



**European Work
and Employment
Research Centre**



Reducing Precarious Work through Social Dialogue: An analysis of 'protective gaps' facing people at work in the UK

Part 1 report – Executive Summary

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Executive Summary

This report highlights significant challenges in identifying, addressing, and reducing the prevalence of precarious work in the UK. Furthermore, the protections available to workers in both 'standard' and 'non standard' forms of employment are under threat from economic restructuring and changes in the legal and regulatory environment. The growth of an individualised 'rights-based' regime in the UK mirrors the decline in collective forms of employee representation and voice and means workers (and trade unions) face significant difficulties in building solidarity across a fragmented and highly dispersed workforce. New forms of civil society and grassroots activism can bring pressure to bear on employers over discrete issues such as living wages but the formal coordination of these campaigns is relatively limited, and means that general upward pressure on employment standards is weak.

This UK interim report is one of six country reports commissioned for a wider European research programme, 'Reducing Precarious Work in Europe through Social Dialogue', funded by the European Commission (VP/2014/004). It represents a first stage in a 24-month research project and draws on expert interviews with a range of employer, union, regulatory and civil society bodies. A full listing of interviewees, and the respective organisations, is provided in Section 3 of the report. The second stage of the project will involve detailed case studies of precarious employment experienced in different organisational contexts and supply chains. Results will be published in September 2016.

This interim report has three main objectives:

- To identify the 'Protective Gaps' which exist in the UK economy and labour market
- To explore how these Protective Gaps impact upon different groups of precarious workers
- To identify key areas where social dialogue may play a role in reducing the extent and severity of Protective Gaps

The nature of 'Protective Gaps' in the UK

This report develops the analytical framework of 'Protective Gaps' as a means to capture the multi-layered experiences and meanings of precarious employment. It assesses the evidence of four protective gaps: employment rights gaps, representation gaps, enforcement gaps, and social protection and integration gaps. Drawing on secondary data (policy documents, labour market data, relevant websites) and primary interview data, the report critically assesses the nature, extent and severity of these four protective gaps in turn.

Four Protective Gaps in the UK

1. In-work Regulatory gaps			
Minimum standards gaps (minimum wages, maximum hours, paid holidays, sick pay, pensions)	Eligibility gaps (employment status/age/length of job/hours or income thresholds)	Upgrading gaps (regulated pay progression in line with cost of living)	Integration gaps (fragmentation due to outsourcing; limited rights to move to stable contracts or change hours)
2. Representation gaps			
Institutional gaps (lack of unions, works councils at workplace, social dialogue at sector or supply chain)	Eligibility gap (lack of access to institutions due to employment status/ contract/ hours/ location)	Involvement gaps (lack of organising efforts, or efforts to involve in institutions or access to managers)	
3. Enforcement gaps			
Mechanism gaps (gaps in access, process, inspections, sanctions, whistleblower protection)	Awareness gaps (gaps in knowledge about rights, gaps in transparency)	Power gaps (fear of loss of job or residency, fear of exclusion from unemployment support, lack of access to employer)	Coverage gaps (extent of unregistered workplaces, informal and illegal employment)
4. Social protection and integration gaps			
Entitlement gaps (length of job/ hours or income thresholds)	Contribution gaps (state subsidies - minimum out of work benefits/ in-work benefits/ employer subsidies)	Integration gaps (access to housing/credit etc linked to employment status and security as well as income)	

i) Employment rights gaps

Standard employment rights in the UK are set at a relatively low level compared to other European countries. Moreover, there is relatively limited scope and incentives for employers to improve, coordinate and integrate rights. Statutory **minimum standards** such as the National Minimum Wage are a relatively recent phenomenon and along with rights such as parental leave tend to be set at a low level. Moreover where minimum standards have greatest effect (i.e. in parts of the private sector where collective worker representation is weak) they are often used by employers as a ‘ceiling’ rather than a ‘floor’ of employment conditions. Most categories of workers are **eligible** for basic statutory protections including those engaged on fixed-term, agency or zero hours contracts (with the exception of self-employed workers). Eligibility for employment rights such as maternity and sick leave pay is contingent on completing minimum thresholds for continuous employment and earnings, which workers on low hours or short-term contracts may struggle to achieve.

The scope for regular and consistent **upgrading** of employment rights is relatively limited; some rights experience adjustments with the changing political orientation of government (e.g. employment protection rules), while others are heavily influenced by macroeconomic concerns.

Collective worker representation is limited in scope meaning that localised improvements in standards are often dependent on employer goodwill.

