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Digital technology

Guide for union representatives

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Introduction

Technology is changing our daily lives at a rapid pace – from the way we keep in touch with our family and friends to the way we shop, travel, find news or entertainment, or manage our finances.

New technology is also changing the way we do our jobs, and the way businesses and organisations manage their workforces.

These changes raise important practical issues for trade unionists. New technologies at work can be positive – for productivity, fairness, safety, or quality of work. But they can also bring risks – of dehumanisation, loss of privacy, built-in bias, and loss of accountability. These are issues trade unionists should be concerned about, and that workers will increasingly look to trade unions to find solutions to.

But the good news is that expertise in the technologies themselves is not needed for dealing with the issues they raise. Fundamentally the issues raised by new technology, of transparency, inclusion, and fairness, are those that trade unionists have always dealt with in the workplace.

This guide helps address the following questions:

- What can and should unions ask of management about its use of data-collecting or automated technologies to manage its workforce?
- What arguments and legal frameworks are available to help check that employers are being open and fulfilling their responsibilities?
- What can and should we demand in collective agreements around new data-collecting or automated technologies at work?

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If you have further questions about this guide or would like advice on how you can raise these issues please contact andrew.pakes@prospect.org.uk

Our approach

4 pillars to worker voice over technology

Transparency – workers have a right to know when data-collecting or automated technologies are being planned and used at work. Is surveillance software being used? What data is collected? What is it being used for?

Involvement – workers should be consulted and involved in impact assessments and reviews of new technology, such as through Data Protection Impact Assessments.

Collective bargaining – the use of our data and introduction of new technology should be part of collective negotiations, just like other forms of pay and conditions.

Redress – we need a framework to challenge discriminatory and harmful decisions, either through employer policies or the law.

1: Part 1 – Why digital technology matters

New technologies that are changing our world

New technologies are changing our daily lives at a rapid pace – from the way we keep in touch with our family and friends to the way we shop, travel, find news or entertainment, or manage our finances. New technologies are also transforming the way businesses operate and manage their workforces.

Some people think that we are now in the midst of a new technological revolution comparable to the original industrial revolution of the eighteenth and nineteenth centuries. Whether or not that is true, change is happening fast.

A new industrial revolution?

Key advances that are driving today's "technological revolution" include:

- **Advanced sensor technology** – devices or components that can record sounds and images, or register physical changes such as movement or temperature
- **Universal connectivity** – enabling instant, fast transmission of data between devices and large servers using wifi, fibre or even satellite connections
- **Big data** – digital gathering and storage of very large data sets, covering anything from weather to prices to people's behaviour
- **Deep learning** – computers automatically identifying patterns, trends, associations and correlations in data with limited or no human involvement or supervision
- **Artificial Intelligence** – computers using and automatically evolving algorithms to take on cognitive, problem-solving, variable optimising or decision-taking roles
- **Robotization** – machines undertaking physical tasks alongside of humans or instead of them

Most of these technologies are now a regular part of our daily or home lives – sometimes without us realising. They are also now an increasingly important part of our work.

Prospect members and technology

Prospect members have long worked in technologically advanced fields and today are frequently at the forefront of this revolution, whether as developers and data scientists building new tools and systems, or specialist professionals making increasing use of new digital technologies to the benefit of consumers and the public:

- The development of Artificial Intelligence can be traced back to seminal work carried out by Alan Turing with colleagues at the **National Physical Laboratory**. Today specialists at NPL continue to work at the cutting edge of AI development and its application in areas such as biotechnology and the race to beat antimicrobial resistance.[46]
- Members of Prospect's rapidly growing **tech workers branch** are employed as software engineers, IT architects and data analysts across a wide range of companies and industries that are driving forward the digital transformation of their operations and services[47]
- Staff at the **Meteorological Office** in Exeter develop and use AI running on one of the world's most powerful supercomputers to turn around half a million daily atmospheric observations into increasingly accurate and detailed weather forecasts.[48]
- Researchers at **BT**'s Adastral Park research and innovation centre in Suffolk are at the forefront of developing and applying AI technologies – whether to improve customer service or meet the increasingly urgent challenge of cyber-security.[49]
- Staff at **National Air Traffic Services** combine their human expertise and experience with machine learning to better predict the likelihood of potential safety events and reduce delays caused by poor weather conditions.[50]
- Regulators at the **Department for the Environment, Food and Rural Affairs** have looked at using Artificial Intelligence, Machine Learning and data science to target import inspection regimes at the UK border and in maritime environments.[51]
- Engineers at **National Grid** maintaining thousands of miles of wires and pylons now identify issues and areas needing work by using machine learning to analyse data captured by remote inspection drones.[52]
- Data scientists at the **Office for National Statistics** in Cardiff are deploying the latest advances in machine learning to use images of trees and other greenery sampled from Google Street View to better audit the state of Britain's environment.[53]
- Scientists and specialists at the Pirbright Institute in Surrey use big data and high performance computing to carry out bioinformatics analysis of animal virus diseases, including those with the potential to spread to humans.[54]
- Staff at the **UKAEA Culham Science Centre** in Oxfordshire provide a testing base for autonomous vehicles and other remote technologies, building on expertise developed for the safe handling of fusion experiments.[55]
- Researchers at the **Health and Safety Executive** in York are exploring ways of using data science, artificial intelligence and machine learning to aid the identification and assessment of risks and reduction in workplace injuries.[56]

How are digital technologies changing work?

Key features of the new digital technologies that this briefing will focus on are that they often involve either, or both:

- the collection of **data** on an increasing scale and across a widening range of fields (from physical environments and processes to people's behaviour and physical states);
- the **automation** of cognitive processes and tasks (such as interpreting data or making decisions on the basis of it) that would previously have been undertaken by humans

These two aspects are often closely interlinked – it's the large amounts of data that make possible the automation of increasingly complex tasks or decisions; while automation makes possible the gathering, recording and analysis of larger amounts of data than could ever have been done by humans alone.

