify just one company as the basis for your responses to this survey:

- Deliveroo (1)
- UberEats (2)
- Jinn (3)
- Other (Please specify) (4)
Q9 How long have you been working for this food delivery company?

- 0-3 months (1)
- 4-6 months (2)
- 7 months - 1 year (3)
- More than 1 year (4)

Q10 How are you paid?

- By hour (1)
- By delivery (2)
- By hour + delivery bonus (3)
- Other (Please specify) (4)

Q11 Where do you work?

- Manchester (1)
- London (2)
- Brighton (3)
- Other (Please specify) (5)

Q12 Are you a Trade Union member?

- Yes (1)
- No (2)
- I don't know (3)
Q13 Is there a company management office in the city where you work?

- Yes (1)
- No (2)
- I don't know (3)

Q14 Is there a call center that you can call for work related issues?

- Yes (1)
- No (2)
- I don't know (3)

T3 Section 2 - Working time and the job

Q15 Are you working as an employee or as a self-employed?

By 'employee' we mean someone who gets a salary from an employer or a temporary employment agency. 'Self-employed' includes people who have their own business or are partners in a business as well as freelancers.

- Employee (1)
- Self-employed (2)
- I don't know (3)

Q16 Do you have legal rights in relation to working time in your job (such as maximum limit of weekly hours, paid holiday leave, rest breaks, etc.)?

- Yes (1)
- No (2)
- I don't know (3)
Q17 Please, tick the box that you consider most appropriate to describe your situation:

| Would you consider legal employment rights (e.g. working time) to be a positive thing? (1) | Strongly Disagree (1) | Disagree (2) | Neither Disagree nor Agree (3) | Agree (4) | Strongly Agree (5) |
| Do you think that Trade Union membership is important to help dealing with working time issues? (2) | | | | | |
Q 18 Please, tick the box that you consider most appropriate to describe your situation:
How often?

<table>
<thead>
<tr>
<th>I am able to discuss working time issues with my management (1)</th>
<th>Never (1)</th>
<th>Rarely (2)</th>
<th>Sometimes (3)</th>
<th>Often (4)</th>
<th>Always (5)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>I find it easy to discuss my working time issues with my management (2)</th>
<th>Never (1)</th>
<th>Rarely (2)</th>
<th>Sometimes (3)</th>
<th>Often (4)</th>
<th>Always (5)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>My Trade Union has raised the issue of working time with my management (Leave blank if you are not a Trade Union member) (3)</th>
<th>Never (1)</th>
<th>Rarely (2)</th>
<th>Sometimes (3)</th>
<th>Often (4)</th>
<th>Always (5)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
<td></td>
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</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>My Trade Union's intervention helped to resolve issues with working time in my workplace (Leave blank if you are not a Trade Union member) (4)</th>
<th>Never (1)</th>
<th>Rarely (2)</th>
<th>Sometimes (3)</th>
<th>Often (4)</th>
<th>Always (5)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>I find it easy to organize my work through the mobile applications</th>
<th>Never (1)</th>
<th>Rarely (2)</th>
<th>Sometimes (3)</th>
<th>Often (4)</th>
<th>Always (5)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
</tbody>
</table>
Q19 If you had an issue about working time, who would you preferably contact?

- My management office  (1)
- The call center  (2)
- My union  (3)
- Other (Please specify)  (4)
<table>
<thead>
<tr>
<th>Q20 How often?</th>
<th>Never (1)</th>
<th>Rarely (2)</th>
<th>Sometimes (3)</th>
<th>Often (4)</th>
<th>Always (5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>The hours I work negatively affect my wellbeing at work (1)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The hours I work do not detract from my wellbeing at work (6)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The hours I work negatively affect my health (2)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The hours I work negatively affect my social relationships (e.g. with family and friends) (3)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The hours I work are compatible with my social relationships (7)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I find my work stressful (4)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I feel exhausted at the end of my working day (5)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Q38 Do you have any further comment?

______________________________
T4 Section 3 - The working time dimensions

3.1 - Working time duration
This subsection refers to the number of hours that you work and your preferences about it. Please, tick the box that you think is most appropriate to describe your situation.

Q21 How many hours do you usually work per week? (Please enter the number of hours)

_______________________________________________________________

Q22 Is there a minimum amount of hours that you have been told by the company that you have to work every week?

○ Yes (Please specify how many hours) (1)
_______________________________________________________________

○ No (2)

○ I don't know (3)

Q23 Is there a maximum amount of hours that you have been told by the company that you can work every week?

○ Yes (Please specify how many hours) (1)
_______________________________________________________________

○ No (2)

○ I don't know (3)
Q24 How often?

<table>
<thead>
<tr>
<th>Statement</th>
<th>Never (1)</th>
<th>Rarely (2)</th>
<th>Sometimes (3)</th>
<th>Often (4)</th>
<th>Always (5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>I am satisfied with the number of hours that I work per week (1)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I would like to work more hours (2)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I would prefer to work less hours (3)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I work a weekly fixed amount of hours (4)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I am able to change how many hours I work at my own choice (5)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>There is flexibility on the number of hours that I can decide to work from week to week (6)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>My management accommodates my preferences with regard to how many hours I work per week (7)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>In practice, it is easy to have my hours changed to suit my needs (8)</td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>
Q39 Do you have any further comment?

