

Briefing

Future of Work: Employers' collection and use of worker data



More than a third of workers had no confidence that their employer would use their data appropriately.

Background

The growing role of new technologies in workplaces mean employers are accumulating rapidly increasing amounts of data on their employees.

In addition to digitally held personal data used for recruitment, management or other HR processes, this may now include data gathered through technologies such as:

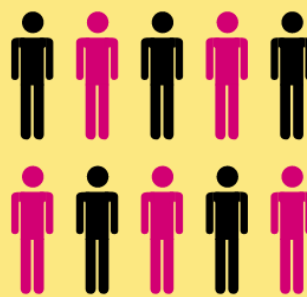
- location tracking and vehicle telematics,¹
- keystroke and computer use monitoring,²
- audio recording and automated monitoring systems,³
- CCTV or workplace sensors,⁴
- facial recognition or “coding” software,⁵
- wearable devices such as Fitbits,⁶ or
- social media and other sources of open data.

Such, often sensitive, data and the inferences drawn from datasets, are playing an increasing role in how employers recruit, manage, discipline or reward their workforces.⁷ Often this can lack transparency or accountability, increasing the risk of opaque, ill-founded, unfair or discriminatory decision-making. In some cases it may involve data being fed into “black box” algorithms or Artificial Intelligence systems, or passed to external consultancies to whom processing has been outsourced.

There is also a growing industry of “data brokers”⁸ offering ways for organisations to “monetize” any data they hold for commercial purposes.⁹ This may range from personal information used for direct marketing or credit scoring, to the logging of behavioural patterns used in data inferencing.¹⁰

Consultants Deloitte have warned that employers “need robust security safeguards, transparency measures, and clear communication around their people data efforts – or they could trigger employee privacy concerns and backlash over data abuse”.¹¹

**Nearly half of
people don't know
what data their
employer collects
about them.**

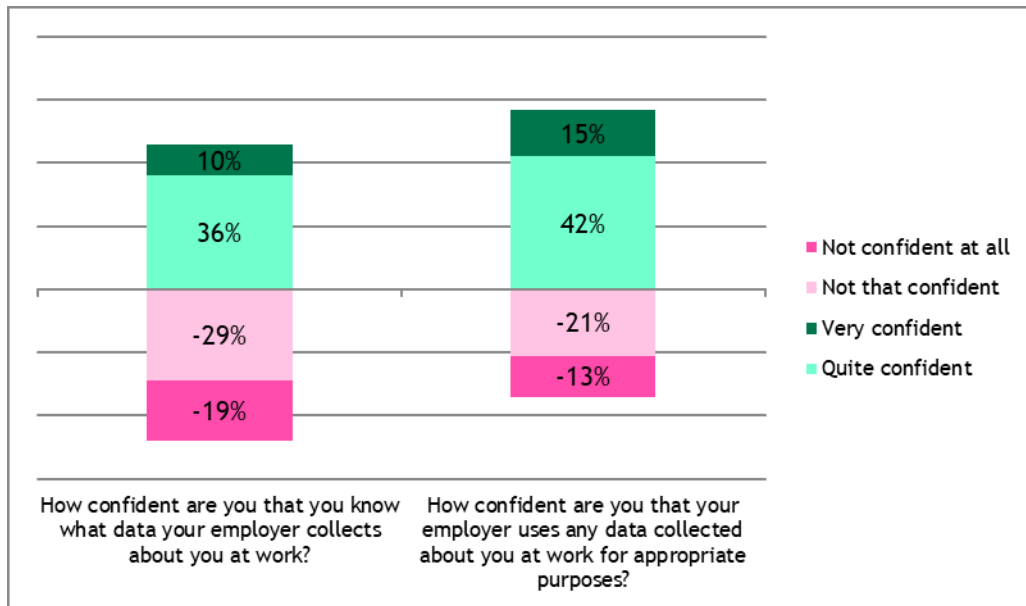


Our survey

In January 2020, Prospect surveyed over 7,750 members working in professional, technical and specialist roles across a range of industries throughout the UK. We found that:

- **Almost half** (48%) were “not confident” or “not confident at all” that they knew what data their employer collected about them at work.
- **Over a third** (34%) were “not confident” or “not confident at all” that their employer used data collected about them at work for appropriate purposes.