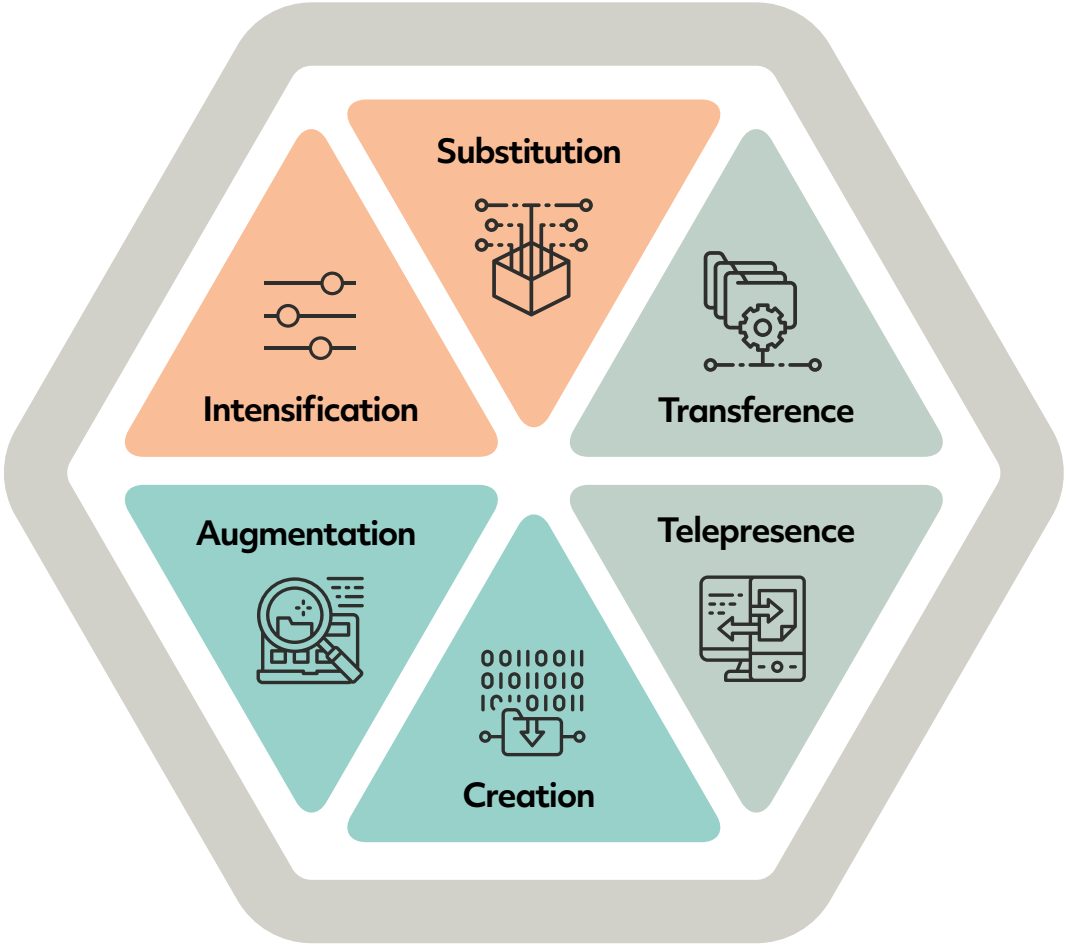
Often the automation of cognitive processes on the basis of large amounts of data is called "machine learning" or "Artificial Intelligence"; in work settings, it is sometimes discussed under the heading of "algorithmic management". But the technologies and management practices we aim to address in this briefing won't always come with these labels, and the most important task for trade unionists is not become experts in new technologies but to be alert to issues raised by the data-collection and automation which many of them involve.

How are new digital technologies being applied at work?

New data-collecting and automated technologies are playing a more important part in how businesses and organisations conduct their operations, including how they manage their workforces.

Increasingly common examples include:

- **Tracking software** – GPS and digital tracking
- **Surveillance software** – on phones/laptops
- **Keystroke monitoring** – on what you are typing, and speed
- **Shift allocation systems** – scheduling your work shifts
- **Feedback systems** – incorporating client or customer "ratings" into employee records
- **Task management systems - app based software to allocate tasks, set times and monitor how you are working**
- **Performance management** – rating workers, on promotions, bonuses
- **Facial/emotional recognition** – cameras used to check on workers
- **Recruitment software** – used to sift candidates for external recruitment as well as internal recruitment or promotion.
- **Right To Disconnect** – portable digital technology is also adding to an always-on culture, blurring the lines between our home and private lives, and when we are working and when we are not. This in turn is feeding into stress, burnout and wellbeing concerns. It is why Prospect is also campaigning for employers and government to introduce a Right To Disconnect (https://prospect.org.uk/future-of-work-technology-and-data/).



How technology is changing jobs

New digital technologies are also changing how workers are managed and experience their working lives – not always in positive ways. The Institute for the Future of Work has identified six ways that digital technology is changing the way we are managed and work.[1]

Substitution – automated (or "algorithmic") systems that monitor processes and allocate tasks, replacing the work of human supervisors or managers

Transference – interactive systems that transfer work from supervisors or managers to customers or clients, such as ratings that might inform task allocation or performance reviews

Telepresence – connective technologies that allow remote workers to be monitored, supervised, communicated with or allocated new tasks at a distance

Creation – new tasks and roles necessitated by the operation of new technologies, such as coding, data analytics and IT engineering

Augmentation – systems that automatically present workers with prompts, tips, additional information and "on the job" training in response to the task or situation they face

Intensification – automated task allocation and continuous monitoring that can put workers under pressure to complete more tasks in a given period of time

How widespread are these new technologies at work?

Some of these technologies and management practices may seem exceptional, even far-fetched. But the evidence suggests that their use is spreading rapidly and is often unnoticed.

PwC reported in 2017 that 40% of companies worldwide were using Artificial Intelligence as part of their HR functions. Though these were concentrated in the US, European employers were expected to catch up rapidly.[2]

The CIPD reported in 2018 that HR professionals across the world were increasingly "using people data to tackle significant challenges, with three-quarters (75%) tackling workforce performance and productivity issues using people data". In the UK, 14% of organisations are already "using machine learning and artificial intelligence to develop people reports".[3]

A YouGov survey commissioned in November 2020 found that one in five employers were using, or planning to use, software to monitor remote workers.[4]

The Institute for the Future of Work reported in 2021 that: "Algorithmic systems process information from an increasingly diverse set of information gathering technologies. Such technologies allow for more granular, and invasive collection of personal information at work. Biometric analysis, fine-grained location tracking, face and image recognition have all increased in workplaces through COVID-19"[5]

Data-collecting and automated technologies are changing Prospect industries

Data-collecting and automated technologies are becoming an increasingly common element of Prospect members' working lives.

Telecoms

- A Prospect member in the **telecoms sector** reported in 2021 that "Many employers are looking at new ways of hybrid working that will mix the traditional office with a blend of home-based working. Existing software applications can already track when an employee has logged in or is 'away' after a period of inactivity. We can already see new software that is rapidly being developed and implemented to capture ever increasing levels of detail on our activity and productivity."
- **Vodafone, Openreach, AT&T** are among hundreds of firms thought to have used an AI-powered hiring platform supplied by HireVue, which uses voice and facial recognition software and a "proprietary algorithm to determine which candidates are ideal for a specific job by analysing their vocabulary, speech patterns, body language, tone, and facial expressions".[6] Concerns have been expressed that such techniques run a risk of discriminating against people with disabilities.[7]

Energy

- **Northern Powergrid** is planning to deploy "innovative wearable technology" to monitor its workers' "fatigue" and "wellbeing".[8] The firm has already installed telematics technology in its vans, trucks and pool car fleet, including forward-facing cameras, a system that registers which driver is driving, and a dashboard LED display to manage driving techniques.[9] It plans to augment this with "Artificial Intelligence driver assistance systems" in all its fleet vehicles.[10]
- **National Grid** recently signed a $150m multi-year contract with Atos to provide "Digital

Managed Workplace Services" with Atos.[11] Atos has reported that "in some organizations there is a semblance of a 'Big Brother' attitude to productivity monitoring" but promotes solutions such as "self-monitoring technologies" and "Results Only Working Environments" as more effective approaches to measuring productivity of remote workers.[12]

Defence

- **BAE Systems** is exploring the use of artificial intelligence for inspecting whether work has been done correctly across assembly, manufacturing and build processes, and the use of connected sensors across processes to enable automatic scheduling and management of manufacturing processes and workflows.[13]
- **Babcock** has invested in an Equipment Tracking and Inventory Management mobile barcoding system with accompanying Radio Frequency network at its marine base in Rosyth.[14] Babcock uses Enterprise Resource Planning (ERP) software supplied by IFS and uses "almost all the modules that IFS deliver". The HR module includes employee management, performance review and attendance functions.