______________________________________________________________

T5 3.2 - Organization of time

This section refers to the organization of your work during the working day/week, the shifts and the preferences that you have on 'when you work'. By 'schedule' the questions refer to when you work, and not necessarily to the number of hours that you work.

Please tick the box that you think is most appropriate to describe your situation.

Q25 How many days per week do you usually work? (Please enter the number of days)

______________________________________________________________

-
<table>
<thead>
<tr>
<th>Q26 How often?</th>
<th>Never (1)</th>
<th>Rarely (2)</th>
<th>Sometimes (3)</th>
<th>Often (4)</th>
<th>Always (5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>I am satisfied with my working schedule (1)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>My working schedules are fixed and set by the management (2)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I can change the days that I work (3)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I can change the shifts that I work (9)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I am able to change work schedule/timings at my own choice (4)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>My manager accommodates my preferences for which shifts (schedules) I prefer to work (5)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>In practice, it is easy to have shifts changed according to my preferences (6)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I can take a break when I wish (10)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>It is easy to take weeks off (e.g. to go on holiday) (7)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>If I do not work for some weeks, then I can have my usual scheduled hours back when I</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Q40 Do you have any further comment?

____________________________________________________________________________

T6 3.2 - The rhythm of work
The rhythm of work refers to the pace and intensity of your work effort. Please tick the box that you think is the most appropriate to describe your situation.
<table>
<thead>
<tr>
<th>Q27 How often?</th>
<th>Never (1)</th>
<th>Rarely (2)</th>
<th>Sometimes (3)</th>
<th>Often (4)</th>
<th>Always (5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>The pace of my work is fair (1)</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>I am able to choose or change my speed of work (2)</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>I have enough time to get my work done (3)</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>My management accommodates my preferences on the rhythm of the workload (4)</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>My performances (e.g. delivery time, pick up time, etc.) are monitored by my management (5)</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>The monitoring of my performance affects the pace of my work (6)</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>The measurement of my performance changes my rewards (e.g. bonuses, pay rise, etc.) (7)</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
<td>○</td>
</tr>
<tr>
<td>I feel pressured to complete my work as quickly as possible (8)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The technology that measures my performance is reliable and efficient (9)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I find it useful to have a technology that measures my performance (10)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The technology that measures my performance stimulates me to be more productive (11)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Q41 Do you have any further comment?

_______________________________________________________________

–

336
B. Results

Report
Working Time Survey

Q1 - Your Gender:

<table>
<thead>
<tr>
<th>#</th>
<th>Answer</th>
<th>%</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Male</td>
<td>84.21%</td>
<td>16</td>
</tr>
<tr>
<td>2</td>
<td>Female</td>
<td>15.79%</td>
<td>3</td>
</tr>
<tr>
<td>3</td>
<td>Other</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td>4</td>
<td>Prefer not to say</td>
<td>0.00%</td>
<td>0</td>
</tr>
</tbody>
</table>

Total 100% 19

Q2 - Specify your age range:
Q3 - Most recent level of study:

<table>
<thead>
<tr>
<th>#</th>
<th>Answer</th>
<th>%</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Under 16</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td>2</td>
<td>16 - 24</td>
<td>52.63%</td>
<td>10</td>
</tr>
<tr>
<td>6</td>
<td>25 - 34</td>
<td>36.84%</td>
<td>7</td>
</tr>
<tr>
<td>7</td>
<td>35 - 45</td>
<td>10.53%</td>
<td>2</td>
</tr>
<tr>
<td>8</td>
<td>Over 45</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>100%</td>
<td>19</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>#</th>
<th>Answer</th>
<th>%</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Primary education</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td>5</td>
<td>Lower secondary education</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td>#</td>
<td>Answer</td>
<td>%</td>
<td>Count</td>
</tr>
<tr>
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<td>--------------------------------------</td>
<td>---------</td>
<td>-------</td>
</tr>
<tr>
<td>1</td>
<td>Yes</td>
<td>26.32%</td>
<td>5</td>
</tr>
<tr>
<td>2</td>
<td>No</td>
<td>73.68%</td>
<td>14</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>100%</td>
<td>19</td>
</tr>
</tbody>
</table>

**Q5 - Are you from:**

- **UK**
- **Other EU country**
- **Non-EU country**
<table>
<thead>
<tr>
<th>#</th>
<th>Answer</th>
<th>%</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>UK</td>
<td>57.89%</td>
<td>11</td>
</tr>
<tr>
<td>2</td>
<td>Other EU country</td>
<td>21.05%</td>
<td>4</td>
</tr>
<tr>
<td>3</td>
<td>Non-EU country</td>
<td>21.05%</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>100%</td>
<td>19</td>
</tr>
</tbody>
</table>

Q6 - Do you have more than one job?

