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REDUCING PRECARIOUS WORK IN EUROPE THROUGH SOCIAL DIALOGUE: THE CASE OF THE UK

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Executive summary

This research briefing highlights the significant challenges in identifying, addressing and reducing the prevalence of precarious work in the UK. Precarious work is found among both standard and non-standard forms of employment as a result of four inter-related ‘protective gaps’: *employment rights*; *social protection and integration*; *representation*; and *enforcement*. In the UK, precarious work erodes both material standards at work and the ‘norms’ of good employment and redistributes risks from employers to workers and the state.

The four protective gaps impact upon different types of precarious jobs in different ways. This briefing summarises key findings for workers in ‘standard’ employment types, and in three forms of non-standard work: variable and part-time hours jobs; temporary work; and multiple forms of cost-driven subcontracted work. Our detailed case studies show that social dialogue can play a positive role in closing protective gaps and reducing precarious work but those engaged in efforts to improve conditions, be it employers, unions, public authorities and civil society organisations are battling against the odds. Internal and external levers can help actors enact positive change, especially with better representative and enforcement standards, but further radical change in regulatory conditions, including both employment rights and social protection, is needed to underpin sustained improvement.

Identifying ‘Protective Gaps’ in the UK

This research has developed the novel framework of ‘protective gaps’ in order to capture the multi-layered experiences and meanings of precarious employment, its variety in different sector and country contexts and associated prospects for labour market inclusion. Drawing on expert interviews and secondary data, the research traced the character of four interlocking protective gaps in the UK.

i) Employment rights gaps

Standard employment rights in the UK are weak compared to other European countries. Moreover, there is limited scope for employers and unions to improve, coordinate and integrate rights. Since the late 1990s there has been ‘significant legislative development’¹ (e.g. minimum wage and family support policies), although limited legal support for ‘participative standards’ that enable collective decision-making by social partners. One intervention with lasting, albeit ‘haphazard’, impact was the new status of ‘worker’, which potentially extends protections to forms of casual work.²

Where minimum legal standards have greatest effect –for example, in those parts of the private sector where collective worker representation is weak- employers often use them as a ceiling rather than a floor of employment conditions.³ Many workers in jobs offering low or variable hours, short-

¹ Dickens, L. and Hall, M. (2010) ‘The changing legal framework of employment relations’, in T. Colling and M. Terry (eds.) *Industrial Relations: Theory and Practice*, Chichester: Wiley.

² Established in the Employment Rights Act 1996; see Adams, Z. and Deakin, S. (2014) ‘Institutional solutions to precariousness and inequality in labour markets’, *British Journal of Industrial Relations*, 52(4): 779-809.

³ Grimshaw, D., Bosch, G. and Rubery, J. (2014) ‘Minimum wages and collective bargaining: What types of pay bargaining can foster positive pay equity outcomes?’, *British Journal of Industrial Relations*, 52(3): 470-498.

term contracts or low pay find themselves ineligible for statutory protections such as maternity and sick leave pay. This is because entitlement requires minimum periods of continuous employment with the same employer and/or minimum weekly earnings.

The scope for regular upgrading of employment rights is relatively limited in the UK. Some rights are adjusted frequently with the changing political orientation of government (e.g. employment protection rules), but because collective worker representation is limited, any localised improvements in standards are mostly uncoordinated and dependent on employer goodwill. On the other hand, the implementation of European directives has largely harmonised employment rights for workers in part-time, fixed-term and temporary agency employment with those in full-time, permanent jobs. Gaps remain however. For example cost-driven subcontracting dilutes employment standards along the supply chain, equal treatment of agency workers comes with loopholes that encourage evasion; and the spread of zero hours contracts and false self employment tests the applicability of employment rights in these 'grey' areas of the labour market.

ii) Social protection and integration gaps

The second protective gap interacts in important ways with forms of precarious employment. The UK social protection system is characterised by a) relatively low level contribution based benefits combined with a high use of means-tested benefits (although healthcare is universal for residents), b) significant use of in-work benefits ('tax credits'), and c) employer-provided benefits to supplement low statutory provision. Workers' eligibility for social protection depends on the structure and level of household incomes, individual social security contributions and meeting rules of 'suitable' labour market behaviour. Post-2010 reforms have reduced the value of entitlements, including in-work benefits and housing benefit. Many also face a heavy disciplinary stick to comply with job search, medical reassessments and working hours rules: *'everything is focused on getting people into work ...and that's opening up a lot of gaps in the market for [employers] to take advantage of'* (Policy Officer, Citizens Advice).

Despite high female employment participation, the value of UK family support policy is low by European standards. Moreover, maternity leave rules impede labour market inclusiveness due to long (rigid) continuity requirements, the earnings threshold and exclusion of the self employed. Despite its ageing population the UK has done little to advance pension benefits: on average, statutory public pensions and mandatory private pensions (2015 rules) amount to just a fifth of average earnings.⁴ Finally, Universal Credit is being introduced to harmonise in-work and out-of-work benefits and removes hours thresholds. However, the new system comes with stronger compliance rules, increases the requirement for hours worked (or job searches), and by maintaining a work-first ethos effectively legitimises more zero hours contracts and self employment.

iii) Representation gaps

Protection of workers in the UK by trade unions, collective bargaining structures, and joint consultative committees has declined significantly over the last 40 years in the UK. This means that while non-union channels of representation have been strengthened by legislation, six in seven workers in the private sector have no formal representation through independent channels of social dialogue (e.g. collective bargaining, see table 1). While there are no formal differences in the

⁴ A replacement rate of just 22% according to OECD (2015) *Pensions at a Glance*: table 6.10 compared to 55% for France.

eligibility of different groups of workers for representation through unions and other channels of social dialogue, in practice certain groups are under-represented –e.g. migrant workers, temporary agency workers and low-wage workers. Although unions have attempted to involve vulnerable and precarious workers through organising campaigns, slow progress means many still lack effective representation at work.

Table 1. Collective agreement coverage (%) by employment status, 2014 data

	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
Union member	67.6	69.1	62.1	67.8	60.2
Union 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
Workplace < 50 employees	14.9	15.5	13.8	15.0	13.9
Workplace > 50 employees	39.0	39.2	38.0	39.7	27.2

Source: BIS (2015: 34); authors' compilation.

iv) Enforcement gaps

Despite relying on an individual rights-based system of employee protection in the UK, the evidence suggests enforcement of rights is highly variable. 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 employees risk falling below minimum standards. The ability of regulatory and industry watchdog bodies such as ACAS (Advisory, Conciliation and Arbitration Service) and the GLA (Gangmasters' Licensing Authority) to protect and support workers is challenged by the austerity regime. Moreover, their narrow remit means the scope and coverage of protection varies.