Civil service

- In 2017 the **Civil Service** commissioned Capgemini as a partner in a £4m project to explore the use of AI-driven "robotic process automation" across Government departments and agencies. This has now been followed by a deal establishing the firm as "the de facto RPA provider to HM Government".[15] In a survey of AI take up by organisations across the public and private sectors Capgemini includes amongst possible use cases "identifying talent for training", "position matching", and "detecting high potential employees / low performers".[16] More recently Capgemini has promoted "data-driven approaches to managing people", arguing that "as so many organisations adapt to remote working, now is the time to experiment with them".[17]
- The **Civil Service i**s investing heavily in digital testing and assessment systems to select candidates for recruitment and promotion, to reduce the need for human sifting of applications.[18] The system was developed by PSI, a workforce assessment provider which promotes AI and machine learning as a way to remove bias from HR processes.[19] It has now been adopted by more than fifty departments and has reportedly saved £3.5m in resource needed to manually screen job applications.[20]
- The **Driver and Vehicle Standards Agency** has equipped its field-based workforce with mobile devices carrying bespoke apps enabling the sharing and updating of data in real time. This includes a facility for enforcement officers to take a photo of the registration of a bus or HGV, which the system can then read and automatically bring up records for.[21] Its 2018 digital, data and technology strategy claimed that mobile working tools would deliver "improved workforce management".[22] The DVSA has also developed an AI-powered clustering algorithm to target resources for inspecting MOT testing sites.[23]
- The **Ministry of Defence** has installed a workforce management system that records attendance using Clocking Terminals, centralises absence managements.[24] Its provider, Crown Workforce Management, says its system can help with "identifying suspicious patterns of absence that may indicate staff gaming the system" and

can "automatically … open disciplinary procedures based on attendance patterns". It also allows a "wealth of data" to be pooled, stored and used to predict when staff are "statistically more likely" to be off sick or take their holidays.[25] Crown also says their system offers tools for managing appraisals and tracking "high performers".[26]

- The **Environment Agency** contracted Capgemini to build an automated alternative to manual activities involved in issuing environmental permit and license applications. It now uses a robot that "automatically opens up applications, locates relevant documentation, reconciles details, updates applications and legacy systems, and creates all necessary documents for email dispatch to the applicant and consultees", reducing the call on National Permitting Service staff time.[27]

International experiences

- In the **US** cameras linked to (often faulty and discriminatory) facial recognition software are increasingly used to monitor contract lawyers working from home, who have complained that it makes them feel robotized, forces them to sit in uncomfortable positions for long periods, and results in them losing work on the basis of errors made by the program.[57]
- **UNI Global Union** has reported on a case of bank employees employed in a customer service centre that appraised workers on the basis of a system that measured their tone of voice and mood, but which didn't work properly on female voices and "downscored" ethnic minority accents.[58]
- In **India** civil servants have been told to register their attendance at work through a biometric fingerprint system, with the data then published online enabling anyone to examine a single employee's attendance record.[59]

Impact of the pandemic

During the pandemic Prospect has recorded an increase in the number of technology cases being raised by members. These concerns include a range of new digital technology products that employers have started to use. For example:

GPS tracking on work mobile devices – whilst the union has negotiated the safe use of tracking software for some remote or public-facing jobs on health and safety grounds, there has been an increase in the use of tracking devices. In a number of cases neither the union nor staff have been consulted about the introduction of this software. This has created concerns about how the tracking data will be used. The union has requested to see the Data Protection Impact Assessment and asserted the rights of data subjects (workers) to be consulted.

Task allocation software – an employer has introduced task allocation software that sets average times for tasks and monitors 'on the job' time. This has raised concerns about how the data will be used, who has access and whether it will become part of performance management processes. In industries, like logistics or warehousing, this type of software is suggested to increase work intensification.

Performance – the union has cases where data used through productivity software is now being used in productivity and performance reviews. This is despite neither staff nor the union being consulted under GDPR about the legitimate use of data collected by this monitoring software.

When things go wrong…

Recent high-profile cases of data breaches and misuses – and the potential for automated systems to operate in discriminatory ways – have raised public sensitivity to the risks and potential problems of new data-driven technologies.

This awareness is now extending to workplace and employment contexts:

- In 2017 an automatic decision-making process for sifting job applicants used by the **Government Legal Service** was found to have indirectly discriminated against one who suffered from Asperger's syndrome[60]
- In 2018 **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 women[61]
- Workers at **call centres** can now be monitored by software that uses algorithms to assess their tone, mood and success in pleasing customers.[62] UNI Global has reported a case where these were then used in appraisals, despite being inaccurate and discriminatory[63]

Why does it matter?

Data-collecting and automated technologies are transforming how we are managed and work.

Used carefully and responsibly, data can help improve understanding, and automated or rule-governed processes can improve accuracy and consistency in decision-making.

As the experience of the pandemic has highlighted, digital connectivity can be invaluable in helping to keep us in touch and safe.

But there are very real risks that workers may have legitimate concerns about. These include:

Privacy – privacy, dignity, surveillance, security, the buying or selling of data, and the rights enshrined in Data Protection legislation and the UK GDPR

Accuracy – the level of competence and rigour applied in the recording, selection, analysis, and interpretation of data by managers and employers

Accountability – the transparency and accountability of automated scoring or prediction systems that function as inexplicable "black boxes" without human oversight

Fairness – the fairness and even legality (for example under equality law) of managerial decisions based upon these technologies and processes

Wellbeing – managerial processes that minimise human involvement can feel insensitive and inflexible, or result in intensification and stress, damaging quality of work and risking safety

OECD principles on AI

The OECD has set out four main issues in the design and implementation of ethical AI:

- Human rights: privacy, fairness, agency and dignity
- Transparency and explainability
- Robustness, security and safety
- Accountability

Principles for the Responsible Stewardship of Trustworthy AI (OECD, 2019).[64]

2: Part 2 – What we can do about it

Role of unions and Prospect's approach

Unions have a key role to play in ensuring workers are involved in the introduction of digital technology at work, and in reducing risks to our data and jobs.