Yes: 42.11% (8)
No: 57.89% (11)
Total: 100% (19)

Q7 - For which food delivery company do you work? (You can select more than one option if you are working for more than one delivery company)
Q8 - If you work for more than one food delivery company, please identify just one company as the basis for your responses to this survey:

<table>
<thead>
<tr>
<th>#</th>
<th>Answer</th>
<th>%</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Deliveroo</td>
<td>75.00%</td>
<td>18</td>
</tr>
<tr>
<td>2</td>
<td>UberEats</td>
<td>16.67%</td>
<td>4</td>
</tr>
<tr>
<td>3</td>
<td>Jinn</td>
<td>8.33%</td>
<td>2</td>
</tr>
<tr>
<td>4</td>
<td>Other (Please specify)</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>100%</td>
<td>24</td>
</tr>
</tbody>
</table>

Q8 - If you work for more than one food delivery company, please identify just one company as the basis for your responses to this survey:

<table>
<thead>
<tr>
<th>#</th>
<th>Answer</th>
<th>%</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Deliveroo</td>
<td>78.95%</td>
<td>15</td>
</tr>
<tr>
<td>2</td>
<td>UberEats</td>
<td>5.26%</td>
<td>1</td>
</tr>
<tr>
<td>3</td>
<td>Jinn</td>
<td>5.26%</td>
<td>1</td>
</tr>
<tr>
<td>4</td>
<td>Other (Please specify)</td>
<td>10.53%</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>100%</td>
<td>19</td>
</tr>
</tbody>
</table>
### Q9 - How long have you been working for this food delivery company?

<table>
<thead>
<tr>
<th>#</th>
<th>Answer</th>
<th>%</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>0-3 months</td>
<td>10.53%</td>
<td>2</td>
</tr>
<tr>
<td>2</td>
<td>4-6 months</td>
<td>31.58%</td>
<td>6</td>
</tr>
<tr>
<td>3</td>
<td>7 months - 1 year</td>
<td>26.32%</td>
<td>5</td>
</tr>
<tr>
<td>4</td>
<td>More than 1 year</td>
<td>31.58%</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>100%</strong></td>
<td><strong>19</strong></td>
</tr>
</tbody>
</table>

### Q10 - How are you paid?

<table>
<thead>
<tr>
<th>#</th>
<th>Answer</th>
<th>%</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>By hour</td>
<td>21.05%</td>
<td>4</td>
</tr>
<tr>
<td>2</td>
<td>By delivery</td>
<td>42.11%</td>
<td>8</td>
</tr>
<tr>
<td>#</td>
<td>Answer</td>
<td>%</td>
<td>Count</td>
</tr>
<tr>
<td>----</td>
<td>---------------------------</td>
<td>---------</td>
<td>-------</td>
</tr>
<tr>
<td>1</td>
<td>Manchester</td>
<td>26.32%</td>
<td>5</td>
</tr>
<tr>
<td>2</td>
<td>London</td>
<td>31.58%</td>
<td>6</td>
</tr>
<tr>
<td>3</td>
<td>Brighton</td>
<td>26.32%</td>
<td>5</td>
</tr>
<tr>
<td>5</td>
<td>Other (Please specify)</td>
<td>15.79%</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>100%</td>
<td>19</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Answer</th>
<th>%</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cambridge</td>
<td>33.33%</td>
<td>1</td>
</tr>
<tr>
<td>Cardiff</td>
<td>33.33%</td>
<td>1</td>
</tr>
<tr>
<td>Leeds</td>
<td>33.33%</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>3</td>
</tr>
</tbody>
</table>
Q12 - Are you a Trade Union member?

<table>
<thead>
<tr>
<th>#</th>
<th>Answer</th>
<th>%</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Yes</td>
<td>68.42%</td>
<td>13</td>
</tr>
<tr>
<td>2</td>
<td>No</td>
<td>15.79%</td>
<td>3</td>
</tr>
<tr>
<td>3</td>
<td>I don't know</td>
<td>15.79%</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>100%</td>
<td>19</td>
</tr>
</tbody>
</table>

Q13 - Is there a company management office in the city where you work?

<table>
<thead>
<tr>
<th>#</th>
<th>Answer</th>
<th>%</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Yes</td>
<td>89.47%</td>
<td>17</td>
</tr>
<tr>
<td>2</td>
<td>No</td>
<td>10.53%</td>
<td>2</td>
</tr>
</tbody>
</table>
Q14 - Is there a call centre that you can call for work related issues?

<table>
<thead>
<tr>
<th>#</th>
<th>Answer</th>
<th>%</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Yes</td>
<td>94.74%</td>
<td>18</td>
</tr>
<tr>
<td>2</td>
<td>No</td>
<td>5.26%</td>
<td>1</td>
</tr>
<tr>
<td>3</td>
<td>I don't know</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>100%</td>
<td>19</td>
</tr>
</tbody>
</table>

Q15 - Are you working as an employee or as a self-employed? By ‘employee’ we mean someone who gets a salary from an employer or a temporary employment agency. ‘Self-employed’ includes people who have their own business or are partners in a business as well as freelancers.
Q16 - Do you have legal rights in relation to working time in your job (such as maximum limit of weekly hours, paid holiday leave, rest breaks, etc.)?