A close **integration** between employment rights for different types of workers has largely been achieved, which means part-time, fixed-term and temporary workers for example enjoy the same protections as full-time permanent members of staff. However, there are major gaps: the qualifying period of continuous employment can limit agency workers' entitlement to equivalent standards as permanent staff; outsourcing is a significant mechanism in driving the dilution of standards across the supply chain; zero hours contracts have emerged as a significant 'grey' employment form; and bogus self employment appears to act as a substitute for standard employment forms.

ii) Representation gaps

The protection of workers through **institutions** such as trade unions, collective bargaining structures, and joint consultative committees has declined significantly over the last 40 years in the UK. This means that whilst non-union channels of representation have been strengthened by legislation, a high share of workers in the private sector (around six in seven) have no formal representation through independent channels of social dialogue such as collective bargaining with trade unions.

Collective agreement coverage by employment status (2013)

	Full-time vs. Part-time		Permanent vs. Temporary		
	All employees	Full-time	Part-time	Permanent	Temporary
All employees	27.5	29.1	23.1	28.0	20.5
Male	25.4	26.6	16.3	25.9	18.5
Female	29.7	32.9	25.1	30.2	22.4
Member	67.6	69.1	62.1	67.8	60.2
Non-member	13.6	14.0	12.5	13.7	13.0
Private sector	15.4	16.9	10.9	15.7	9.8
Public sector	60.7	64.5	51.7	62.1	43.1
Less than 50	14.9	15.5	13.8	15.0	13.9
More than 50	39.0	39.2	38.0	39.7	27.2

Source: BIS (2015: 34)

Whilst there are no formal differences in the **eligibility** of different groups of workers for representation through trade unions and recognised channels of social dialogue, in practice certain groups such as migrant workers, those on temporary agency contracts, and those in low paying jobs are much less likely to be unionised than UK born, permanent and higher paid workers. Although trade unions have attempted to **involve** vulnerable and precarious workers through organising campaigns, slow progress means that many lack effective representation at work.

iii) Enforcement gaps

Despite the relatively heavy reliance on an individual rights-based system of employee protection in the UK, there is evidence that the **enforcement** of rights is highly variable. Furthermore, the structure of certain types of work (e.g. care work with no fixed place of work) combined with cost-cutting employer practices (e.g. non-payment of travel time) means that employees risk falling below minimum standards such as the hourly equivalent of the National Minimum Wage. The ability of regulatory and industry watchdog bodies such as ACAS, the ESA and GLA (which depend on public

funding) to both protect and support vulnerable workers is challenged by the economic climate of austerity, and their narrow remit means the scope and **coverage** of protection varies.

Central government efforts to increase compliance with statutory protections such as the NMW run counter to the general rebalancing of legal protections in favour of employers, and relies on the **awareness** of workers as to their employment rights and their **power** to successfully challenge illegal or discriminatory employer practices. The commitment of the government to 'reducing red tape' on businesses, cutting entitlement to legal aid and charging workers fees for employment tribunals clearly weakens the position of workers who feel discouraged from challenging employer practices and face barriers to justice. The emergence of new civil society groups offers some scope for building solidarity among low paid and insecure workers but the single-issue campaigning nature of these organisations (such as the living wage foundation) means that the coordination of action on multiple issues facing precarious workers is still problematic.

iv) Social protection and integration gaps

The **eligibility and entitlement** of workers to social protections is highly contingent on the structure and level of household incomes, and the **contribution** made to systems of social insurance. The value of these entitlements is being reduced as a result of welfare reforms (e.g. cuts to in-work benefits and caps on housing benefit). From the perspective of **integration**, variable and insecure working hours and working periods attached to certain types of contract mean some workers face challenges in accessing social protections, compounded by the limited access to finance and credit.

How do *Protective Gaps* apply to different types of precarious work?

Precarious forms of employment challenge normative standards and redistribute risks of insecurity from employers to workers. Unlike the catchall term 'flexibility', precarious work is not defined by employer needs (numerical or functional, for example), nor does it equate to non-standard contractual forms (e.g. part-time, temporary, self employed). The report interrogates the character of protective gaps for four types of precarious employment, as follows.