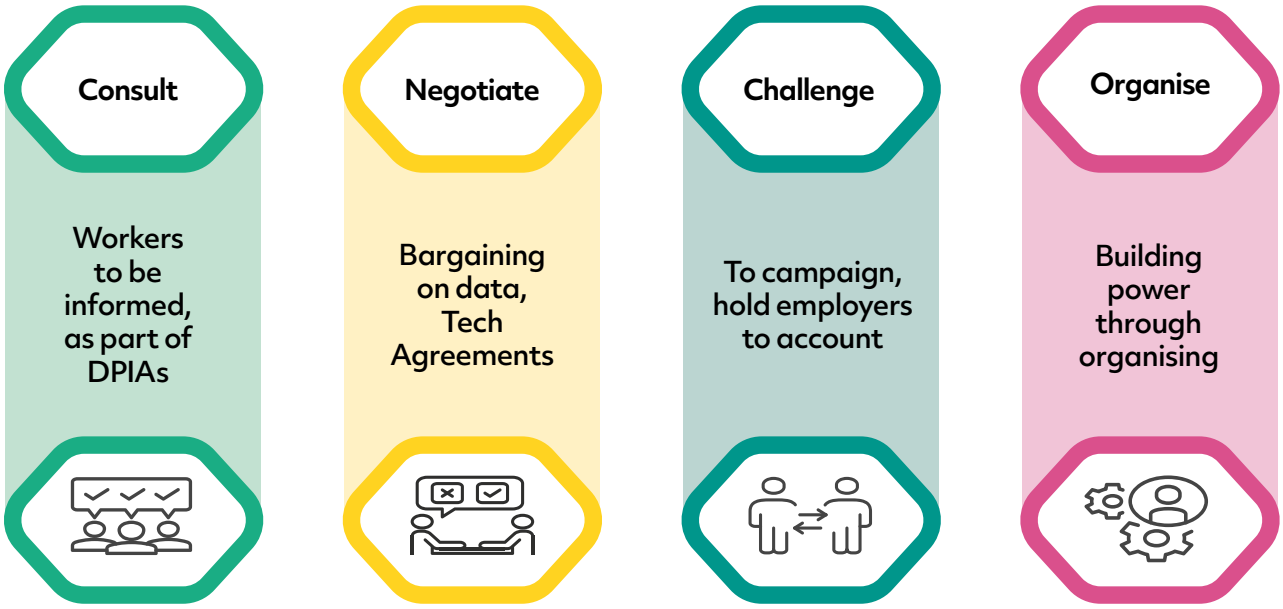
Trade union reps don't need to become deep experts in every new technology in order to act effectively on behalf of members.

Rather, our focus should be on identifying potential issues or areas of concern for members and potential members, and pressing employers for the assurances, information, explanations and procedures that will give employees confidence that technologies will be used properly and responsibly.

This could include:

- Ensuring employers are transparent with employees about their use of data-collecting or automating technologies
- Surveying members and potential members to gather their views and concerns about possible impacts on privacy, fairness, wellbeing etc
- Securing opportunities for the union or employees as a whole to be involved or consulted when new technologies are being planned or procured
- Agreeing rules about how data-collecting or automating technologies will be used, including rights for employees to access data or challenge outcomes
- Establishing framework technology agreements that embed overarching rules and procedures ensuring that employees are informed, consulted and involved whenever new technologies are introduced

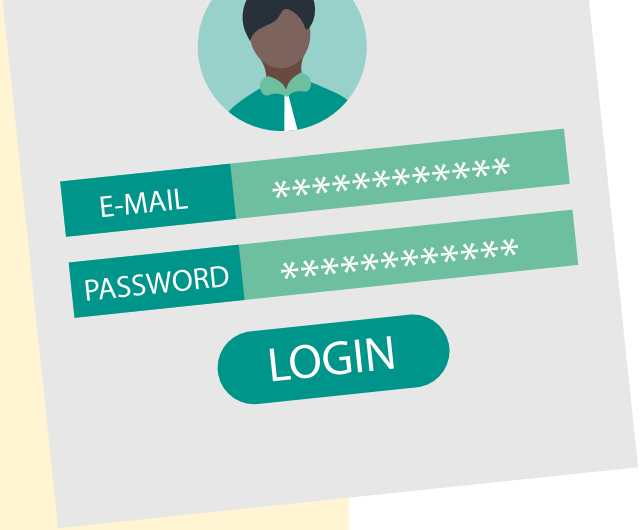
Prospect's approach is built around four pillars: consultation, negotiation, challenge and organising.



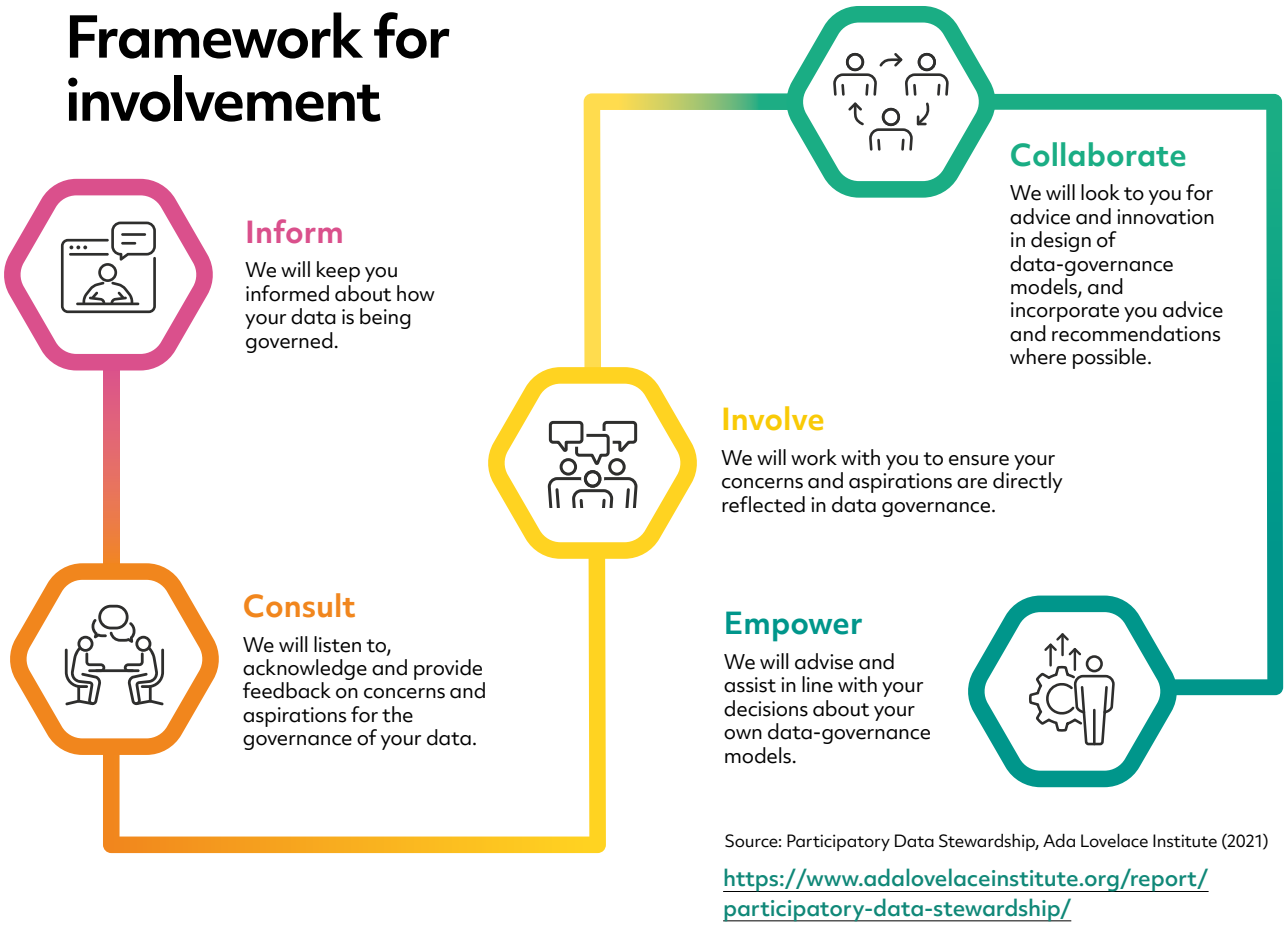
Overview of legal frameworks

There are significant legal issues that may be raised by the introduction of new data-collecting and automated technologies at work. These include:

- **Data protection legislation** and the **UK GDPR** places important obligations on employers with regard to how they process data about their workers, including with regard to transparency, accessibility, security, justifiability, and, in some cases, involvement and consultation. It also includes provisions that give workers rights to be informed of, and require human review of, automated decision-making processes that impact them. (These are set out in more detail below).
- **Information and consultation legislation** requires employers to establish general information and consultation arrangements in their workplace if 2 per cent or more of employees request it. These arrangements can cover any issues related to the employer's performance, or changes to working conditions or employment prospects.[28] In principle these arrangements needn't involve trade unions but in practice they typically do. The introduction of new technologies that could impact the how workers do their jobs and are managed would be important topics to include in such arrangements.
- **Trade union and labour relations legislation** requires employers that recognise a trade union to disclose information on request "which it would be in accordance with good industrial relations practice to disclose" and without which the union "would be to a material extent impeded in carrying on collective bargaining".[29] Official ACAS guidance specifies that this may include policies on recruitment, redeployment and redundancy; appraisal systems; and planned changes in work methods or equipment.[30] Complaints of failure to disclose such information can be taken up with the Central Arbitration Committee.
- **Equality legislation** places on employers a responsibility to ensure that their practices and procedures do not directly or indirectly discriminate against workers on the basis of protected characteristics. Experience has already shown that automated processes increasingly used in recruitment, promotion, performance appraisal and other workforce management practices run a significant risk of disadvantaging groups including women, ethnic minorities and disabled workers. For example, 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.[31]



- **Health and safety legislation** places on all employers a legal duty to ensure, as far as is reasonably practical, that work does not put employees' health and safety at risk. This could be a result of workplace technologies that, for example, put employees under excessive mental stress or prompt behaviours (such as attempting to complete tasks too quickly) that could prove dangerous. HSE regulations state that employers should consult staff (or, where recognised, union safety reps) on the health and safety consequences of any new technologies they are introducing – which could include software or platforms used to enable remote working or monitoring of remote workers.[32]
- **Fair dismissal legislation** puts a legal obligation on an employer to be able to show it has acted fairly and reasonably in dismissing employees of two or more years' standing. Dismissals based on performance data, profiling systems or automated procedures that are inaccurate, unfair or opaque are likely to be in breach of this obligation.
- **Information and consultation legislation** requires employers to inform and consult their employees on health and safety issues, and on making twenty or more redundancies in a ninety-day period.[33] These obligations to inform and consult could encompass data-collecting or automated technologies if they raise health and safety issues or are used to inform redundancy decisions.
- **Common law** has treated contracts of employment as entailing a responsibility on the part of employers to take decisions about employees in a way that is consistent with the maintenance of mutual trust and confidence, and can be explained to employees.[34] Relying on automated systems for analysing data and determining decisions could easily conflict with this.
- **The right to privacy** is enshrined in the UK Human Rights Act, reflecting Article 8 of the European Convention on Human Rights. How this balances with employers' interest in knowing what their employees are doing – especially if they are working from home or outside normal working hours – is as yet a relatively untested area of law.



Source: Participatory Data Stewardship, Ada Lovelace Institute (2021)

https://www.adalovelaceinstitute.org/report/participatory-data-stewardship/

Framework for involvement

Employers should be actively involving unions and workers in decisions about our data. That means going on informing staff to proactively involving and negotiating over how our data is used in a work setting. The Ada Lovelace Institute has developed a useful framework for participatory data stewardship that highlights the difference between being informed and being involved.

Consultation – workers to be informed, engaging employers

The foundation for the accountable use of digital technology at work is ensuring workers and unions are informed and consulted about new technological developments. Employers are legally obliged to consult workers over the use of surveillance technology, the nature of how our data is used and any reasons for monitoring. Where collective bargaining arrangements exist, we should make consultation on digital technology part of the union's ongoing agenda.

Using the UK GDPR

Though far from perfect, the recent UK GDPR, incorporated into UK law by the Data Protection Act 2018, provides an important set of principles and procedures for checking and, where necessary, challenging employers' use of data-collecting and automated technologies at work.

This legislation currently requires that employers using any technologies that involve the collection or processing of data identifying their workers will in most cases need to:

- specify a **lawful basis** for processing this data. "Consent" will not normally be sufficient in an employment context, meaning that the employer will have to be able to specify a clear purpose or purposes for the data-processing as necessary and proportionate for performing a contract of employment or protecting the employer's "legitimate interest"
- **inform workers** that the processing is taking place through a **Privacy Statement** that must specify, among other things, what personal data is being processed, the purpose(s) of the processing, the lawful basis of the processing, whether the data will be shared and for how long it will be stored
- be ready to ensure workers can exercise a range of important statutory rights, including a right to **access** and be provided with copies of the data that is being collected on them, a right to **correct**, **complete**, or **restrict the use of** data that is unfair or inaccurate, and a right to have personal data about them **erased** in certain circumstances,

Solely automated decisions

The legislation also places important obligations on employers using technologies that subject workers to **solely automated** decision-making processes – which might include the use of AI or algorithms in selection of candidates for recruitment or promotion, allocation of important tasks or roles, or evaluating their performance or capabilities. Under UK GDPR employers using such techniques must

- **inform** workers (including job-applicants) that such automated processing is taking place
- **conduct a human review** of the decision if the worker requests it[35]

The UK GDPR also gives workers the right to mandate an organisation or body to lodge a complaint on their behalf. This should give unions the opportunity to make complaint on behalf of its members.

Data Protection Impact Assessments (DPIA)

UK GDPR means that employers introducing new data-collecting or automated technologies to manage their workers will in most cases need to inform and **consult workers and their representatives as part of A Data Protection Impact Assessment (DPIA)**.

Workers have a right to be informed when their data is being processed. GDPR talks about 'high-risk' use of personal data. This is defined in law as something that "may result from personal data processing which could lead to physical, material or non-material damage." Any use of personal data to make decisions about workers – for example on performance – is likely to count as high-risk in this sense.

Employers are legally required to inform workers in advance about the use of this software and consult workers, and unions about it. GDPR says that a Data Protection Impact Assessment (DPIA) will be required where the processing is likely to result in a high risk to the rights and freedoms of natural persons. In other words, they are obliged to inform and consult with workers in all cases where workers' data is extracted.

The requirement for consultation in a DPIA enables trade unions, as representatives of potentially affected workers, to question the new process on behalf of members.