Central government efforts to increase compliance with statutory protections (e.g. the minimum wage) conflict with a rebalancing of legal protections in employers' favour. The outcome is a greater need for workers to be aware of their employment rights and to have the courage to challenge illegal or discriminatory employer practices. However, the government cut entitlements to legal aid and introduced expensive fees for workers to take a case to an employment tribunal, ignoring warnings from the ILO.⁵ Workers in precarious employment now face considerable barriers to justice.

Types of Precarious Work

Diminished standard employment

Precarious work can be found in standard employment relationships, namely full-time and permanent jobs. Job security standards have diminished due to the erosion of statutory rules and customary practice (e.g. among downsizing public authorities). The right to reasonable working

⁵ The ILO warned the UK government, 'the high fees to file claims on discrimination may constitute an obstacle to the enjoyment of the rights embedded in the [Equal Remuneration] Convention' (http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3251189).

hours remains contentious with the UK's opt out from the EU maximum hours rule and poor performance in European rankings of excessive hours worked. And real wages have stagnated for most workers alongside a persistent high share ($\approx 13\%$) of full-timers in a low-wage job.⁶ Social protection gaps are widespread. State pensions are low so that decent pensions depend upon employer provision which is far from common, particularly in the private sector and small firms. Also, new 'Universal Credit' welfare rules risk encouraging employers to reduce guaranteed hours in the knowledge that welfare benefits may top up lost hours. Gaps in representation undermine the standard for collective worker voice, especially for low-wage employees. In the private manufacturing sector, the share of workplaces with any union members dropped from 22% to 12% during 2004-2011.⁷ At the same time, more private sector workplaces have appointed stand-alone non-union representatives, from 6% to 10% (2004-2011). Developments in the inspection regime are mixed with budget cuts in some areas offset by more effective targeting of activity in others.

Variable and part-time hours employment

Part-time work is well established in the UK and has long been concentrated among women workers. There is strong evidence that part-time work is increasingly 'demand driven' such that employers design flexible and low hours contracts to follow the contours of demand as opposed to workers' preferences. In addition, welfare rules trap many second earners on low hours and low earnings to fit with entitlement rules and maximise the value of in-work benefits.

Zero hours contracts are a growing problem (figure 1). Their ambiguous legal status means a worker's entitlement to rights and employment conditions is not consistently applied. Also, variability in working patterns means both financial security and 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 pay and face obstacles to progression through training and career development.

Temporary work

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. While fixed-term temporary workers face problems of job/contract insecurity, temporary agency workers experience the additional risk of exclusion from formal rights and entitlements by virtue of their classification as 'worker' rather than 'employee', or due to the limited duration of their employment contract. Much temporary work is involuntary: around two thirds of workers aged 20-59 in temporary agency work would prefer a permanent employment contract⁸; and many become trapped in a 'low pay, no pay cycle'. Around one in ten 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, except under the 'pay between assignments' ('Swedish derogation') model. There is considerable debate as to whether this is a

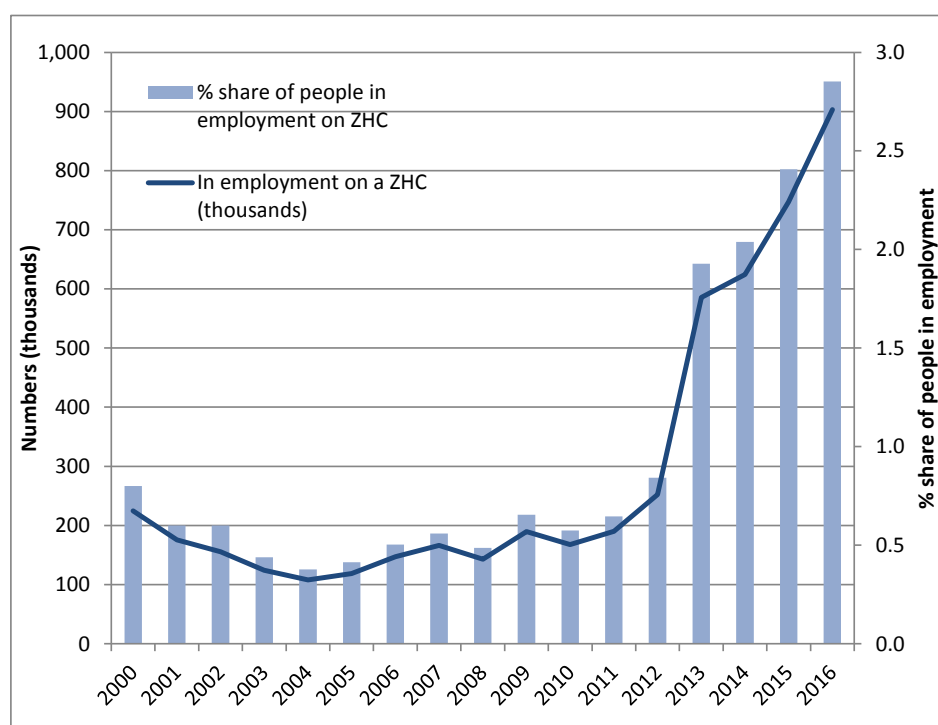
⁶ Data refer to earnings less than two thirds of median pay, Annual Survey of Hours and Earnings data for 1998-2014; authors' compilation.

⁷ Van Wanrooy, B. and colleagues (2014) *The 2011 Workplace Employment Relations Study*, Dept. Business, Innovation and Skills.

⁸ Labour Force Survey data, April-June 2014.

regulatory loophole, enabling employers and agencies to diminish standards, or an alternative flexible mechanism for ensuring minimum protection.

Figure 1. Trends in zero hours contracts, 2000-2016



Source: ONS employment data, authors' compilation.

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 subcontractors and their workforces is highly contingent on the steady supply of work packages from higher up the supply chain. Our assessment suggests the long and complex supply chains sometimes obscure the boundaries of the employment relationship and make it difficult to establish and enforce an employer's social and legal responsibilities to meet worker rights and employment conditions.