Four employment forms at risk of precariousness

i. Diminished 'standard' employment contract	<ul style="list-style-type: none">• permanent contract• full-time (plus overtime hours/ shiftwork)• part-time work (when the outcome of rights to reduce hours)• reduced hours working (with rights to return to full-time)
ii. Variable hours below full-time	<ul style="list-style-type: none">• part-time work• zero hours contracts
iii. Temporary work	<ul style="list-style-type: none">• fixed-term contracts• temporary agency work• internships, casuals
iv. Cost-driven subcontracted work	<ul style="list-style-type: none">• subcontracted employees• false self-employed

1) Diminished standard employment relationship

Precarious work potentially concerns jobs associated with the 'standard' employment relationship, namely full-time and permanent, whether because particular standards have eroded or labour market segmentation generates unequal experiences among different workforce groups. Job security standards have diminished, both in the form of statutory rules and conventional practice (e.g. among downsizing public authorities). The right to decent working time also remains contentious in light of the UK's sustained opt out provisions from the EU 48-hour maximum rule and poor performance in the European ranking of excessive working hours.

Gaps in representation undermine the standard for collective worker voice, especially for low-wage employees for whom union density is in fact higher among part-time than full-time employees. In the private sector non-union forums are more widespread than union representation, although union representation on Joint Consultative Committees lends stability and effectiveness.

The introduction of fees to take a case to employment tribunal makes enforcement of standards more costly and more difficult and quite clearly shifts risk from employer to worker, whatever the nature of employment contract. Developments in the inspection regime are mixed with cutting of resources in some areas but more effective targeting of activity in others.

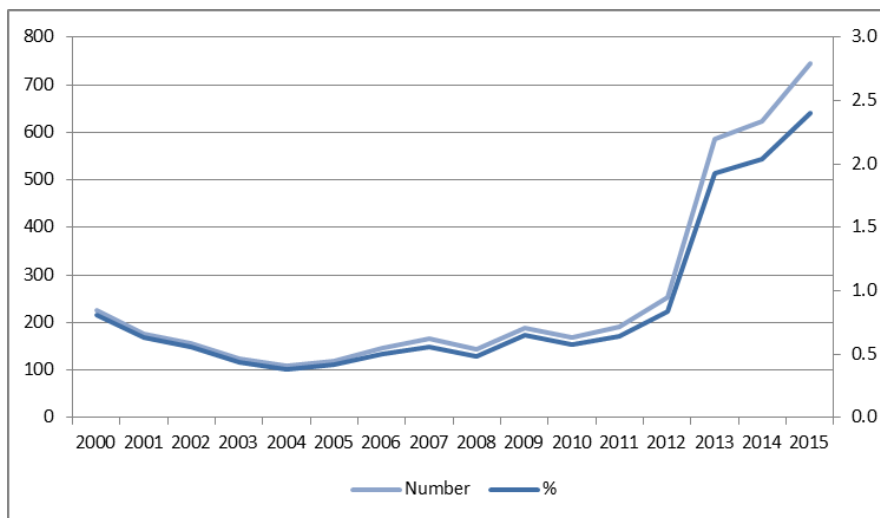
Finally, social protection standards remain generally low relative to many European countries. State pensions are low so that decent pensions depend upon employer provision which is far from widespread, particularly in the private sector. Also, new welfare rules (Universal Credit) risk encouraging employers to reduce guaranteed hours in the knowledge that welfare benefits may top-up lost hours.

2) Less than full-time guaranteed hours

Part-time work is well established in the UK and historically has been seen as a way to fit working patterns with other commitments such as childcare and domestic roles. This in turn means that part-time work is typically concentrated among women workers. There is however strong evidence that part-time work has become increasingly 'demand driven' in that employers design flexible and low hours contracts to follow the contours of demand as opposed to the preferences of workers. In addition the structure of welfare payments means that many second earners are trapped on relatively low hours and low earnings in order to maximise the value of in-work benefits.

Zero hours contracts are a particular problem owing to their ambiguous legal status. This means a worker's entitlement to certain rights and employment conditions is not consistently applied. Also, variability in working patterns may mean that both financial security and issues of work-life balance are subject to the vagaries of market conditions and employer demand. More broadly part-time and zero hours contract workers are at risk of low earnings (which the welfare system does not necessarily compensate for), and may struggle to access training and career development opportunities which would allow them to progress within firms.

The rise in zero hour contracts, 2000-2015



Source: ONS data; authors' compilation.

3) Temporary work

Temporary agency workers may find themselves excluded from formal rights and entitlements (or even written conditions of employment) by virtue of their classification as 'worker' rather than 'employee', or due to the limited duration of their employment contract. In addition, both agency workers and fixed-term contract employees may only acquire certain rights (such as equivalent rates of pay or entitlement to maternity pay) after a specified period of continuous employment.