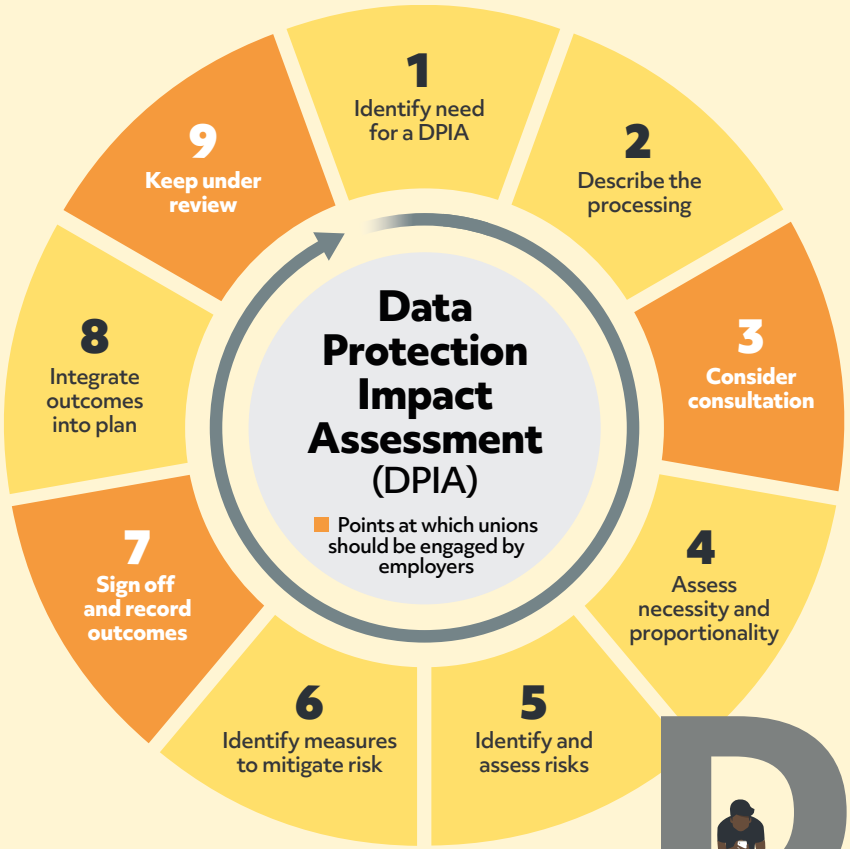
Union representatives can scrutinise an employer's DPIA to make sure it:

- Provides a description of the proposed processing of the data, and the reasons why the processing is taking place.
- Explains the legal basis for the processing.
- Provides an assessment of how necessary the processing of the data is in relation to the reasons for the processing – employers should only be collecting the minimum amount of data needed.
- Consults with the relevant stakeholders – this should include trade union and/or workforce representatives.
- Identifies and assesses the risks to the personal data of individuals.
- Identifies the measures to address the risks, including safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with the Regulations.
- Details recommendations to be signed off by project managers - the outcomes should be incorporated into the project plan.

Checklist: What questions should employees and reps ask during a DPIA?

Key questions that can and should be raised with employers include:

- ☐ How is the data going to be used?
- ☐ Why is the personal data being collected?
- ☐ What are the sources of this data?
- ☐ How have you identified risks arising from the use of individual personal data and the rights/ freedoms of the collective group of employees?
- ☐ What are these risks and how can they be reduced?
- ☐ If you have decided not to consult with union reps, can you disclose the reasons why?
- ☐ What will be the review process?
- ☐ How will data breaches be shared with the union?
- ☐ If employer has decided not to undertake a DPIA, what are their reasons why?



Other issues that should be considered include:

- ☐ Processors – Is the data being collected and processed by another organisation on behalf of the employer? The employer should then have a processing agreement with that company, and staff need to be informed about their identity in the privacy notice.
- ☐ International data transfers - Is the data being transferred overseas, eg via cloud storage? A transfer of personal data to a third country or international organisation shall only take place subject to specific provisions set out in the regulations: an adequacy decision covering specific countries; binding corporate rules; standard data protection clauses.

Prospect has produced a complete guide to DPIAs for trade unionists which can be accessed at https://prospect.org.uk/about/data-protection-impact-assessments-a-union-guide/

Lawful Basis to process data

To process employee personal data employers must have a lawful basis to do so, as set out in Article 6 and if the data is defined as special category, then you need an additional basis as set out in Article 9 of UK GDPR.

Consent is just one lawful basis, and if the data involves special category, which could include biometric data ie photographs, pictures, fingerprints, used in monitoring, then you would need explicit consent.

The Article 29 Working Party Guidelines on consent (2016/679) states that consent must be:

- Freely Given
- Specific
- Informed
- Unambiguous

For consent to be valid guidelines published by the EDPB (European Data Protection Board - Guidelines 05/2020 on consent under Regulation 2016/679 May 2020) states that the minimum requirement for consent is that individuals should be informed, and the following information is required for obtaining valid consent:

- Controller's identity
- Purpose of each of the processing operations for which consent is sought
- What type of data will be collected and used
- The existence of the right to withdraw consent
- Information about the use of the data for automated decision-making.

Therefore, if an employer is using consent, then they need to inform their employees and involve them in the process when introducing new technology.

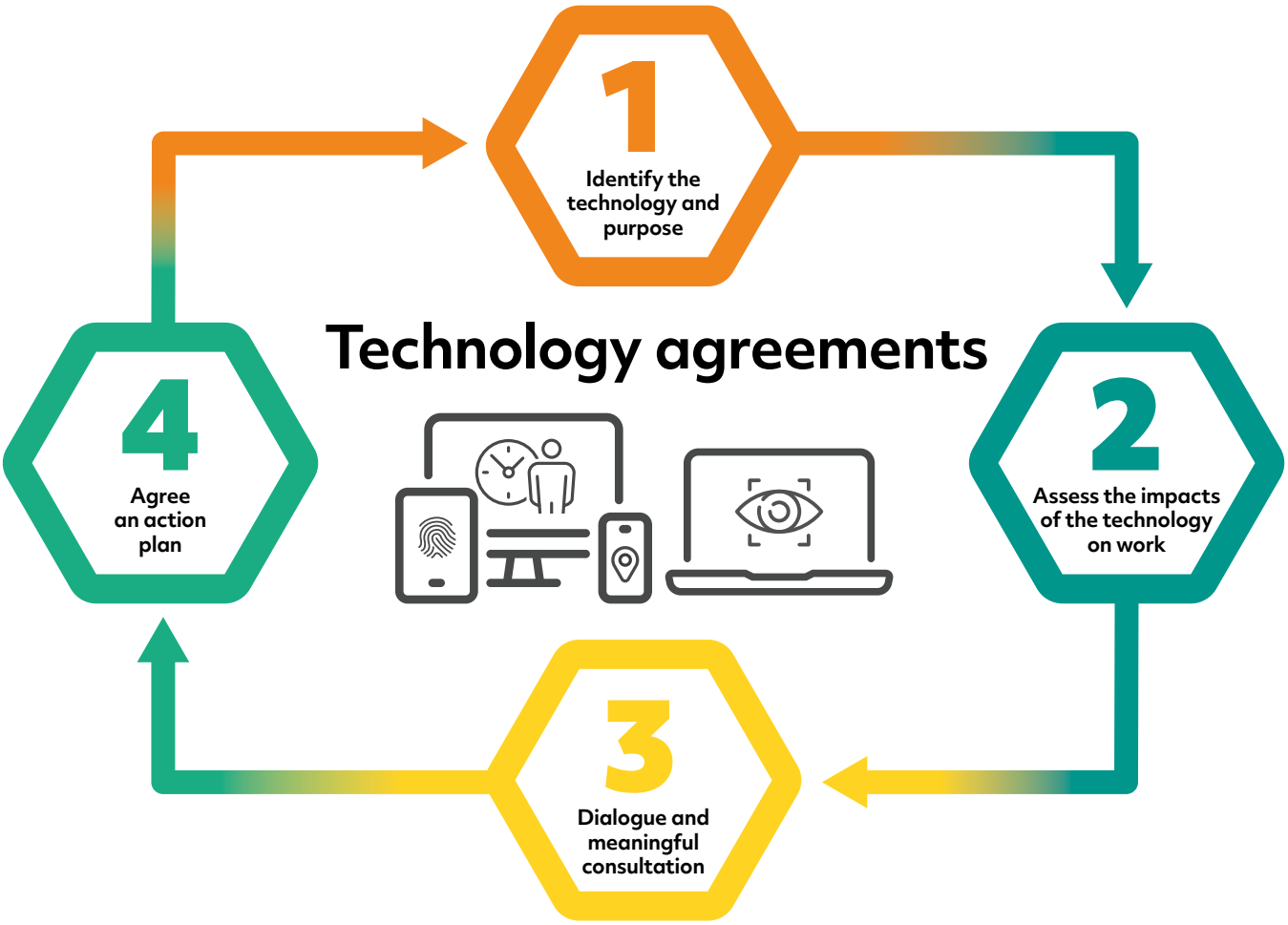
However, in the employment context consent is seldom seen as a legitimate lawful basis that can be used by an employer because of the nature of their relationship with employees.