TUPE protections⁹ 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. False self-employment is another means by which employers can avoid specific obligations by transferring responsibility for terms and conditions such as sick pay and holiday pay onto the individual worker.

Four Case Studies of Precarious Work

⁹ TUPE, the Transfer of Undertakings (Protection of Employment) Regulations, is the UK implementation of the Acquired Rights Directive 2001/23 EC.

The UK research team selected four case studies from different sectors with the aim of illuminating how processes of social dialogue might reduce precarious work, and identifying the challenges which remain (table 2). The case study data reflect the complexity of employment relations across four diverse sectors (local government care services, warehousing, food production and higher education) and the precarity of employment across diverse contractual forms (full time permanent, part-time, zero hours, fixed-term and agency work). The findings reveal three main points in terms of the multiple roles of social dialogue.

Table 2. Summary features of case studies 1-4

	1. Local government outsourcing	2. Temporary agency work (TAW)
Sector	Care work	Warehousing & logistics
Problems	Low pay, Zero hours, Unpaid hours, Very low unionisation	Inferior TAW 'worker' status, Weak union protection, Unilateral management screening process (opaque selection tool); Very high use of TAW, most migrants (CEE); No control over hours schedules; Very low unsocial hours premiums
Social Dialogue Levers	Sector level union charter for social clause in public procurement for social care Local LG-union-employer alliance (18m negotiations)	EU Agency Workers Regulations (2013) plus Pay-Between-Assignments, High potential local union strength but only among permanent workers
Positive Outcomes	Higher wage floor, Reduced zero hours contracts, Paid travel time	Some temp to perm transitions
Problems	Compressed pay differentials, Eroded pay premiums, Possible higher management pay, limited union mobilisation in care organisation, No diffusion to other LG outsourced contracts	Simultaneous levelling down of SER conditions, Isolated work organisation reduces chance of mobilisation; Overly compliant workforce; Apparent union indifference(?)

LG = local government; SER = standard employment relationship

	3. Union Actions Against Casual Work	4. Casual Work in Higher Education
Sector	Food production –bakery	Higher education/Academic work
Problems	Aggressive management, Use of TWA (zero hours) to cover weekends, Inter-plant cost competition, Imposed worse contracts for SER	High use of casual work (varying forms) - 30%-50% of academics in 2 cases, Irregular pay, Task-based pay rates, Obstacles to temp-perm transition
Social Dialogue Levers	Isolated local union actions (strikes), Very high local membership (incl. TAW),	Sector-level union campaign, Targeted local actions
Positive Outcomes	All TWA moved to perm contracts	Some individualised successes (transitions to perm)
Problems	Victimisation, Redundancies, Ultra-financialised ('politics of dis-investment'), Management 'incompetence, greed and culture of confrontation', Probable plant closure	No reliable data on use of casual contracts, Weak individual bargaining position, Poor pay prospects and hours/job security

i) Local successes but how to spread the gains?

Because industrial relations in the UK is generally decentralised and fragmented, where union bargaining does occur it tends to be isolated or 'cellular'. This means unions cannot easily replicate local successes and face obstacles to coordinating strategies across disparate workplaces and firms within a sector. For example, at case study 1 social dialogue proved critical in reducing precarious

work among local government subcontracted care workers. But the local political context, weak union representation and limited union resources meant this local success could not be easily replicated: *'We would like to get in to represent these people in [more care provider organisations] but it's a difficult area to recruit in. ...We don't even know half of the new providers...'* (local union rep).

Also at case study 3, despite local short-term gains, because managers had aggressively fostered competition between plants for financial investment to push through cuts in employment conditions, unions found it difficult to establish a solidaristic inter-plant strategy: *'[The North West plant] was the only site not to have any agency staff by this time... [The Yorkshire plant] had allowed them in as part of a wage negotiation ... And this was just after they closed [Yorkshire] and reopened it, and they offered people to come back and do [agency] contracts, that's how they got round it. So everybody came back on less terms and conditions'* [Union official].

ii) Social dialogue against dualism

Social dialogue actions in all four cases ran counter to dualist strategies that seek to protect a core of 'insiders' at the expense of a precarious class of 'outsiders'. At case study 1, unions strengthened protections for non-unionised workers outside of local authority control and narrowed protective gaps between directly employed and subcontracted staff. At case study 2, pay and conditions for permanent agency workers were harmonised after 12 weeks despite agency workers being directly employed by the agency which presented the option to use the 'Swedish derogation'. However, this harmonisation was largely achieved as a result of a levelling down of pay and conditions for permanent workers which the trade union had been unable to prevent.

Through industrial action, the union at case study 3 prevented zero hours contracts for agency worker being used by managers at the North West plant to level down pay and conditions, and also forced managers to transition agency workers on to permanent contracts. However, managers mothballed the plant two years later. At case study 4 rather than seeking to harmonise standards between groups the unions sought to reduce the share of workers on non-standard contracts by supporting moves into permanent work wherever feasible.

iii) Social dialogue systems to regulate labour relations

Turning finally to the ability of mechanisms of social dialogue to regulate the workplace, it is clear that systems of worker voice and representation in the UK struggle to counteract both overt and subtle forms of management control of workers. Even where substantive matters of pay and conditions are relatively closely regulated through national or local level collective agreements, the control of work schedules, and worker discipline are relatively under-regulated, and offer management significant scope to extract high levels of effort and compliance.

The four case studies suggest these effects are magnified among workers on contingent or precarious contracts who are heavily (but often implicitly) incentivised to work hard and not to challenge management practices in order to secure access to a permanent job, or to continue to receive enough hours from those in control of work schedules. An agency worker at case study 2 told us:

"...I'm on a rotating shift...which isn't good for me 'cos I've got kids. So every second week I don't see them because when I get back they are in bed... The hours are OK although recently on 2 days I have

had half days... The rota comes out a week in advance and this Friday I have only got four hours... So it's a bit of a knock in the pay packet which isn't great when you've got kids....but it goes like that sometimes..."

So what recommendations?