<table>
<thead>
<tr>
<th>#</th>
<th>Answer</th>
<th>%</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Yes</td>
<td>12.50%</td>
<td>2</td>
</tr>
<tr>
<td>2</td>
<td>No</td>
<td>87.50%</td>
<td>14</td>
</tr>
<tr>
<td>3</td>
<td>I don't know</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>100%</td>
<td>16</td>
</tr>
</tbody>
</table>
Q17 - Please, tick the box that you consider most appropriate to describe your situation:

<table>
<thead>
<tr>
<th>#</th>
<th>Question</th>
<th>Strongly Disagree</th>
<th>Disagree</th>
<th>Neither Disagree nor Agree</th>
<th>Agree</th>
<th>Strongly Agree</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Would you consider legal employment rights (e.g. about working time) to be a positive thing?</td>
<td>0.00%</td>
<td>0%</td>
<td>0%</td>
<td>25.00%</td>
<td>31.25%</td>
<td>5%</td>
</tr>
<tr>
<td>2</td>
<td>Do you think that Trade Union membership is important to help dealing with working time issues?</td>
<td>0.00%</td>
<td>0%</td>
<td>0%</td>
<td>18.75%</td>
<td>37.50%</td>
<td>6%</td>
</tr>
</tbody>
</table>
Q 18 - Please, tick the box that you consider most appropriate to describe your situation: How often?

<table>
<thead>
<tr>
<th>#</th>
<th>Question</th>
<th>Never</th>
<th>Rarely</th>
<th>Sometimes</th>
<th>Often</th>
<th>Always</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>I am able to discuss working time issues with my management</td>
<td>50.00%</td>
<td>12.50%</td>
<td>25.00%</td>
<td>0.00%</td>
<td>12.50%</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>8</td>
<td>2</td>
<td>4</td>
<td>0</td>
<td>2</td>
<td>16</td>
</tr>
<tr>
<td>2</td>
<td>I find it easy to discuss</td>
<td>56.25%</td>
<td>18.75%</td>
<td>12.50%</td>
<td>6.25%</td>
<td>6.25%</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>9</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>16</td>
</tr>
<tr>
<td></td>
<td>my working time issues with my management</td>
<td>0.00%</td>
<td>25.00%</td>
<td>33.33%</td>
<td>25.00%</td>
<td>16.67%</td>
<td>2</td>
</tr>
<tr>
<td>---</td>
<td>------------------------------------------</td>
<td>-------</td>
<td>--------</td>
<td>--------</td>
<td>--------</td>
<td>--------</td>
<td>---</td>
</tr>
<tr>
<td>3</td>
<td>My Trade Union has raised the issue of working time with my management (Leave blank if you are not a Trade Union member)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>My Trade Union's intervention helped to resolve issues with working time in my workplace (Leave blank if you are not a Trade Union member)</td>
<td>8.33%</td>
<td>25.00%</td>
<td>33.33%</td>
<td>16.67%</td>
<td>16.67%</td>
<td>2</td>
</tr>
<tr>
<td>4</td>
<td>I find it easy to organize my work through the mobile applications</td>
<td>13.33%</td>
<td>0.00%</td>
<td>26.67%</td>
<td>40.00%</td>
<td>20.00%</td>
<td>3</td>
</tr>
</tbody>
</table>

Q19 - If you had an issue about working time, who would you preferably contact?
<table>
<thead>
<tr>
<th>#</th>
<th>Answer</th>
<th>%</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>My management office</td>
<td>26.67%</td>
<td>4</td>
</tr>
<tr>
<td>2</td>
<td>The call center</td>
<td>33.33%</td>
<td>5</td>
</tr>
<tr>
<td>3</td>
<td>My union</td>
<td>26.67%</td>
<td>4</td>
</tr>
<tr>
<td>4</td>
<td>Other (Please specify)</td>
<td>13.33%</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>100%</td>
<td>15</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Answer</th>
<th>%</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Email rider support</td>
<td>50.00%</td>
<td>1</td>
</tr>
<tr>
<td>you wouldn’t really call anyone if you can’t come to work just don’t</td>
<td>50.00%</td>
<td>1</td>
</tr>
<tr>
<td>show up</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>2</td>
</tr>
</tbody>
</table>
Q20 - How often?

<table>
<thead>
<tr>
<th>#</th>
<th>Question</th>
<th>Never</th>
<th>Rarely</th>
<th>Sometimes</th>
<th>Often</th>
<th>Always</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>The hours I work negatively affect my wellbeing at work</td>
<td>26.67%</td>
<td>20.00%</td>
<td>20.00%</td>
<td>33.33%</td>
<td>0.00%</td>
<td>15</td>
</tr>
<tr>
<td>6</td>
<td>The hours I work do not detract from my wellbeing at work</td>
<td>6.67%</td>
<td>20.00%</td>
<td>60.00%</td>
<td>0.00%</td>
<td>13.33%</td>
<td>2</td>
</tr>
</tbody>
</table>
### Wellbeing at Work

<table>
<thead>
<tr>
<th>Question</th>
<th>Percentage</th>
<th>Count</th>
<th></th>
<th>Count</th>
<th></th>
<th>Count</th>
<th></th>
<th>Count</th>
<th></th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>The hours I work negatively affect my health</td>
<td>20.00%</td>
<td>3</td>
<td></td>
<td>46.67%</td>
<td>1</td>
<td>0.00%</td>
<td>0</td>
<td>15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The hours I work negatively affect my social relationships (e.g. with family and friends)</td>
<td>13.33%</td>
<td>2</td>
<td></td>
<td>33.33%</td>
<td>5</td>
<td>26.67%</td>
<td>4</td>
<td>15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The hours I work are compatible with my social relationships</td>
<td>6.67%</td>
<td>1</td>
<td></td>
<td>40.00%</td>
<td>6</td>
<td>13.33%</td>
<td>2</td>
<td>15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I find my work stressful</td>
<td>6.67%</td>
<td>1</td>
<td></td>
<td>33.33%</td>
<td>5</td>
<td>20.00%</td>
<td>3</td>
<td>15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>I feel exhausted at the end of my working day</td>
<td>0.00%</td>
<td>0</td>
<td></td>
<td>26.67%</td>
<td>4</td>
<td>40.00%</td>
<td>6</td>
<td>15</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Q38 - Do you have any further comment?**

Do you have any further comment?