The relationship between employer and employee is recognised as being intrinsically unbalanced, given the dependency the employee will have on the employer for their employment. It is unlikely that an employee can freely give their consent, as the fear of refusal or the real risk of a detrimental effect from a refusal will influence their decision to consent.

Therefore, any introduction of new technologies in the workplace or the use of AI, means that an employer would be unlikely to use consent and would be required to use a different lawful basis, such as:

- Performance of a contract,
- compliance with a legal obligation,
- processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority,
- legitimate interest.

Therefore, it is important to know what lawful basis is being used to undertake the processing, if it is the wrong legal basis then this will be a breach of UK GDPR, and organisation can be liable to fines.


1
Identify the technology and purpose
2
Assess the impacts of the technology on work
3
Dialogue and meaningful consultation
4
Agree an action plan
Technology agreements

Negotiation – bargaining on data and technology agreements

Data-collecting and automated technologies are likely to have a significant impact over the terms and conditions of work. As indicated above, consultation with workers' representatives about such technologies is likely to be a legal requirement under the UK GDPR, as well as long-standing legislation on disclosure of information for the purposes of collective bargaining.[36]

It should also be seen as an important and increasingly essential way to maintain and strengthen trust, engagement, inclusion and morale across the workforce.

Unions should aim to ensure provisions around digital technology and use of our data are included as part of ongoing consultation in collective bargaining arrangements, just like pay and conditions. This might mean agreeing a specific framework of principles and processes around the introduction of new technologies into the workplace or work processes, sometimes referred to as a "technology agreement".

Why employers should care

Responsible and thoughtful employers should be aware of the risks and potential jeopardy that new technologies can result in.

Mishandled implementation of data-collecting and automated technologies can have lasting negative impacts on privacy, accuracy, accountability, fairness and wellbeing that can damage the trust, engagement, morale and cohesion that are essential to workforce productivity. The most successful businesses and organisations will be those that work with employees and their representatives to find and agree solutions to the risks posed by new technology and ways of working.[65]

For these reasons 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".[66]

Meanwhile the CBI has called on employers to tackle mistrust by ensuring human oversight of Artificial Intelligence and "empower staff to engage with AI technology, challenge unfair bias in data and ensure teams designing the technology are diverse".[67]

The Institute for the Future of Work alongside Community have helped develop a 4-stage process to help unions consider how to bargain over technology (Shaping technology use at work 2021– https://www.ifow.org/case-studies/partnering-with-trade-unions-to-shape-technology-use-at-work).

Technology agreements

There are broadly 4 steps that should be considered in planning to negotiate a technology agreement:

Things to check for in a technology agreement could include:

- Does the agreement enshrine a commitment from employers to consult, review and involve the union at all

stages of planning, procuring, implementing, monitoring and reviewing the introduction of new technologies?

- Does the agreement include provision for standing committees or ad hoc working groups to allow for specific proposals or arising issues to be considered in sufficient depth and detail?
- Does the agreement set out principles for how change will be managed, goals or outcomes that need to be upheld or protected, impacts that will be considered?
- Does the agreement specify processes to ensure thorough advance assessment, monitoring and review of any impacts on issues such as equality, diversity and inclusion; health and safety; quality of work; trust, engagement and job satisfaction?
- Does the agreement provide strong safeguards around monitoring and surveillance of workers, including a commitment to proportionality and guarantees of transparency, consultation, impact assessments, respect for privacy, limits to legitimate use and, where relevant, rights to challenge and redress?
- Does the agreement commit the employer to maintain robust procedures and safeguards around the collection, storage, sharing, checking and correction of workers' personal data and the purposes it can be used for? Does it prevent, or provide robust safeguards around, data collected for one purpose being used for a different purpose?
- Does the agreement commit the employer to maintain processes and resources in place to ensure that workers' rights to be informed of automatic processes are upheld, and that requests for human review can be promptly acted on?
- Does the agreement commit the employer to provide training and reskilling for workers whose jobs are affected, or who see some or all of their roles transferred or displaced?

The Institute for the Future of Work and Community have produced a useful detailed guide on tech agreements which may help you consider what may help in your situation (https://community-tu.org/preparing-for-the-future/#3c49ad0c).

Checklist: Questions to ask employers on the use of automated decision-making tools, including algorithmic or "AI"-powered systems, and their impact on workers

- ☐ What are the intended uses of these systems?
- ☐ What outcome/impact is the system optimizing for?
- ☐ What are the impacts on different groups of workers?
- ☐ Is data in the system trained on? Who controls that data?
- ☐ Who maintains the system? How is it maintained?
- ☐ How can workers be involved in the decisions?

Getting advice and support

Trade union reps don't need to know everything about how the technology works. The union's is to ask questions and ensure employers are being transparent. Prospect can help assess and provide advice on responses from employers.

As a union, we can help:

- Provide access into an expert network to advise on technical questions
- Ensure evidence of impact that is explainable
- Create a paper trail/ documentation trail of decisions
- Get you to be in the room when decisions are made.

Examples of union involvement in data and automation at work

- Prospect members at **BT Group** have established a Data Rights sub-committee to focus attention and expertise on data-driven processes and technologies being introduced by the employer. This has resulted in useful assurances and rules around the company's use of monitoring data and machine learning to analyse and redesign workflows – though at the time of writing important issues remain unresolved.
- The **Maritime and Coastguard Agency** implemented at Survey and Inspection Transformation Programme which entailed use of new ICT and expectations of "contactability" to enable more flexible and remote working resulting in more continuous operation and savings on office costs.[37] Prospect was able to negotiate an agreement that tied these changes to ways of working to significantly enhanced pay for professional staff.[38]
- **Northumbrian Water** reached an agreement with trade unions on the introduction of vehicle telematics with the addition of an app that gave drivers full access to their data.[39]
- The **Environment Agency** has sought to extend telematics technology to its leased car fleet. Unions have sought to negotiate a "privacy switch" for when the vehicle is not being driven on Environment Agency business.[40]
- The **Animal and Plant Health Agency** recently introduced automated scheduling software that would tell field staff which farms to visit and in what order – something they had previously judged for themselves. The Prospect branch raised concerns that this might also be used to monitor staff performance. In the event the system was abandoned when it proved less efficient than allowing field staff to prioritise and plan their own visits.
- In Ireland, the Financial Services Union secured commitments from U**lster 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.[41]
- **Air navigation service providers** in many countries have sought to introduce "ambient workplace recording" to air traffic control operations rooms, ostensibly to aid safety by assisting in incident and accident investigations. Unions have sought to establish rules around the use of such recordings, limiting their use to safety or (with the consent of the relevant staff) review and training purposes, while protecting their confidentiality and preventing them from being used in disciplinary cases.[42]

- **Natural Resources Wales** consulted unions on the introduction of a lone and remote working policy that uses a cloud-based system to track and record movements of remote workers so they can be located in an emergency. This has been welcomed as a measure to protect the safety of safety of staff working in potentially hazardous or hostile situations, such as those patrolling for illegal fishing for example.
- 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**.[43]

Example: The Workforce Partnership Council in Wales

The Workforce Partnership Council brings together trade unions, the Welsh Government and public service employers in Wales to discuss cross-public service workforce matters.

