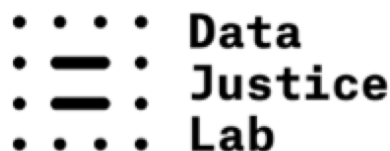


# THE DATAFIED WORKPLACE AND TRADE UNIONS IN THE UK

## WORKING PAPER

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# Introduction

From concerns about job losses to increased surveillance and work intensification to the creation of novel forms of gig work and platform labour, the advancement in data-driven technologies is now a key part of the future of work, working conditions and workers' rights. Trade unions are central to this discussion, but it is not always clear how they understand and engage with these developments. This working paper sets out a brief overview of how trade unions in the UK understand the challenges of the datafied workplace and how they are responding to them. It is based on interviews with officials from 15 different trade unions in the UK carried out during 2021, and forms part of a larger project on the social justice implications of datafication<sup>1</sup>. For simplicity, we have structured our findings according to three themes for each section that highlight the dominant responses we received in our interviews.

Table of unions interviewed:

Associated Society of Locomotive Engineers and Firemen (ASLEF)
Bakers, Food and Allied Workers' Union (BFAWU)
Communication Workers' Union (CWU)
Community Trade Union (Community)
Fire Brigade Union
General Union (GMB)
Musicians' Union (MU)
Prospect
Transport Salaried Staff Association (TSSA)
Trades Union Congress (TUC)
Union of Shop, Distributive and Allied Workers (USDAW)
Unison
University and College Union (UCU)
Unite
United Tech and Allied Workers (CWU)

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# Challenges of the datafied workplace

There has been widespread debate on the nature of challenges that the datafied workplace presents to workers and trade unions, but we rarely hear from unions themselves how they perceive these. In this first section we summarise findings from our interviews with trade union representatives on how trade unions predominantly understand the issues pertaining to the introduction and use of data-driven technologies in the workplace. We found three central themes:

## 1) Misuse and mission creep

A prominent understanding of the challenges of the datafied workplace focused on the potential for data to be misused by employers for unspecified or undeclared purposes. The concern may therefore not be the introduction of data-centric technologies *per se* but the specific way in which they are used in different and often contradictory ways to the stated intention, leading to a 'loss of faith' in the system and workers 'being penalised', so that 'something that was brought in voluntarily suddenly is held against you in a discipline' (CWU). This concern about technology is often referred to as 'mission creep' in which data infrastructures are created for one purpose said to benefit workers, but are then used for other purposes. Often health and safety is used as a pretext or justification for datafying workplaces, but the same technologies are then repurposed for managerial control. For example, one interviewee gave the example of mission creep in the case of surveillance for van security purposes that then becomes part of a more disciplinary form of monitoring that is 'used to track and monitor the whereabouts of staff whilst they were in charge of a van' (Prospect). This was reiterated by another interviewee who said 'we've seen examples where all of a sudden, the camera is not just there for security, it is noting what time you come into work, or how long you were out for your lunch break, and what time you go home' (Unison). Whilst unions accept that employers should be able to collect data and monitor workers for health and safety reasons, there is a need to ensure 'careful' purpose limitation of data-driven technologies (CWU) and for clearer 'boundaries' (Prospect) on how such technologies might be used in the workplace.

## 2) Surveillance, assessment and disciplining

When it comes to (mis)uses of data, our interviews highlighted unfair use by employers when there is a shift from employer duties in relation to staff wellbeing and health and safety towards control. For example, interviewees described employers using data 'as a stick to beat workers with' (CWU) in order to control workers and increase productivity and profit. Another interviewee described the tracking systems deployed in vans as 'safety [that] gets turned into a

discipline' which is problematic because 'people don't want the extra scrutiny [and] just lose all faith in it.' Workers feel they are being surveilled 'a lot more than necessary', with surveillance and monitoring systems becoming 'an automatic harasser' that produces 'undue criticism' of workers (Community).