I am classed as self employed by Deliveroo, however I am clearly an employee

I think that is not fair that we are considered self-employed

On the previous page I think it is important to have the legal distinctions between self employed independent contractor and self employed worker, I feel I am not an employee or and independent contractor but I am a limb b worker who is self employed but is undertaking business for Deliveroo
Q21 - How many hours do you usually work per week? (Please enter the number of hours)

20
20
33
72 hours
30
25 hours
8
40
35
10
50
30
35-40
25

Q22 - Is there a minimum amount of hours that you have been told by the company that you have to work every week?
<table>
<thead>
<tr>
<th>Answer</th>
<th>%</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>20.00%</td>
<td>1</td>
</tr>
<tr>
<td>2x 1800-2100 on 2 weekends per month</td>
<td>20.00%</td>
<td>1</td>
</tr>
<tr>
<td>6</td>
<td>20.00%</td>
<td>1</td>
</tr>
<tr>
<td>Have to work 2 days out of Fri sat sun.</td>
<td>20.00%</td>
<td>1</td>
</tr>
<tr>
<td>You 'had' to work two of fri/sat/sun night every two weeks</td>
<td>20.00%</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>5</td>
</tr>
</tbody>
</table>

**Q23 - Is there a maximum amount of hours that you have been told by the company that you can work every week?**

<table>
<thead>
<tr>
<th>#</th>
<th>Answer</th>
<th>%</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Yes (Please specify how many hours)</td>
<td>7.14%</td>
<td>1</td>
</tr>
<tr>
<td>2</td>
<td>No</td>
<td>85.71%</td>
<td>12</td>
</tr>
<tr>
<td>3</td>
<td>I don't know</td>
<td>7.14%</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>100%</td>
<td>14</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Answer</th>
<th>%</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>35</td>
<td>100.00%</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>1</td>
</tr>
</tbody>
</table>
Q24 - How often?

1. I am satisfied with the number of hours that I work per week
   - Never: 0.00%
   - Rarely: 14.29%
   - Sometimes: 64.29%
   - Often: 21.43%
   - Always: 0.00%

2. I would like to work more hours
   - Never: 0.00%
   - Rarely: 14.29%
   - Sometimes: 35.71%
   - Often: 50.00%
   - Always: 0.00%
<table>
<thead>
<tr>
<th></th>
<th>I would prefer to work less hours</th>
<th>7.14%</th>
<th>1</th>
<th>42.86%</th>
<th>6</th>
<th>42.86%</th>
<th>6</th>
<th>7.14%</th>
<th>1</th>
<th>0.00%</th>
<th>0</th>
<th>14</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>I work a weekly fixed amount of hours</td>
<td>42.86%</td>
<td>6</td>
<td>7.14%</td>
<td>1</td>
<td>7.14%</td>
<td>1</td>
<td>28.57%</td>
<td>4</td>
<td>14.29%</td>
<td>2</td>
<td>14</td>
</tr>
<tr>
<td>5</td>
<td>I am able to change how many hours I work at my own choice</td>
<td>14.29%</td>
<td>2</td>
<td>0.00%</td>
<td>0</td>
<td>14.29%</td>
<td>2</td>
<td>14.29%</td>
<td>2</td>
<td>57.14%</td>
<td>8</td>
<td>14</td>
</tr>
<tr>
<td>6</td>
<td>There is flexibility on the number of hours that I can decide to work from week to week</td>
<td>14.29%</td>
<td>2</td>
<td>0.00%</td>
<td>0</td>
<td>7.14%</td>
<td>1</td>
<td>14.29%</td>
<td>2</td>
<td>64.29%</td>
<td>9</td>
<td>14</td>
</tr>
<tr>
<td>7</td>
<td>My management accommodates my preferences with regard to how many hours I work per week</td>
<td>35.71%</td>
<td>5</td>
<td>0.00%</td>
<td>0</td>
<td>21.43%</td>
<td>3</td>
<td>21.43%</td>
<td>3</td>
<td>21.43%</td>
<td>3</td>
<td>14</td>
</tr>
<tr>
<td>8</td>
<td>In practice, it is easy to have my hours changed to suit my needs</td>
<td>14.29%</td>
<td>2</td>
<td>0.00%</td>
<td>0</td>
<td>21.43%</td>
<td>3</td>
<td>21.43%</td>
<td>3</td>
<td>42.86%</td>
<td>6</td>
<td>14</td>
</tr>
</tbody>
</table>
Q39 - Do you have any further comment?

Do you have any further comment?

In practice I need to work when it is busy - I can't choose to work during quiet periods if I prefer, because there is no work

Near impossible to get more hours. But very easy to get less

The biggest problem I have is the split shifts. I have a long unpaid break between shifts but work is too far away to go home during that time. It's a real pain. It's a really long day for me with hours of not earning any money in the middle.