It has drawn up an annex to its Partnership and Managing Change agreement on "Managing the Transition to a Digital Workplace" which aims to ensure agreed principles of partnership and change management are extended to issues raised by the increasing role of digital technologies in the workplace and work processes. [44]

It sets out five key principles, accompanied by clear explanations and specifications and examples of what would count as evidence that the principles are being upheld, including:

- "employee voice and participation", evidenced by "regular structured meetings" held with trade unions to involve workers "in the introduction of new digital technologies in the workplace"
- "health safety and well-being", evidenced by "comprehensive risk and equality impact assessments" that are "developed and regularly reviewed in consultation with trade unions"
- "respecting workers rights", ensuring that "the introduction of digital technology does not adversely affect compliance with statutory employment rights and standards", with "workers and their trade unions … engaged at an early stage in order to understand how the implementation of new technology relates to statutory employment rights and standards"

Challenge – campaigning to hold employers to account

Prospect believes that technology should be used to improve work and jobs with workers consulted and involved at every stage from development to use. Collective bargaining and renewed digital rights should be at the centre of the responsible use of technology at work.

As well as supporting members, representatives and branches seeking to engage with and influence technological change in their workplace or organisation we are lobbying and campaigning for changes to business practice, government policy and legal frameworks at all levels.

See graphic: **Our agenda for responsible technology**.

Organising – building power

Trade unions' chances of success in tackling this issue are greatly improved when branches are well organised.

Consultation is more meaningful when members fully participate, so this issue is an opportunity to build engagement with members. Regular member meetings to inform them of progress and get feedback and comments from then is essential. Members working in different areas/ departments may have views and ideas to contribute to the case being putting forward.

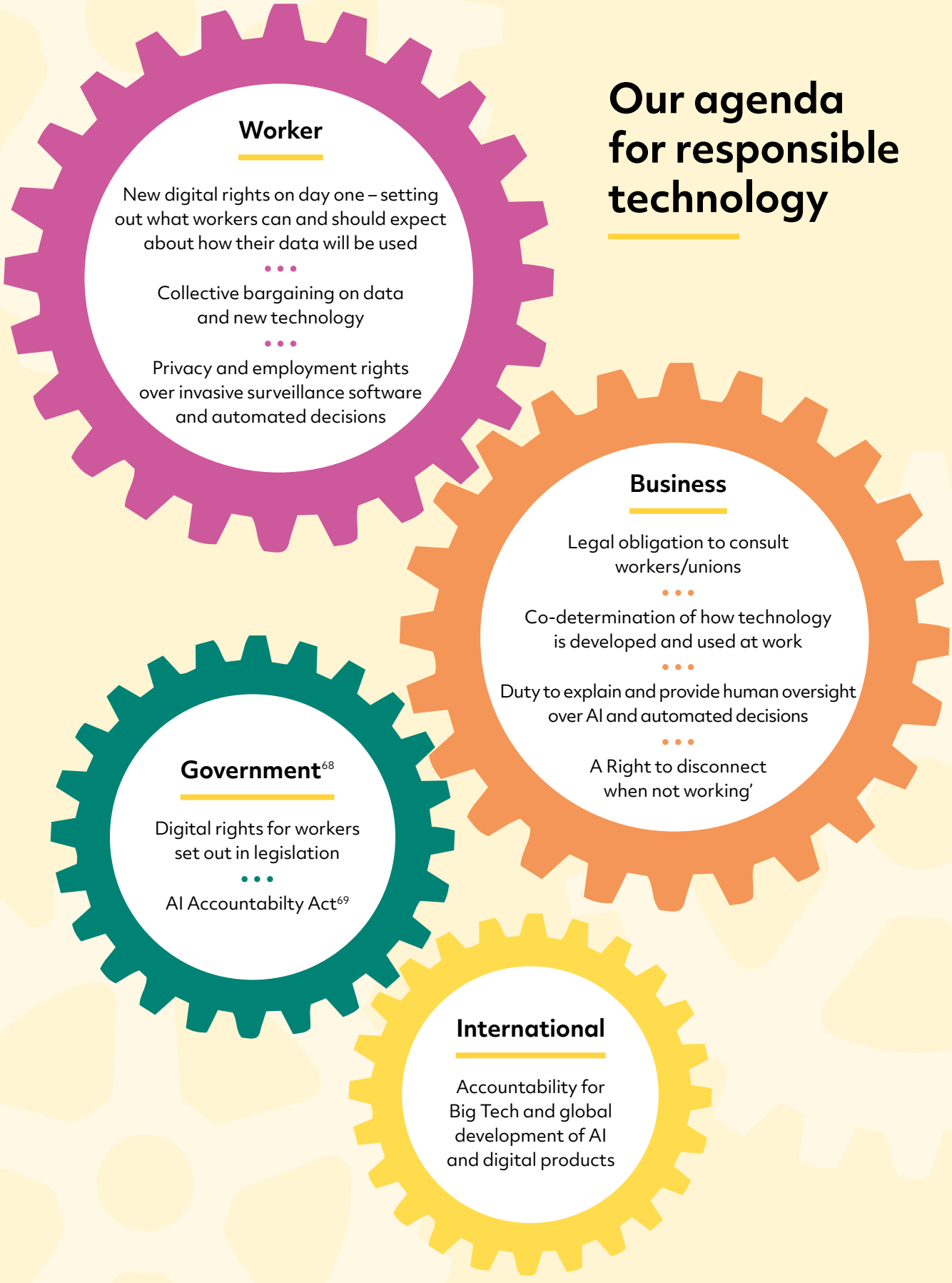
Trade unions will then be able to enter **negotiations** confident that they have the backing of the members and will be able to offer real examples of members concerns or how members may be impacted by any proposals.

The collective strength of a branch can also make a real impact to any campaigns being led by Prospect. For example, in 2020 Prospect launched a petition to raise concerns over the automatic surveillance implemented by Microsoft's Office 365.[45] Members can follow Prospects social media feeds, amplify the message, and share articles in their own networks. Prospect is a union of over 150,000 members and if all add their voice, together we can build a much bigger awareness of this issue and successfully **challenge** any negative impacts.

Organising in a workplace around an issue is also a good way to grow the membership of your union. Trade unions should think about how they can use branch communications like meetings, newsletters, posters and emails to raise awareness amongst non-members about the issue. An issue like this offers an excellent opportunity for every member to strike up a conversation with a colleague. They can ask them what their concerns are and let them know that by joining the union they are able to take part in consultations and are also increasing the chances of a successful negotiation and challenge.

Ask your Prospect Organiser if you need any support and/ or training to be more effective at campaigning and recruiting members in your branch.

Our agenda for responsible technology



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Digital technology

Guide for union representatives

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