Our research findings support a call for all stakeholders a) to be more aware of the extensive protective gaps across the UK labour market and b) to design and implement effective policy and practice that can both close gaps and reduce the pervasiveness of precarious employment. Our high-priority recommendations addressing all four protective gaps are as follows:

- **Minimum shift hours/ guaranteed hours** (*e.g. following New Zealand's 2016 ban on zero hours contracts as a lesson in good practice*)
- **Rights to flexible working from day one not after six months full-time**
- **Strengthen statutory support for 'participative standards' so that workers can rely upon a well-resourced and informed representative voice at work** (*as in most of Europe*)
- **Abolish fees for taking a case to an Employment Tribunal**
- **Legislate (at local or national level) to require decent employment standards in low-cost subcontracting** (*e.g. via extension of best practice social dialogue agreements/outcomes per service activity*)

Information and acknowledgements

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For more information please visit our website: <http://www.research.mbs.ac.uk/ewerc/Our-research/Current-projects/Reducing-Precarious-Work-in-Europe-through-Social>.

1. Introduction

An assessment of media reports and everyday shared experiences among people at work in the UK would suggest a growing share face on the one hand a higher risk of precarious employment and on the other more limited chances of improving conditions through forms of social dialogue involving worker representation. Some employment forms - such as zero hours contracts, false self employment, temporary work or outsourced work - challenge existing rules and norms governing fair standards in employment. Moreover, private sector workplaces in Britain are typically non-unionised with no worker input into management decisions over work organisation, pay and other conditions; even in public sector workplaces, unions' strength and capacity to shape employment policy and practice is weak. If a more inclusive labour market is accepted as a worthwhile goal, then the UK currently faces major challenges that demand coordinated efforts especially from government, employers and unions, but also from workers and citizens.

But what do we mean by precarious employment? Moreover, in a country where collective bargaining covers fewer than one in three people in employment, what role is there for social dialogue?

Our working definition of precarious employment follows the early work at the ILO of Rodgers and Rodgers who said that it *'involves instability, lack of protection, insecurity and social or economic vulnerability ... It is some combination of these factors which identifies precarious jobs, and the boundaries around the concept are inevitably to some extent arbitrary'* (1989: 5, cited in Anderson 2010). Our interest is not in estimating a quantitative figure for the share of workers in precarious employment, but in seeking to trace the different ways precarious forms of employment challenge normative standards and redistribute risks of insecurity from employers to workers (see, also, Buschoff and Schmidt 2009; Frade and Darmon 2005; Simms 2014; Vosko et al. 2003).

Unlike the catchall term 'flexibility', precarious work is not defined by employer needs (numerical or functional, for example), nor does it simply correlate with contractual forms (part-time, temporary, self employed). Our analytical starting point is instead that precarious employment is the antithesis of the standard employment relationship (SER) (Bosch 2004; Rodgers 1989), described by the open-ended contracts of full-time, permanent jobs. Over the 20th century, the SER in the UK co-evolved with multiple layers of protections -employment rights, social security rights and forms of collective representation -in recognition of the need to protect workers against both the vagaries of the labour market and the power of the employer to exploit the mutual 'zone of acceptance' represented by the open-ended contract (Marsden 1999; Perulli 2003). Today's workers in precarious employment are at risk of falling outside these protections, exposing what we call in this programme of research *'Protective Gaps'*. This report identifies *Protective Gaps* in four areas – employment rights gaps, representation gaps, enforcement gaps and social protection and integration gaps.

The challenge is then to identify how forms of social dialogue can play a positive role in narrowing these gaps. Social dialogue in the UK is not appreciated in the way it is in some parts of the European

Commission, where it is considered 'crucial to promote competitiveness and fairness and to enhance economic prosperity and social well-being'.¹⁰ Collective bargaining, which once ensured most British citizens enjoyed a decent standard of living, today only exists for a minority. Employers are far more likely to be held in check by legal regulations, which since the 1990s have become more extensive in both nature and scope. As Dickens and Hall put it, '*Voluntarism is dead ... Legal regulation of employment relations now plays a central role within the context of considerably weakened collective regulation*' (2010: 317).

Employment standards are more likely now to evolve through rules set by government than by employers and unions. But the longstanding 'light-touch' mode of legal regulation in the UK (that requires in many areas that employees *request* the implementation of their rights) means workers depend very much on voluntarist, trade union support to defend, improve and enforce social and employment rights, since the law in itself does not deliver workplace justice. However, many workplaces in the UK face problems in sustaining employment standards due to the absence, poor resources and/or inactivity of unions that can diffuse and enforce legal standards. This places employers in the driving seat, both in mediating the interpretation of social and employment rights and in moulding expectations of employment standards among new and incumbent members of the workforce (Colling 2010: 338-342).

This report is structured as follows. Part one interrogates the nature and form of protective gaps in the context of the UK's changing labour market. Chapter two outlines key trends in the structure and form of work in the UK labour market. Chapter three describes the research methods and interviewees. Chapter four presents evidence of the main protective gaps in the UK and how these have changed in recent years. Chapter five offers an analysis of the impact of protective gaps on different types of precarious work, and chapter six concludes by considering the role of social dialogue in reducing the severity and extent of protective gaps.

Understanding how social dialogue can reduce the extent and severity of protective gaps is a key focus of the second stage qualitative research presented in Part two of this report. Given low collective bargaining coverage and union density in the UK, managers enjoy significant scope to unilaterally vary pay, terms and conditions, and workers struggle to counteract worsened employment practices without effective mechanisms of 'voice'. This places employers in the driving seat, both in mediating the interpretation of social and employment rights and in moulding expectations of employment standards among new and incumbent members of the workforce (Colling 2010: 338-342). Four cases of social dialogue and precarious work were selected and are presented sequentially in Part two. Following their introduction in chapter 7, the cases presented in chapters 8-11 address three issues: i) the changing role of trade unions both nationally and locally; ii) the ability of social dialogue to combat dualism; and iii) the ability of systems of social dialogue to effectively regulate labour relations within the workplace.