I chose when to work by logging in and marking myself available I do not have to arrange this with deliveroo - this means these questions don't really apply to me.

I can choose how many hours and when work every day

Deliveroo changes hours as they wish the drivers have very little influence on the hours we are offered most people are offered significantly less hours an they want

In Brighton we don't have hours per se. I can log in when I want. When I say i want to work more hours, I want there to be more hours when there's enough orders floating about that it would be worth my while working
Q25 - How many days per week do you usually work? (Please enter the number of days)

<table>
<thead>
<tr>
<th>Days per Week</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
</tr>
<tr>
<td>5/6</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
</tr>
</tbody>
</table>
### Q26 - How often?

- **Never**
- **Rarely**
- **Sometimes**
- **Often**
- **Always**

<table>
<thead>
<tr>
<th>#</th>
<th>Question</th>
<th>Never</th>
<th>Rarely</th>
<th>Sometimes</th>
<th>Often</th>
<th>Always</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>I am satisfied with my working schedule</td>
<td>7.14%</td>
<td>14.29%</td>
<td>42.86%</td>
<td>6.28%</td>
<td>7.14%</td>
<td>14</td>
</tr>
<tr>
<td>2</td>
<td>My working schedules are fixed and set by the management</td>
<td>50.00%</td>
<td>7.14%</td>
<td>14.29%</td>
<td>7.14%</td>
<td>21.43%</td>
<td>14</td>
</tr>
<tr>
<td>3</td>
<td>I can change the days that I work</td>
<td>0.00%</td>
<td>7.14%</td>
<td>14.29%</td>
<td>7.14%</td>
<td>71.43%</td>
<td>14</td>
</tr>
<tr>
<td>Q40 - Do you have any further comment?</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>----------------------------------------</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Do you have any further comment?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>questions dont match with fee per drop</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I can take a break whenever but i don't get paid for that time.</td>
<td></td>
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<td></td>
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<td></td>
</tr>
<tr>
<td>The hours I work depend on when it will be busy. As I get paid per delivery it mean that when it's quiet I might get 0/1 order an hour which is well below the minimum wage. Therefore if I want to survive I need to work really unsociable hours like Friday/Saturday and Sunday evenings.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Q27 - How often?

<table>
<thead>
<tr>
<th>#</th>
<th>Question</th>
<th>Never</th>
<th>Rarely</th>
<th>Sometimes</th>
<th>Often</th>
<th>Always</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>The pace of my work is fair</td>
<td>0.00%</td>
<td>7.69%</td>
<td>1 61.54%</td>
<td>8 15.38%</td>
<td>2 15.38%</td>
<td>2 13</td>
</tr>
<tr>
<td>2</td>
<td>I am able to choose or change my speed of work</td>
<td>0.00%</td>
<td>23.08%</td>
<td>3 38.46%</td>
<td>5 30.77%</td>
<td>4 7.69%</td>
<td>1 13</td>
</tr>
<tr>
<td>3</td>
<td>I have enough time to get my work done</td>
<td>0.00%</td>
<td>7.69%</td>
<td>1 38.46%</td>
<td>5 30.77%</td>
<td>4 23.08%</td>
<td>3 13</td>
</tr>
<tr>
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<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>4</td>
<td>My management accommodates my preferences on the rhythm of the workload</td>
<td>46.15%</td>
<td>6</td>
<td>23.08%</td>
<td>3</td>
<td>23.08%</td>
<td>3</td>
</tr>
<tr>
<td>5</td>
<td>My performances (e.g. delivery time, pick up time, etc.) are monitored by my management</td>
<td>0.00%</td>
<td>0</td>
<td>0.00%</td>
<td>0</td>
<td>7.69%</td>
<td>1</td>
</tr>
<tr>
<td>6</td>
<td>The monitoring of my performance affects the pace of my work</td>
<td>7.69%</td>
<td>1</td>
<td>7.69%</td>
<td>1</td>
<td>23.08%</td>
<td>3</td>
</tr>
<tr>
<td>7</td>
<td>The measurement of my performance changes my rewards (e.g. bonuses, pay rise, etc.)</td>
<td>38.46%</td>
<td>5</td>
<td>7.69%</td>
<td>1</td>
<td>30.77%</td>
<td>4</td>
</tr>
<tr>
<td>8</td>
<td>I feel pressured to complete my work as quickly as possible</td>
<td>7.69%</td>
<td>1</td>
<td>15.38%</td>
<td>2</td>
<td>15.38%</td>
<td>2</td>
</tr>
<tr>
<td>9</td>
<td>The technology that measures my performance is reliable and efficient</td>
<td>7.69%</td>
<td>1</td>
<td>15.38%</td>
<td>2</td>
<td>53.85%</td>
<td>7</td>
</tr>
</tbody>
</table>
I find it useful to have a technology that measures my performance

|   | I find it useful to have a technology that measures my performance | 23.08% | 3 | 7.69% | 1 | 46.15% | 6 | 23.08% | 3 | 0.00% | 0 | 13 |

The technology that measures my performance stimulates me to be more productive

|   | The technology that measures my performance stimulates me to be more productive | 7.69% | 1 | 15.38% | 2 | 30.77% | 4 | 30.77% | 4 | 15.38% | 2 | 13 |

Q41 - Do you have any further comment?

Do you have any further comment?