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There was some variation by region and nation in these figures. Lowest levels of confidence were in London, the West Midlands, and Northern Ireland.

More than 70% have no confidence in their employer involving them in decisions about how technology is implemented.

Q38. How confident are you that you know what data your employer collects about you at work?

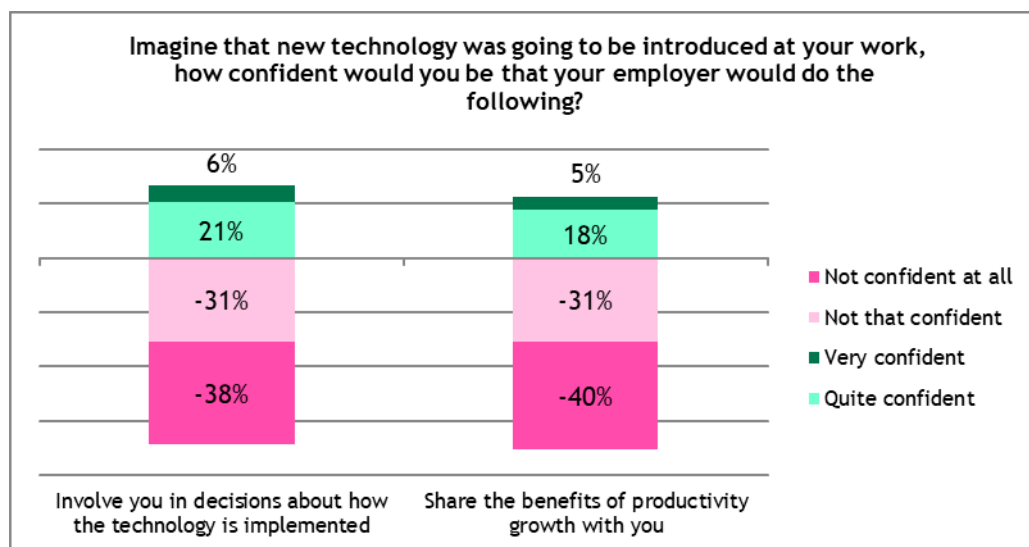
	London	South East	South West	East of England	East Midlands	West Midlands	North West	North East	Yorkshire and the	England	Scotland	Wales	NI
Respondents	1137	1389	890	638	290	355	1109	147	375	6336	841	409	131
'Quite confident' or 'Very confident'	38%	45%	51%	49%	46%	45%	49%	42%	43%	46%	49%	52%	34%
'Not that confident' or 'Not confident at all'	52%	49%	44%	46%	51%	49%	46%	55%	52%	49%	47%	44%	61%

Q39. How confident are you that your employer uses any data collected about you at work for appropriate purposes?

'Quite confident' or 'Very confident'	50%	55%	63%	58%	58%	50%	59%	57%	55%	56%	59%	61%	46%
'Not that confident' or 'Not confident at all'	36%	36%	29%	32%	34%	43%	31%	37%	37%	34%	33%	33%	45%

Workers are also worried they will be neither consulted about how new technology is introduced into the workplace nor share in the benefits it might bring.

- **Over two thirds** (69%) were “not confident” or “not confident at all” that their employer would involve them in decisions about how new technology would be implemented
- **Less than a quarter** (23%) have any confidence that their employer would share the benefits of productivity growth with them



These fears were also more acute in some parts of the country, notably in Scotland, the East Midlands and the North East.

Q34. Imagine that new technology was going to be introduced at your work, how confident would you be that your employer would involve you in decisions about how the technology is implemented?

	London	South East	South West	East of England	East Midlands	West Midlands	North West	North East	Yorkshire and the	England	Scotland	Wales	NI
Respondents	1137	1389	890	638	290	355	1109	147	375	6336	841	409	131
'Quite confident' or 'Very confident'	25%	27%	28%	30%	23%	25%	25%	25%	29%	27%	24%	32%	32%
'Not that confident' or 'Not confident at all'	66%	68%	68%	66%	73%	70%	72%	74%	66%	69%	73%	65%	68%

Q35. Imagine that new technology was going to be introduced at your work, how confident would you be that your employer would have the benefits of productivity growth with you?