Much temporary work is involuntary: around two thirds of workers aged 20-59 in temporary agency work would prefer a permanent employment contract; and many become trapped in a 'low pay, no pay cycle'. Around one in ten UK workplaces make use of agency workers and around 1.1 million are engaged on assignments each day. Agency workers are entitled to equal rights with employees at client organisations but this does not hold under the 'pay between assignments' or 'Swedish derogation' model. There is considerable debate as to whether this is a regulatory loophole, enabling employers and agencies to diminish standards, or an alternative flexible mechanism for ensuring minimum protection.

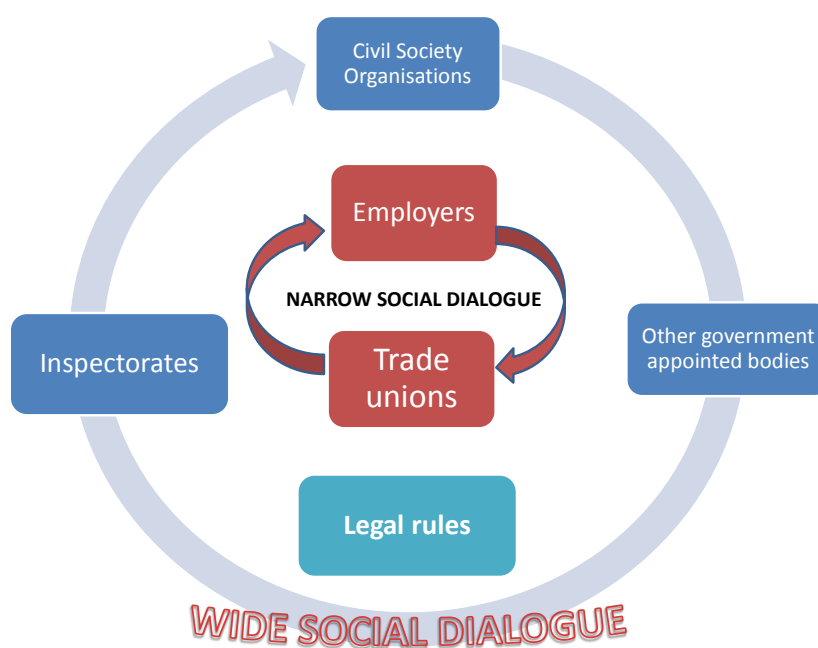
4) Cost-driven subcontracting work

Cost-driven sub-contracting is often associated with conditions of intensive cost competition and undercutting of labour standards, such that the job and income security of sub-contractors and their workforces is highly contingent on the steady supply of work packages from higher up the supply chain. More importantly, the long and complex supply chains sometimes obscure the employment relationship and make it difficult to establish and enforce an employer's social and legal responsibilities for meeting worker rights and employment conditions. TUPE protections have been weakened and now offer less protection of employment conditions for employees transferring from one employer to another with an outsourcing contract; the evidence suggests employers are exercising greater flexibility to restructure working practices and recruit new staff on lower pay and conditions. **Bogus self-employment** is another way in which employers can avoid specific obligations or duties by transferring responsibility for terms and conditions such as sick pay and holiday pay onto the individual worker.

The role of social dialogue in closing protective gaps

The notion of 'social dialogue' is relatively under-used in UK industrial relations, connoting as it does a European consensus-based tripartite system of state, employer and union regulation which does not reflect the more confrontational and fragmented system of voluntarism observed in many sectors and workplaces in Britain. Nevertheless, this report concludes by considering a wider formulation of social dialogue that stretches beyond employer and union interactions to encompass the role of other civil society and campaigning organisations.

Narrow and wide forms of social dialogue in the UK



Much needed improvements to the **effective implementation of standards** typically relies on a combination of institutional mechanisms for worker representation and negotiation, enforcement, employer goodwill and supportive economic conditions. The enforcement of standards relies on workers being aware of their rights at work, and the ability of individuals or non-unionised groups to articulate their concerns to managers, or to notify regulatory and enforcement agencies of breaches. However, the UK's light touch system of labour market regulation along with new obstacles to legal representation (such as charging for employment tribunals) have undoubtedly strengthened the position of employers over employees, who find themselves increasingly tied to employers as social protections are withdrawn. Against this backdrop, the relative weakness and absence of narrow union-employer social dialogue in many British workplaces means civil society organisations are playing an increasingly important role alongside enforcement agencies in strengthening mechanisms of rights and representation at work. There are also significant opportunities to harness the campaigning and political lobbying power of civil society networks to expose unfair employment practices as well as applying pressure to employers directly over specific work standards such as living wages. The next phase of the research (2015-16) will explore the impact of these wider forms of social dialogue in reducing the extent and severity of precarious work, whilst also identifying opportunities for closer collaborative working between organisations that have an interest in improving employment conditions among the most vulnerable workers.