¹⁰ <http://ec.europa.eu/social/main.jsp?catId=329&furtherPubs=yes&langId=en>

Part 1

Reducing precarious work through social dialogue in the UK:

An analysis of 'protective gaps' facing people at work

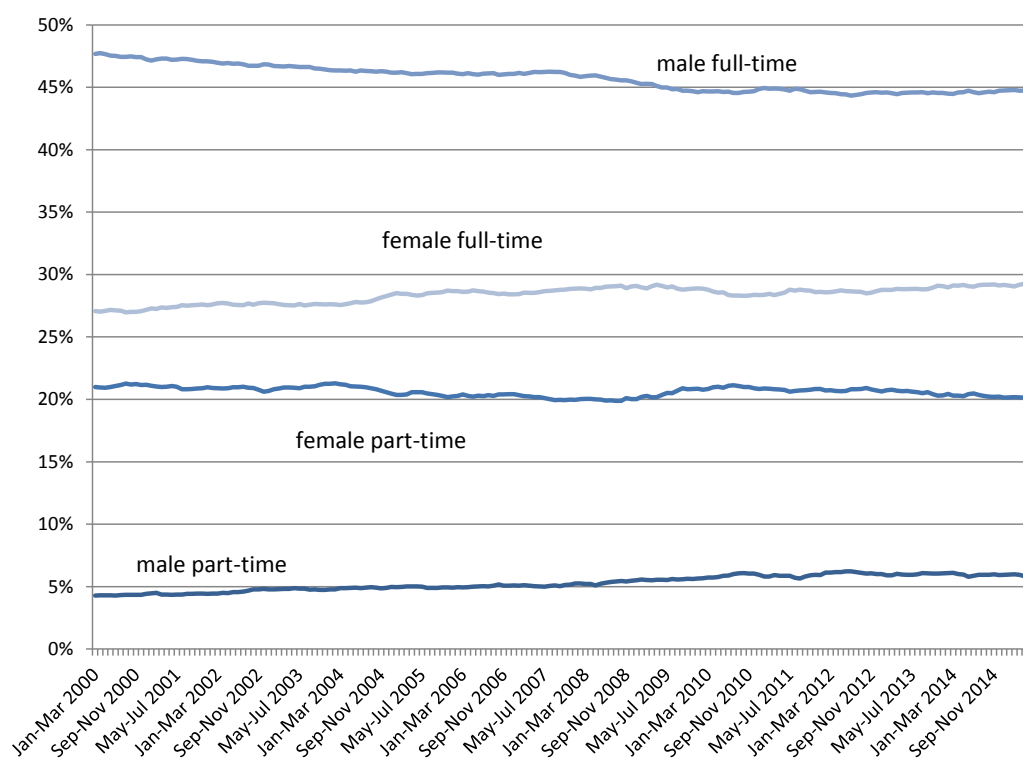
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2. Labour market trends: flexible and precarious work

The intention here is to provide a very brief review of labour market patterns and statistics in order to give a snapshot of trends in flexible and precarious employment to set the scene for the detailed analysis of protective gaps facing people in precarious work, the focus of this report. We start by assessing trends in three key areas of non standard employment – part-time, temporary and self employment.

Part-time employment accounts for around one in four employees (26%) in the UK and there is no evidence of significant change in the part-time to full-time composition of employment over the last 15 years (figure 2.1). There has, however, been a slight shift in the gender composition of part-time workers towards more men; in 2000, women accounted for 83% of part-time employees but this dropped to 78% by the first quarter of 2015. In turn, women account for a steadily increasing share of full-time employment –from 36% to 40% during 2000-2015. Temporary employees account for around 6% of all employees and again this share has not changed significantly in the last 15 years; it measured 7% in 2000 and dipped to 5% at the onset of the economic crisis. The share is around one percentage point higher among female employees than male employees owing to women greater likelihood of public sector employment where use of temporary contracts is higher than in the private sector.

Figure 1-1 - trends in full-time and part-time employment by gender, 2000-14



Source: ONS published Labour Force Survey data, file EMP01 SA, all people aged 16+; authors' compilation; part-time definition relies on respondents' self-classification

One of the issues of concern with both part-time and temporary employment is the significant increase during the post-crisis jobs recovery in numbers of people taking up these jobs as a second best opportunity where no full-time or permanent employment was available. The share of part-time employees who reported being unable to find full-time work was one in ten in 2008 (9%, first quarter), but this shot up to 19% mid-way through 2013 and stood at 16% in early 2015. Similarly, shares of temporary workers reporting being unable to find permanent work rose from one in four (25%) in 2008 to two in five in 2013 and one in three by early 2015. Table 2.1 also provides details by gender. Among part-time employees, men are at least twice as likely to report problems finding full-time work; more than one in four (27%) of the 1.5 million male part-time employees said they would prefer full-time work. The gender divide is less among temporary employees.

Table 1-1 - part-time (temporary) employees who could not find full-time (permanent) employment, 2008-2015

	2008			2013			2015		
	All	Male	Female	All	Male	Female	All	Male	Female
Part-time employment¹									
Numbers employed (millions)	7.4	1.7	5.7	8.0	2.0	5.9	8.2	2.1	6.1
% couldn't find full-time work	9%	16%	7%	18%	33%	14%	16%	27%	12%
Temporary work									
Numbers employed	1.4	0.7	0.8	1.6	0.7	0.8	1.7	0.8	0.9
% couldn't find full-time work	25%	28%	23%	39%	43%	35%	34%	38%	31%

Note: 1. Includes self employed and employees.

Source: same as figure 1.