'Quite confident' or 'Very confident'	20%	23%	23%	26%	20%	22%	25%	23%	21%	23%	19%	23%	24%
'Not that confident' or 'Not confident at all'	70%	69%	70%	68%	73%	73%	70%	75%	72%	70%	73%	71%	74%

What can go wrong

Workers' concerns over employers' use of data is not groundless. These are rapidly developing technologies and business practices that have already resulted in serious infringements of workers' rights and dignity. For example:

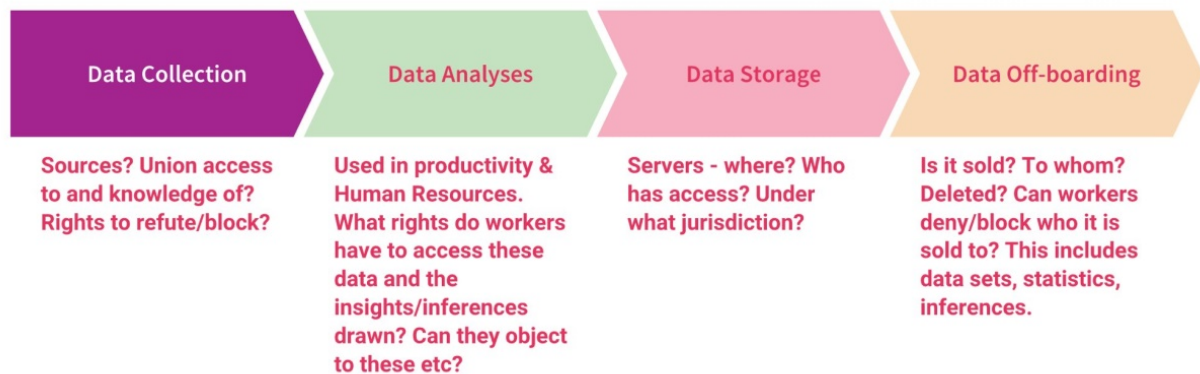
- In 2012 an Employment Tribunal found that an online test used by the **Home Office** to assess candidates for promotion was indirectly discriminating on grounds of race and age¹²
- In 2017 an automatic decision-making process for sifting job applicants used by the **Government Legal Service** was found to have indirectly discriminated against someone who suffered from Asperger's syndrome¹³
- Last year **Amazon** was forced to scrap an AI program it was using to sort applications for jobs at its Edinburgh engineering hub when it emerged it had been discriminating against women¹⁴
- Workers at **call centres** can now be monitored by software that uses algorithms to assess their tone, mood and success in pleasing customers.¹⁵ UNI Global has reported a case where these were then used in appraisals, despite being inaccurate and discriminatory.¹⁶
- There are also concerns about automated hiring systems and the risks of discrimination, bias and cultural insensitivity¹⁷.

Focus on the data lifecycle for workers

Prospect has been working with Uni Global Union, a federation of worker organisations globally, to examine how best practice can be developed to protect workers data, their privacy rights and their rights to form and shape their work and life opportunities free from algorithmic control. As Sandra Wachter so clear concludes from her 2019 paper A Right to Reasonable Inferences.¹⁸

Where are the Workers' Rights?

In the Data Lifecycle @ work



As Wachter and Mittelstadt say in the paper, the:

“...default procedural approach in European data protection law to protect the privacy of individuals is to grant oversight and control over how personal data is collected and processed. In other words, data protection law focuses primarily on mechanisms to manage the input side of processing... the few mechanisms in European data protection law that address the outputs of processing, including inferred and derived data, profiles, and decisions, are far weaker.”

GDPR falls short in enabling workers' as individuals and as a collective the right to reasonable inferences, control over data and the ability to know about, correct, or block inferences. This can have a detrimental effect on workers, labour market diversity and inclusions equality and human rights.