Beyond surveillance, there was a clear concern in some of the interviews with the use of data as indicators or evidence of worker performance, especially because of how this can be used for disciplinary action without any human involvement or opportunity for workers and unions to object. One interviewee said 'it's all negative stuff at the moment we're seeing', citing the way systems are used 'as a way to catch people out, to be used against them, or to scrutinise them and to look at performance indicators rather than, did you actually breach a health and safety.' (GMB) Another interviewee echoed this, saying 'I think [data] should only be used as an indicator and there must be a human assessment afterwards which includes speaking to the employee, not just reading the data and interpreting it, before any action is taken on it.' (CWU) As such, the concern here is with the use of data for assessment and disciplining without any human oversight.

### 3) Workplace democracy

Finally, our interviews with trade unions suggested a fundamental concern with workplace democracy, particularly with regards to an absence of worker and union voice in the implementation of data-driven technologies in the workplace and a lack of robust and meaningful consultation. In this context, interviewees also expressed frustration with employers being non-cooperative and dishonest, making it harder for unions to organise. There were several comments that employers sometimes deliberately fail to consult unions about introducing data-driven systems, continuing a longer-standing trajectory on the use of surveillance technologies. For example, an interviewee from BFAW said that with CCTV systems in the workplace 'they don't normally get a say [...] the company tends to put them up when nobody's about'. Furthermore, when Subject Access Requests are used by individual workers to foster transparency these are refused: 'even if you ask for a Subject Access Request, then they don't give CCTV footage at all.' Similarly, an interviewee from GMB was concerned about a lack of consultation with unions resulting in workers not being made aware of algorithms used in the workplace, saying 'there is certainly very little consultation with trade unions about when [technology] should be brought in and why it should be brought in. We've found some breaches where councillors are not even aware that that type of technology is being used.' Another interviewee implied that this lack of consultation results in unions not trusting that employers are transparent about implementing workplace technology, saying 'there is always a suspicion

at the back of our minds that there are additional monitoring things going on that we are unaware of.' (TSSA)

Some of the union officials we interviewed did generally feel that unions are consulted about the introduction of new technology into the workplace, but one of them qualified this with the comment 'we're not always listened to but we're always consulted' (Unison). Other interviewees reported issues even when their union was consulted or able to negotiate with employers. For example, interviewees from CWU and TSSA both spoke of false assurances given by employers during consultation about vehicle trackers, resulting in abuses of data that raised concerns. One interviewee said 'sometimes we can be quite astonished at how poorly this data is collected, where it is stored and who has access to it. We're given assurances and promises only to find that it is being abused' (TSSA). This was reiterated by the interviewee from CWU, who felt that the union's resistance in this instance was meaningless, calling employer consultations with unions about the use of monitoring systems a 'false choice' explaining: 'they had a vote on it from the union, do we accept this agreement? But they were given assurances which were fake.' Similarly, the interviewee from GMB described how a multi-union consultation process was ignored by managers and highlighted that unions have little opportunity to challenge datafied technologies: 'we very rarely get input into that and only when it's being used for disciplinaries do we then get an opportunity to say, this is not right, you need to stop.' One interviewee described it as a 'consultation deficit' when it comes to the introduction of new technologies since workers and unions expect to be consulted on this but rarely are, resulting in a feeling of powerlessness. A lack of transparency and consultation means that 'workers feel they can't actually effectively challenge the decisions that are being made [...] there's this incredible imbalance between what workers' and unions' expectations are in terms of consultation and what they actually get.' (TUC)

## Responses to the datafied workplace

The way that trade unions are responding to these challenges of the datafied workplace speak to the particular context of the UK and what are perceived opportunity structures in the current environment. Again, we identify three central themes based on the interviews that speak to different levels of engagement:

### 1) Technology agreements and collective bargaining

Several interviewees said collective bargaining should and is being applied to workplace issues pertaining to data-centric technologies. However there was disagreement as to how viable a

strategy this is in reality, with some interviewees suggesting it is the best practical tool at unions' disposal while others highlighted shortfalls that limit its efficacy. For example, one interviewee described collective bargaining 'as the most effective and practical solution to a lot of the problems associated with the use of data driven tools at work' (TUC), whilst another said 'the easiest way to resolve things are through where we've got collective agreements and we can do negotiation to resolve things' (Prospect). The interviewee from TUC expanded on this by arguing that collective bargaining constitutes an important counterbalance to the power asymmetry exacerbated by employers accumulating 'vast amounts of data about individuals' for profit whilst 'workers are effectively cut out of that process. It's really trade unions that can provide that sort of collective influence and voice to act as a counter-balance. So I think trade unions and the power of collective bargaining is an incredibly important factor.'

Collective bargaining is seen to give unions the control to influence decisions regarding implementation of data-driven technologies as well as how they are used, including how data is stored and accessed. For instance one interviewee highlighted that, 'because we have collective bargaining with most of these firms [...] they are obliged to come and talk to us about this and then we raise the appropriate concerns and debate that with them, and quite often we're able to modify or get policies in place that would limit the use, or only used in certain areas.' Here the role of technology agreements becomes a tool for unions to 'control the use of data' by negotiating what [surveillance systems] should look like and how and when they should be used and safeguards for their use.' (TSSA)

One interviewee also indicated that collective bargaining can counter the lack of control workers have regarding decisions to implement new technologies, and pointed to model technology agreements as tools designed to support this. They explained that 'far too often it's the employers and the finance people behind them rather than the workers themselves' and in response is 'trying to help our members get more control over that by making them more aware of the issues and trying to encourage them to bring these points into collective bargaining and we've got some model agreements that we use to try and help with that.' (Unite) Moreover, it was noted that collective bargaining supersedes legal frameworks because legislation does not give unions the same 'position of strength' to negotiate. In this sense, collective bargaining enables data and AI issues to be treated as an industrial issue. The best way to organise is therefore to use collective bargaining to get new technology agreements in place including having 'specialist' new technology representatives in the workplace who can monitor development and 'bring that to the bargaining table as and when the employer wants to introduce some new piece of technology.' (Unite)

However, this contrasted with the view of other interviewees who said that updated legislation is required precisely because collective agreements are not legally binding so are failing to protect workers: 'some of the issue is that when you do get agreements with companies on it, they're not legally binding. So when they decide it no longer suits them, that's the end of it and then the workers are back to having no protection. So I think something definitely needs to be in law.' (CWU) Similarly, an interviewee from TSSA stressed that collective agreements 'rely on the honesty and integrity of the employers that are prepared to reveal what they are doing, and not just get presented with this as a *fait accompli* when you are dealing with an issue.' Experiences amongst trade union officials suggest that collective bargaining for new technology agreements is done on a case by case basis and applies to specific technologies rather than being comprehensive or preventative. For example, while TSSA was able to negotiate and prevent uses of vehicle trackers and wearable devices, there are other technologies that they do not have agreements about, such as body worn cameras, that may be enabling harmful practices.

Therefore, collective bargaining can be a useful avenue for engaging with the datafied workplace but also comes with limitations. Indeed, one interviewee expressed a need for a more pragmatic, sceptical approach to collective bargaining on the basis that political factors in the UK render it a limited strategy. They highlighted that 'we've got to be realistic around places that don't have collective bargaining arrangements' (Prospect) and suggested that greater organising nationally is required, especially since collective bargaining is a lot lower in the private sector. As such, they viewed collective bargaining as part of, rather than a solution to, the wider power imbalance between workers and employers.