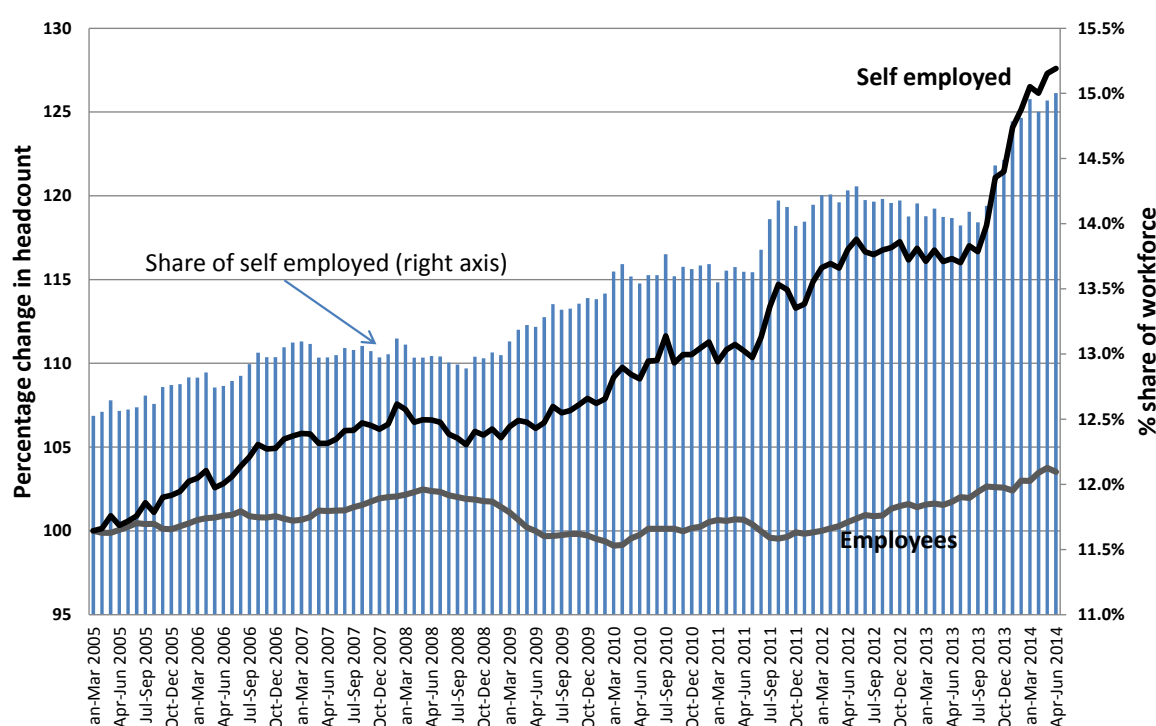
Alongside the rise in the share of workers taking up part-time and temporary jobs for want of a better alternative, there has also been a very substantial rise in the share of the UK workforce in self employment (figure 2.2). By mid-2014 it accounted for what appears to be a historic high of 15% of the workforce.¹¹ While numbers of employees fell during the economic crisis of 2008-2009, numbers of self employed dipped but quickly started a long-term rapid trajectory of growth, from 3.8 million late 2008 to 4.6 million by early 2014. The rapid growth means that since early 2010, which marked the recessionary trough in total numbers employed (28.8 million, Jan-March 2010), self employment has accounted for almost two in five net jobs (37%), far higher than its actual share of the workforce. Moreover, if we compare 2014 data with the pre-crisis peak employment figures (29.6 million, Mar-May 2008) then the role of self employment appears far greater due to the far larger recessionary collapse in numbers of employees; since spring 2008, self employment has in fact accounted for three in four net jobs (a rise of 754,000 self employed and just 264,000 employees).

Reasons for the growth of self employment are varied, including the rise in the state pension age (leading many older men and women to seek self employment where there are barriers to regular employment), financial (push) pressures on unemployed job-seekers to seek out alternative forms of

¹¹ According to data that reports trends since 1975 (Tatomir 2015).

income, financial (pull) factors during the economic recovery when self employment offers potentially higher income than a regular job, as well as institutional pressures to take up self employment (since it counts as a performance target for Work Programme providers¹²). Older people are more likely than younger people to take up self employment and indeed Tatomir's (2015) analysis suggests around half the rise in self employment since 2008 is accounted for by the ageing workforce. Men are twice as likely as women to be self-employed but the rise among women during 2008-2015 outstrips that of men (from 7.6% to 9.8% and from 17.5% to 18.7%, respectively¹³). There is also evidence that the recent rise in self employment is concentrated among low-income workers (Tatomir 2015: chart 15). Relatedly, the share of self-employed working part-time has risen from around 30% in 2008 to 40% in 2015, rising among both men (up to 18%) and women (up to 53%) by early 2015.

Figure 1-2 - trends in self employment –headcount and as a share of UK workforce, 2005-14



Source: ONS data available at www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcmm%3A77-371749; authors' compilation.

Underemployment

The proportion of workers working less than 40 hours who want more hours than their current job offers increased from 7.6% to 10.4% between 2001 and 2014. Workers want on average an extra 11.3 hours per week (up from 10.2 in 2008) the majority of which workers want from their existing job (rather than a second or replacement job). Overemployment has decreased slightly (from 10.2%

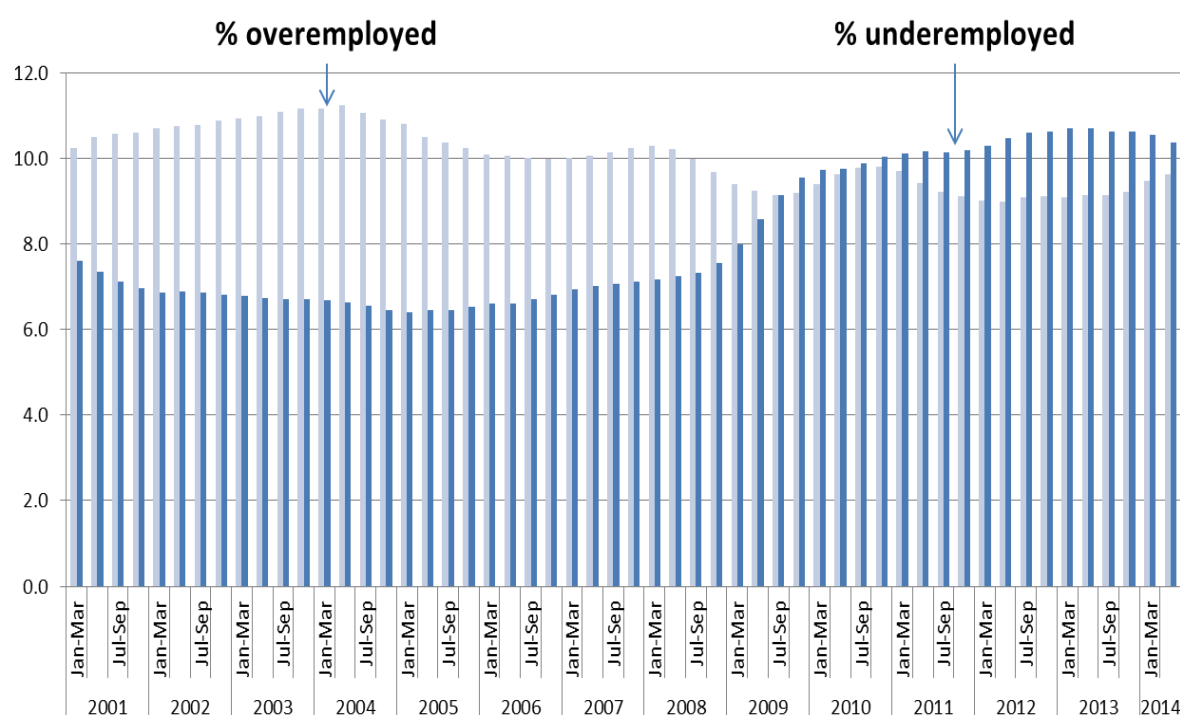
¹² Under welfare-to-work rules, enacted by private sector companies as part of the Work Programme, if an unemployed person takes up self employment it potentially counts as 'sustained employment'.