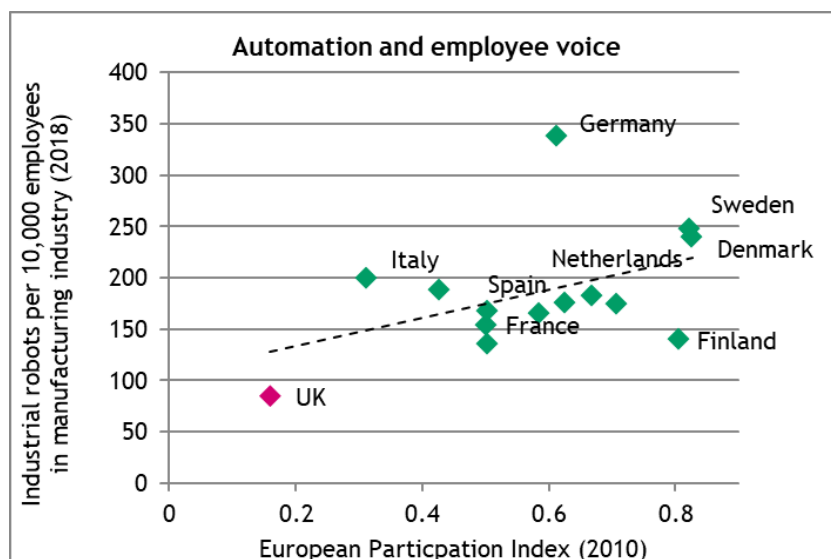
Why worker voices matter - how trade unions are tackling the issue

Trade unions are working to raise awareness of these issues and ensure that new technologies and data-processing techniques are introduced responsibly so that all can share the benefits. Examples of what can be done:

- Prospect has successfully challenged employers in cases where data collected for a stated purpose was then re-used in performance-related pay or redundancy exercises, and taken out of context (for example failing to account for working hours).¹⁹
- In 2019 Prospect won a significant settlement for a member who, an Employment Tribunal ruled, had been subject to unlawful indirect discrimination on the grounds of race and age by an online test used to assess applicants for promotion by the Home Office.²⁰
- In the UK unions at the Environment Agency have negotiated an agreement over the use of telematics and GPS technology to monitor vehicles – including a “privacy switch” for when the vehicle is not being driven on business.
- In Ireland, the Financial Services Union secured commitments from Ulster Bank/RBS to protect employee data from being sold and that workers’ rights and the International Labour Organisation’s Code of Practice on employee data would be adhered to.²¹
- UNI Global, an international federation of unions to which Prospect is affiliated, has secured global agreements on the right to disconnect with Telefonica and Orange, building on work done by our sister unions in France and Spain.²²

Trade unions are increasingly recognised as essential allies of workplace and technological innovation – because the trust and engagement they foster can help organisations move forward with change fairly, accountably and with legitimacy. A recent OECD study found that “More than ever collective bargaining, when based on mutual trust between social partners and designed so as to strike a balance between inclusiveness and flexibility, can help companies and workers respond to demographic and technological change.”²³

This is borne out by comparing data on uptake of automated technologies with measures of employee voice and participation, which shows that high levels of employee involvement are associated with greater industrial innovation.



Prospect is calling for

1. **A right to privacy.** Explicit commitments on employers' collection and use of employee data should be included in employee contracts, collective agreements and bargaining processes, and in employee privacy notices required by GDPR rules.
2. **A right to disconnect** – to challenge the always-on culture and blurring lines between family life and work, including safeguards against excessive expectations of out-of-hours availability and responsiveness, rights to privacy from monitoring systems such as vehicle tracking or wearables during personal time. A right to disconnect will help ensure that workers have the right to enjoy their personal time and not create unfair pressures on people, especially careers, to respond to work demands outside of normal expectations. This need not entail one-size-fits-all rules, but should be negotiated between workers and employers through collective bargaining or other processes of employee voice.
3. **A right to challenge and codetermination.** Employees and their representatives should have the right to check and challenge how their data is used, and what inferences are made, in employers' decision-making processes, and share in the oversight and governance of employers' data strategies, for example through representation on organisations' AI or data ethics committees and recurrent consultation and involvement in the development, evaluation and eventual adaption of data gathering, processing and monetising.
4. **Adaptation of existing data and equality regulations to protect individual and collective rights.** We want a duty on employers to consult on changes to how data is used, including on the design and introduction of new data tools. Guidance should be provided the ICO on how GDPR can be used to protect workers in the use of HR and derived data. Data laws should focus on the lifecycle of data with a presumption for transparency about why data is collected, how it is stored, rules shaping algorithms or machine learning, and safeguard over how data is used. This must include how data is used, not just inputs. For example, on whether data is aggregated and sold, how inferences and derived data are used, how workforce profiles are put together and used, and how decisions are made about workers.
5. **Involving worker voices in setting regulation and industry guidance.** Unions and worker representatives are not represented in the governance of many of the bodies established by government and regulators. For example, there is no mention of worker voice or involvement in the government's AI Strategy, and workers are not represented on key bodies, such as the AI Council, Centre for Data Ethics and Innovation. This must change.