We have real control over the orders we receive as they can be constant at times and very exhausting but at other times we can be sat around for over an hour with no orders.

They used to give us our stats on performance but they stopped in the interest of trying to defeat our (the union's) claim against riders being independent contractors. They still measure our performance but we don't see it. They will fire you if you don't meet the standards. We don't have a good chance of challenging any discipline without knowing what our stats are. The app does mess up, and errors can happen in a number of ways out of our control...

The monitoring 'stimulates me to be more productive' however to do this it means I have to take more risks while cycling to meet Deliveroo's deadlines.
Appendix 4

A. Table of Cases and Legal materials

a) International Law

ILO Convention n. 47/1935
ILO Hours of Work (Industry)’ Convention n. 1/1919
ILO Hours of Work (Commerce and Office)’ Convention n. 30/1930
ILO Night Work Convention n. 171 of 1990
ILO Reduction of Hours Recommendation n. 116/1962
Treaty of Versailles (1919)

b) EU Cases

Abdelkader Dellas and Others v Premier ministre and Ministre des Affaires sociales, du Travail et de la Solidarité, C-14/04, [2005] All ER (D) 19 (Dec)

Association Profesional Elite Taxi v. Uber System Spain, C-434/15, [2018] 3 WLR 13

Federacion de Servicios Privados del Sindicato Comisiones Obreras v Tyco Integrated Security SL, C-266/14, ECJ, 10th September 2015.

Federatie Nederlandse Valkbewingen v Staat der Nederlanden, C-124/05 [2006] ICR 962, [2006] IRLR 561, CJEU


Jan Vorel v Nemocnice Cesky Krumlov, C-437/05, ECJ, 11th January 2007.


Pfeiffer v Deutsches Rotes Kreuz, Kreisverband Waldshut eV, (C-397/01 – C-403/0), 5th October 2004, ECR, 2004


Sindicato de Medicos de Asistencia Publica (SIMAP) v. Conseilleria de Sanidad y Consumo de la Generalidad Valenciana, 3 October 2000, C-303/98, ECR, 2000, 7963
United Kingdom v Council of the European Union (C-84/94) [1996] ECR I-5755
Williams and Others v British Airways plc [2011] ECR I-8409
Zentralbetriebsrat der Landeskrankenbauser Tirols v Land Tirol, C-476-08, [2010] IRLR 631

c) EU Law

Directive n. 93/104/EC, Working Hours and Holidays Directive
Directive n. 94/45/EC, European Works Council (EWC) Directive
Directive n. 96/34/EC, Parental Leave Directive
Directive n. 2000/34/EC

d) UK Cases

Autoclenz Ltd v. Belcher and others [2011] ICR 1157 SC.
Burrow Down Support Services Ltd v Rossiter [2008] ICR 1172
Dewhurst v Citysprint UK Ltd [2016] ET/220512
Hughes v Jones (t/a Graylyns Residential Home) [2008] UKEAT 0159_08_310 (3 October 2008)
Pimlico Plumbers Ltd and another (Appellants) v. Smith (Respondent) [2018] UKSC 29 (on appeal from [2017] EWCA Civ 51)
IWGB Union & Roofoods Limited t/a Deliveroo [2016] CAC, TUR1/985
Mr M Lange and Others v Addison Lee Ltd [2017] ET/2208029/2016
Uber BV v Aslam [2017] UKEAT/0056/17/DA
HMRC v Stringer, [2009] UKHL 31;
R (on the application of Unison) v Lord Chancellor [2017] IRLR 911

e) UK Laws and Regulations

Employment Act 2002 (Dispute Resolution)
Employment Rights Act (ERA) 1996


Working Time Regulations 1999 (SI 1999/3372)

Working Time (Amendment) Regulations 2002 (SI 2002/3128)

Working Time (Amendment) Regulations 2003 (SI 2003/1684)

Working Time (Amendment) Regulations 2006 (SI 2006/99)

Working Time (Amendment) Regulations 2007

Trade Union Act 2016
Appendix 5

Translation of Preface and Acknowledgments

I thought very often about ‘time’ in these years spent living, working and studying abroad. In fact, so often that I decided to make it the topic of my PhD. My first encounter with the theme of ‘time’ in relation to work and home life first happened in a moment that now seems very distant to me. It was in the first year of middle school when I read a novel by Italo Calvino, The Adventure of a Married Couple. The story described the difficult life of a young married couple that worked in a factory. Because of alternate shifts at work (he was working during the night and she during the day) they just had very brief moments to spend together, in an everyday routine that always looked the same:

“Sometimes, on the other hand, it was he who came into the bedroom to wake her, with the little cup of coffee, a moment before the alarm rang; then everything was more natural, the grimace on emerging from sleep took on a kind of lazy sweetness, the arms that were lifted to stretch, naked, ended by clasping his neck. They embraced. Arturo was wearing his rainproof wind-cheater; feeling him close, she could understand what the weather was like: whether it was raining or foggy or if it had snowed, according to how damp and cold he was. But she would ask him anyway: “What’s the weather like?” and he would start his usual grumbling, half-ironic, reviewing all the troubles he had encountered, beginning at the end: the trip on his bike, the weather he had found on coming out of the factory, different from he had entered it the previous evening, and the problems on the job, the rumors going around his section, and so on.”