## 2) New data rights and ownership

Alongside the emphasis on new technology agreements and collective bargaining, several trade unions are also actively advocating for the introduction of specific data rights for workers. This may mean reforming the GDPR or applying other existing legislation. For example, one interviewee said 'what we are really pushing for is for that legislation [the GDPR] to be actually brought up to date and reformed. That policy legislation and codes around practice to actually restrict automated decision making in particular and workplace monitoring.' (Community) In particular, employer transparency and accountability needs to be stronger, which could be met by granting workers rights to be informed about 'What does your employer actually have on you? How does your employer collect data on a day to day basis? What do they currently have? What are they planning to have in the future?' A specific data rights entity was seen to support this need: 'I definitely think that something specifically, rather than like wider workers' rights and wider worker stuff, based on these specific issues would be really beneficial.' (Community)



The GDPR holds potential in this regard, but currently has limitations. For example, the GDPR is limited in centering the individual data subject rather than the collective experiences that unions engage with: 'I think there's a gap in the ICO in that it doesn't address the issue of groups of persons' data.' (Prospect) However, there is potential for labour law and the Equality Act to fill such gaps, in terms of using that 'to take on some of these issues if we see there are categories or groups of persons who are, we believe, disproportionately affected by the introduction of technology or some data arrangements' (Prospect). Another interviewee from the TUC stressed the importance of 'legal redress when AI goes wrong' both in terms of 'access to legal representation but also there being a comprehensive set of legal entitlements and protections', such as protection from discriminatory data-driven decisions, entitlements around consent and the right to know when data-centric tools are being used. Other interviewees spoke about introducing new data rights not covered by the GDPR, such as issues around assessment and disciplining: 'I would like to see a law brought in on how they're allowed to use data on you at work for performance...we need to have legislation to protect workers that's on a par with legislation which protects consumers.' (CWU) The example of the right to disconnect was highlighted in one interview as the potential to introduce new rights that cut across data and workers' rights (Prospect).

Connected to the focus on data rights, several trade unions are linking broader agendas like workplace fairness, equality and democracy to data ownership and worker access to the benefits of datafication and uses of AI. This pushes questions of fairness beyond workers as data subjects and suggests an engagement with fairness in terms of resource distribution. For example, an interviewee from TUC noted that fairness and equality 'would be a really important part of our vision' on the grounds that their members said 'they wanted their colleagues to have fair access to the use of AI at work'. This has prompted TUC to think about discrimination not just in terms of 'how are the decisions being made by AI potentially discriminatory' but also with regards to 'is there some form of discrimination taking place in terms of who actually has access to the benefit of these tools'. Part of this could be tackled with steps to empower individual workers with knowledge of, access to, and control over data as an opportunity in 'the power collective data offers individual workers and the trade union movement to actually take control over that data and use it to further worker and trade union interests.' (TUC) Other interviewees echoed this understanding of where engagement with data should be focused, outlining future visions of the workplace that are centred on 'rebalancing' the asymmetry of data access and ownership, particularly so that workers 'understand' their data and are 'empowered and confident enough to stand up, request access to their data, fully understand what an employer has got and be able to turn around and say that's not acceptable, or be able to actually rebalance how data and tech is viewed and held and hosted by employers and companies as well.' (Community)

The focus on access to and ownership of data is partly based on an assumption that the trend of datifying workplaces cannot be reversed or substantially resisted: 'we can't stop it from happening and it'd be letting our members down by doing that. We've got to acknowledge that this is part of the workforce, it's part of the future of work.' (Community) Similarly, another interviewee noted: 'If that process is going to happen and we can't just stop the technology, then you have to at least make sure that the people who are generating that are going to benefit equally from the rewards that that technology is going to generate.' (Unite) The strategic response for unions is therefore to work with employers to pursue data ownership by workers: 'If done properly, workers could benefit but workers have to own that data, they have to understand their data in an accessible way and we've got to work with employers to make sure that workers can reap the benefits too.' (Community) Moreover, it was noted that in the absence of 'a more progressive government' in the UK, unions cannot rely on or wait for a legal framework that recognises 'ownership of the data which is generated by employees and then is used by capitalists to make money' (Unite). Therefore, in order to rebalance and equalise this relation trade unions must try and take charge of developments: 'part of getting our piece of that pie is to get control over this and to get ownership of what people do as part of their work' (Unite). It was argued by one interviewee that getting involved at the level of governance is important but needs to be considered carefully: the priority for unions needs to be 'governance in a sense of how unions will have a seat at the table to determine usage of these systems', but can bring about 'debate within the union movement itself...[because]...by being involved in it, you are sort of sanctioning its use rather than resisting it or seeking to control it. On the other hand, a seat at the table could also mean that you have a better way of controlling it from the start.' (TFFA)