For further information contact Andrew Pakes on Andrew.pakes@prospect.org.uk

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- ¹ <http://www.blacktelematicsbox.co.uk/people-tracking-system/employee-tracking/>;
<https://www.greensfelder.com/business-risk-management-blog/monitoring-your-employees-through-gps-what-is-legal-and-what-are-best-practices>;
 - ² <https://www.softactivity.com/get/employee-monitoring/>
 - ³ <https://www.wired.com/story/this-call-may-be-monitored-for-tone-and-emotion/>
 - ⁴ <https://www.theguardian.com/world/2018/may/14/is-your-boss-secretly-or-not-so-secretly-watching-you>
 - ⁵ <https://www.ft.com/content/f1607328-baec-11e6-8b45-b8b81dd5d080>;
<https://www.theguardian.com/technology/2019/aug/17/emotion-ai-artificial-intelligence-mood-realeyes-amazon-facebook-emotient>
 - ⁶ <https://www.personneltoday.com/hr/wearable-fitness-trackers-workplace-surveillance-fitbit/>
 - ⁷ https://www.cipd.co.uk/Images/people-analytics-report_tcm18-43755.pdf
 - ⁸ https://www.vice.com/en_us/article/bjpx3w/what-are-data-brokers-and-how-to-stop-my-private-data-collection
 - ⁹ <https://www.mckinsey.com/business-functions/mckinsey-analytics/our-insights/fueling-growth-through-data-monetization>
 - ¹⁰ <https://www.law.ox.ac.uk/business-law-blog/blog/2018/10/right-reasonable-inferences-re-thinking-data-protection-law-age-big>
 - ¹¹ <https://www2.deloitte.com/us/en/insights/focus/human-capital-trends/2018/people-data-analytics-risks-opportunities.html>
 - ¹² <https://members.prospect.org.uk/news/id/2012/November/9/Prospect-legal-win-for-Home-Office-staff>
 - ¹³ <https://www.personneltoday.com/hr/can-an-algorithm-eradicate-bias-in-our-decision-making/>
 - ¹⁴ <https://www.reuters.com/article/us-amazon-com-jobs-automation-insight/amazon-scrap-secret-ai-recruiting-tool-that-showed-bias-against-women-idUSKCN1MK08G>
 - ¹⁵ <https://www.wired.com/story/this-call-may-be-monitored-for-tone-and-emotion/>
 - ¹⁶ <http://www.thefutureworldofwork.org/media/35506/iur-colclough.pdf>
 - ¹⁷ see Dincek, Sanchez-Monedero, Edwards (2019) <https://arxiv.org/abs/1910.06144>
 - ¹⁸ See https://www.researchgate.net/publication/327872087_A_RIGHT_TO_REASONABLE_INFERENCES_RE_THINKING_DATA_PROTECTION_LAW_IN_THE_AGE_OF_BIG_DATA_AND_AI
 - ¹⁹ Data strategy submission
 - ²⁰ <https://members.prospect.org.uk/news/id/2019/March/6/Seven-year-legal-battle-brings-discrimination-victory-dozens-civil-servants>
 - ²¹ <https://www.fsunion.org/updates/2020/01/29/fsu-achieves-employee-data-protection-commitments/>
 - ²² <http://www.thefutureworldofwork.org/stories/uni-global/right-to-disconnect-uni-campaign/>
 - ²³ <http://www.oecd.org/employment/negotiating-our-way-up-1fd2da34-en.htm>

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