The novel perturbed me to some extent, making me realize that I was a relatively privileged girl, who knew nothing yet about the realities of life and work. I started to ask myself many questions. I became anxious because I knew that my grandparents had been workers in factories and grandpa was always telling me how tough life was on the shop floor. Later, mum and dad told me

that working in FIAT was awful and that it had made grandpa deaf. But someone had to do it. In the novel, Arturo and Elide never slept together, their life was not synchronised. Maybe for grandma and grandpa it was the same; my grandpa working the night shift while grandma was at home.

As an eleven year old, that rhythm of life appeared like some curious relic of the past. But I started to wonder was it still like this today? Did couples that could only see each other for a few hours per day still exist? And if so, how could they cope? But in fact, why were they labourers? After all mum and dad hate the idea of having superiors and wanted to work on their own.

Then, as I grew older my understanding of the world developed and became more articulated. I studied law, I started working, I wrote a thesis, I travelled. But my understanding of the rhythm of work and life was not the result of what I have written here; and definitely not the result of all the books and articles I read. Neither was it the struggle of putting words onto paper. The main achievement of the journey of completing the PhD is the discovery of my own rhythm of work and life. This has been such a privileged time, but a time that also demanded great effort, mainly psychological, both from myself and from people around me.

One of my favourite songs says: “between the begin and the end, in the middle, there is all the rest, everything, and that means, silently, building up. And building up is knowing to be able to renounce to perfection” (Niccolò Fabi, Costruire). The PhD is exactly that, like all important things in life. It is a silent ‘building up’, crafted and composed even when apparently you are not thinking of it. It is the background music in every moment caught in daydreaming. It is the result of infinite connections, discussions, and the sharing of opinions and experiences. It is a training journey, an apprenticeship, guided by wise teachers.

Therefore, the first acknowledgment of all is to Tony Dundon, for being the best teacher I could have wished for in my (maybe a little bit rash) decision to start a PhD in Galway, Ireland. Without Tony’s guidance, and suggestions, without his deep interest for the human and professional aspects of the PhD
and his attention to my future as an academic, I would have never achieved what I have achieved today. A special thank goes also to my co-supervisors, Lucy-Ann Buckley and Aristea Koukiadaki, for their on-going support, their attentive supervision and the experiences we have shared together.

The second fundamental thank you is for my family: Mum, Dad, Chicco and my grandparents. Thank you for being present in all the difficult moments, but also in times of joy and happiness, to have understood my choices, bore the distance, and always having believed in me, more than myself.

To my companion of these years goes the most important acknowledgment. Because only he knows how and what these years have meant for me, for our lives, between Galway and Manchester, for our everyday routine. Thank you Yohann for having supported me with great love, despite the tempest. Without you, I would not be here writing these words now.

The most complicated thank you goes to my friends, because they are many and the space is always too little.

Thank you Vale, for having shared here a wonderful year, but also because on a Sunday afternoon (after a Rudy’s pizza) walking around the Northern Quarter, you told me: ‘Look how nice is that Deliveroo rider’s bike. They do a very nice job!’. That was a revelation.

Thank you to Sara and Liv, for always being there as great friends, and to be able to cheer me (and scold me) always the right amount.

Thank you to the Mancunian and Galwegian friends, for giving me a second family away from home: Stefano, Matteo, Laura, Olimpia, Maria, Federico, Chiara, Miguel, Thomas, Jon, Eva, Youen, Barbara, Peppe Zu, Stefano, Marie, Stewart, Aengus, Rob; thanks Giorgia for the rock’n’roll. Thank you to Fabio and Giuseppe, because ‘I was too much of a lawyer’, and you had so many things to teach me and show me.
Thank you to my friends from Modena, Viola, Gianlu and Nazza, because my world is definitely much more colourful with you. To my friends far and wide and to those at home, because now ‘home’ is many places: Marta, Viola, Dario, Marti, Elena (and little Ludo), Giulia, Mario, Michal, Ale, Ele, Bob, Chia, Allegra, Ste, Sara, Albi e Fra.

Thank you to my tennis team at the Northern, for all those times when tennis made me escape from all the frustration of research (even when we had to play at night outside in the cold and rain).

Thank you to all those that have shared with me the joys and sorrows of the PhD, who shared office spaces, lunches and coffee breaks. In particular, thanks to Chanaka, for being my friend from the first day in AMBS, Wojciech, for being the best ‘bad cop’, Kara and Daina for all the chatting, Harald for the lunches, losing at squash and bouldering. Thanks also to all other friends in C1 and to the ‘Galway PhD Gang’, to Eva, Orlagh and Michael especially.

A special thank you also to the colleagues and friends I have met during this journey, to the Capri Summer School, the Doctoral Sweatshop at LSE, the WTF labour law in San Vito dei Normanni, then Maastricht, Toronto, Leeds, Bergamo, Modena. In particular, thank you to Federico, for convincing me of my ‘legal side’, and also to Silvia, Emma and Diogo.

I would like to thank you all my colleagues in AMBS, for all those times that they listened to me and supported me in this calvary which they have experienced before me. Thank you for welcoming me so warmly in the PMO Division. A special thanks to Stefania, for being colleague and friend, and for all the help since my immersion in the Mancunian reality.

Last but not least, a warm thank you to Michele Tiraboschi, Flavia Pasquini and Daniela Izzi for encouraging me to undertake a PhD, and for looking after me all these years.