### 3) Building union power

Whilst the more prominent areas of engagement with the datified workplace focused on collective bargaining and data rights, some of our interviews also pointed to the importance of maintaining focus on institutional power and organising in a wider sense. That is, the datification of the workplace is happening in a context of weakened labour relations in the UK that needs to be addressed: 'I think firstly, the biggest [challenge] is the lack of labour dialogue or social partnership in the UK.' (Prospect) Addressing issues of the datified workplace is therefore hindered by a generally union-hostile UK government. Indeed, there was a sense that if labour relations were stronger in the UK then there would be no need to separate data issues from wider workplace issues or for a separate data rights entity since unions would be able to effectively challenge employers. One interviewee referred to the Wales Social Partnership Act as an example of a model that if achieved would facilitate better trade union engagement with the

datafied workplace: ‘then you wouldn’t need a separate [data] body. You would just be able to say, if this is not done fairly, then this is how we’re going to challenge this and as a trade union representing working people in the workplace, then we have that ability to be able to challenge that.’ (GMB) Similarly, another interviewee stated: ‘what we need are strong and powerful trade unions and I think that this issue [of datafication] can be dealt with in a similar way to most other issues if you have a strong organised workplace, with well-informed and well-supported reps and activists....what’s required [is] that we need to take these things on in the workplace as an industrial issue.’ (Unite)

The datafied workplace is in this sense part of a wider engagement with workplace equality that is approached through strengthening the position of unions through legislation or otherwise: ‘a trade union movement with the ability to be able to challenge in the way that we always have, but with the redress of statutory underpinning of legislation. That is the way you stop inequality in the workplace.’ (GMB) This legislative underpinning may require significant reform: ‘we need to longer term look at sectoral agreements for unions or works councils to be set back up again and for things to be agreed at that sort of level rather than individual employers.’ (Unite) Several interviewees also saw capacity-building and strengthening happen through better collaboration both within the trade union movement and outside it in order to tackle the challenges of the datafied workplace: ‘We don’t exactly have the best trade union rights in the UK or access to workplaces...[which requires]...good industrial relations to work together in the interests of our members and workers.’ (Community). Similarly: ‘cooperating with other trade unions and not only in this country but also internationally...[is needed]...because this is clearly some global issue and so it requires solidarity amongst trade unions as well as amongst workers.’ (Unite) This may also include other social movements and organisations: ‘unions have got to engage with other social movements and civic society groups a lot more on this.’ (Prospect)

## Conclusion

The datafied workplace is a growing and challenging focus for trade unions in the UK. Whilst it is widely seen to have significant implications for working conditions and workers’ rights, it is difficult for trade unions in the UK to engage with developments comprehensively in the current climate. Although ensuring that new technologies are part of collective bargaining agreements is seen to be the more strategic approach, it is also considered limited both in terms of enforcing proper protections for workers and in terms of breadth and inclusivity. The notion of advancing workers’ ‘data rights’ is therefore seen as a potential avenue for addressing pressing issues through either new or existing legislation that can have wider scope. However, the turn to data rights as a lens through which to advance equality and fairness in the workplace is also

seen as indicative of a weakening of labour relations in the UK and an increasingly union-hostile political culture. Building union power through legislative changes as well as collaboration and solidarity therefore remains significant as a prerequisite for trade unions to effectively engage with why and how data-driven technologies are shaping the future of work.