¹³ ONS published Labour Force Survey data, file EMP01 SA, all people aged 16+; authors' compilation.

to 9.6%) which suggests that hours are not being ‘hoarded’ by full-time workers, rather the increase in underemployment reflects the underlying creation of part-time jobs with low hours.

Women are more likely to be underemployed than men (11% vs. 8.9%) as are workers aged under 25 (20.6% which is nearly twice that of any other age group). Underemployment is much more likely in low paying and otherwise precarious and low status work: cleaning, personal services and retail. Unsurprisingly part-time workers are significantly more likely to report wanting extra hours than all workers, and the rate has increased markedly since 2001 (18% to 23.2%).

Figure 1-3 - over and underemployment rates, 2001-2014



Source: ONS data available at: <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcn%3A77-386785> Author's compilation

Short-hours working

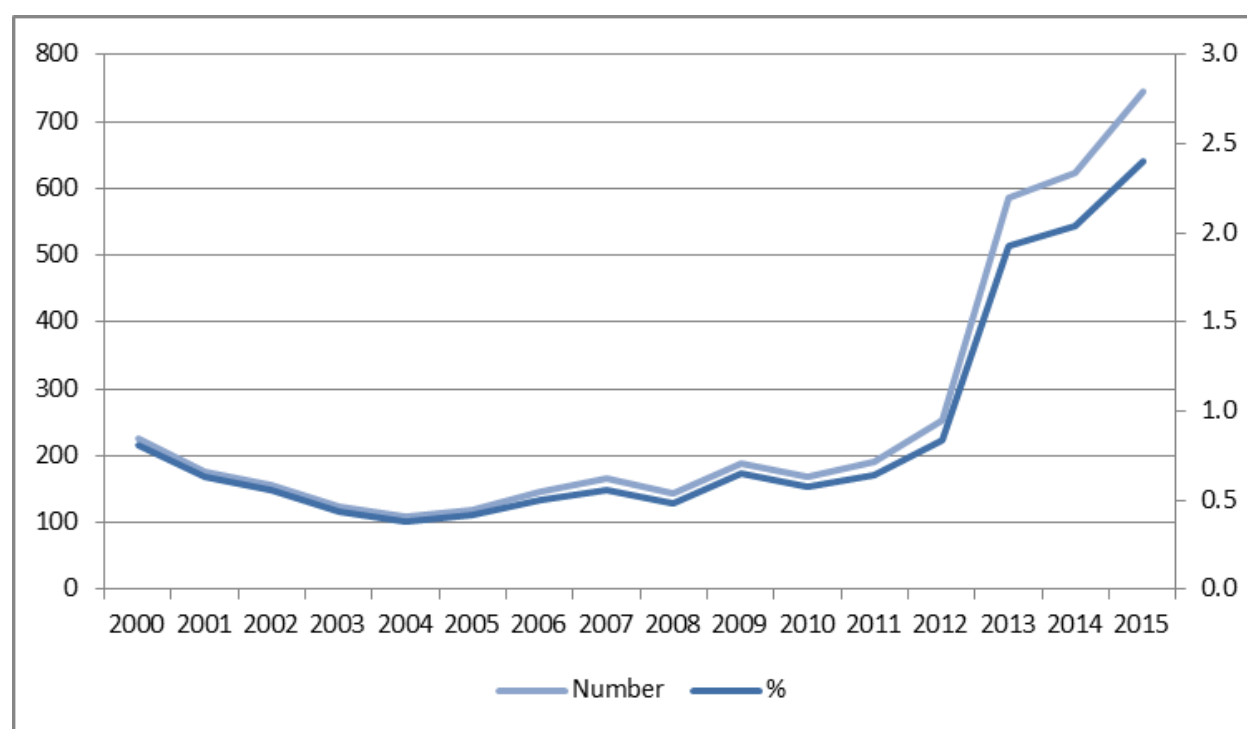
The majority of workers (52.1%) work close to full time hours (between 31 and 45 hours per week), and part-time workers average just under 16 hours per week (a figure which has been relatively stable since 2001). The share of workers on less than 15 hours per week has remained broadly constant since 2001 at around 8%. The share working over 45 hours has dropped from 23.6% to 19.8% with a corresponding increase in those working less than full-time hours (16-30 hours) from 16.5% to 20.1%.

Zero hours contracts

The overall number and share of zero hours contracts is still relatively low, but there has been a sharp expansion since the recession of 2008-09 (an increase of more than 400%, figure 2.4). It is not so much an issue that workers receive no hours at all or may experience the temporary loss of hours (e.g. owing to temporary employer closures/loss of working hours), but that the average weekly hours can vary significantly from week to week, and that the low average hours for many creates a further risk of low wages (typically 22 hours per week for those on zhc compared with 32 hours per

week for all workers). Younger women are more likely to be on zero hours contracts, as are those in caring, retail and elementary occupations. Just over 40% of those on zero hours contracts want additional hours, the majority of which are wanted from workers' existing jobs (rather than a second or replacement job).

Figure 1-4 - the number and share of all workers engaged on zero hour contracts 2000-2015



Source: ONS data available at: <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcn%3A77-392551> Author's compilation

Short tenure working

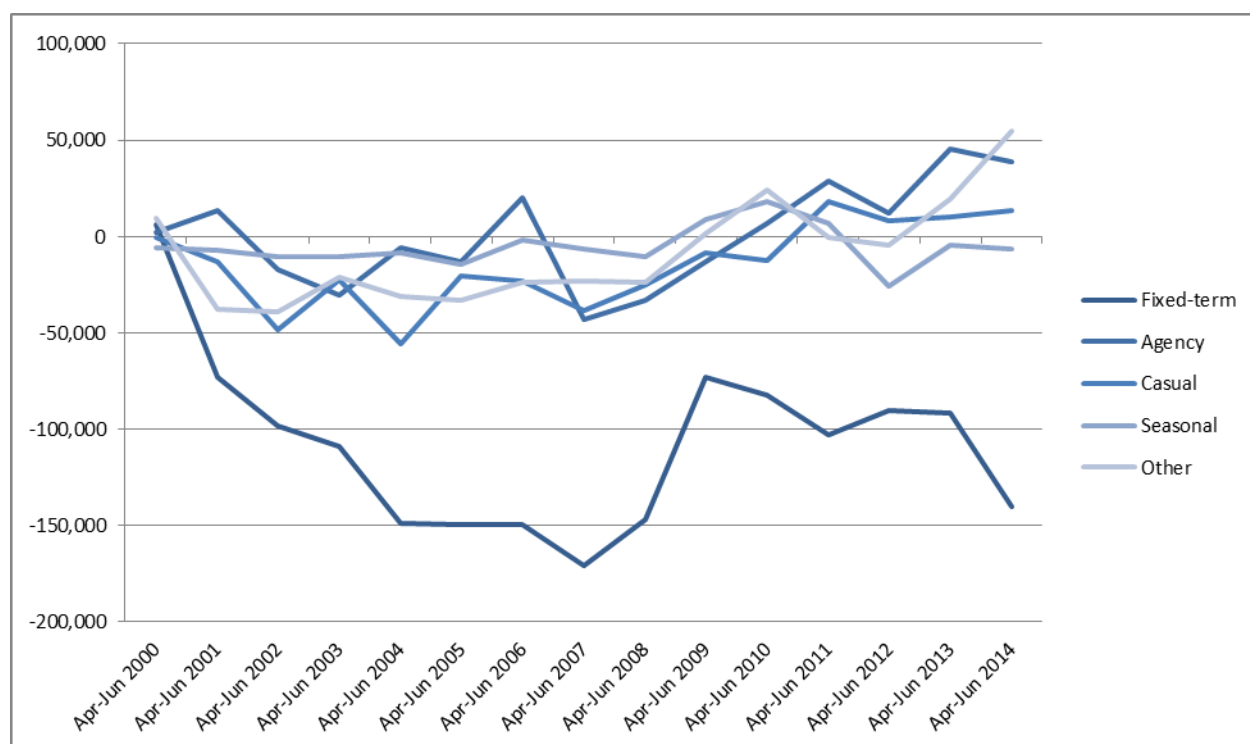
The number of fixed-term staff has dropped sharply since 2001 from just under 800,000 to 650,000 (a drop of 17.7%), as has the number of seasonal staff (from 82,000 to 75,000 a drop of 7.7%). Conversely the total numbers of workers in other forms of non-permanent employment has increased: the total number of temporary agency staff has increased by 14.4%; casual staff 4.2% and 'other' by 28.8% (figure 2.5).

Low paid work

Average wages in the UK are low by international standards and the proportions in low wage work are high (Grimshaw et al 2013). Furthermore, across the economy there is a growing share of workers who effectively 'earn their own poverty': approximately 21% of all workers earned less than the 2014 UK living wage figure of £7.65 (up from 18% in 2012) and the majority of families living in poverty actually have at least one adult in full-time work (Joseph Rowntree Foundation 2015). Women and part-time workers are much more likely to be low paid than men and full-time workers, as are workers aged under 25 (Annual Survey of Hours and Earnings 2014). The three lowest paying industries as indicated by average hourly salaries are: 'accommodation and food service industries' (£7.62 per hour); 'agriculture, forestry and fishing' (£8.83); and 'administrative and support service activities' (£9.86). The three lowest paying occupational categories are: elementary (£8.00 per hour); sales and customer services (£8.50); and caring, leisure and other services (£8.60). These

industries and occupations are often at the intersection of low paying, insecure work with a high risk of low and variable hours.

Figure 1-5 - cumulative change in non-permanent employment 2000-2015



Source: ONS data available at: <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcn%3A77-358355> Author's compilation

Young workers

Youth unemployment is a persistent feature of the UK labour market. As of November 2014 765,000 young people under the age of 25 were unemployed, a rate of 16.9% (compared with an overall unemployment rate of 6%). Although rates have decreased since the recessionary peak of just over 21%, two in five of all those out of work are aged under 25 (UK Commission for Employment and Skills 2015). As of June 2015 a total of 920,000 young people aged under 25 were not in employment education or training (NEET) (Source: ONS 2015¹⁴).

The number of young workers who have never had a job is increasing and it appears that it is taking young people longer to successfully transition into work or further study despite the overall rebound in the labour market (BIS presentation to Work and Pensions Select Committee 2015¹⁵). Skills shortages among young people appear to be less of a concern for employers than may have been the case in the past, but a lack of previous work experience, along with limited personal contacts and references are still significant barriers for many young people looking for their first job (UK Commission for Employment and Skills 2015). It appears that it is still a case that 'who you know' is more important than 'what you know' when starting out in the labour market. Young workers are

¹⁴ <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcn%3A77-393129>

¹⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307334/trends-in-part-time-working-and-short-term-employment-contracts-summary.ppt

also typically taken on at entry level grades and in sectors (construction, retail, hospitality) where the potential for low paid and insecure work is comparatively high (UKCES 2015).

3. Research method

This report will eventually cover two stages of empirical analysis: i) expert interviews and secondary data analysis and ii) detailed case studies. At this half-way point we are drawing only on the first stage expert interviews and secondary data analysis. The aim was to gather views and experiences from senior managers and officials from a sample of UK organisations and institutions, the function of which covered issues concerning precarious forms of employment. We sought to include views from trade unions and employer associations, as well as a range of independent agencies and organisations with responsibilities for regulating or monitoring labour market conditions in one form or another. These views were complemented with an interrogation of secondary data, including government policy documents, labour market analyses, academic research and critical assessments by diverse stakeholder organisations.

Table 3.1 provides a list of organisations where we sought expert input and the themes of each discussion. As part of a commitment to ongoing expert input into our research, all informants are invited to an advisory board and dissemination workshop (November 2015) where we anticipate further detailed responses that will guide our general conclusions and selection of case studies for stage 2.

Table 3-1 - details of stage 1 interviews with expert informants

Organisation	Theme	Interview date & length
Trades Union Congress (TUC)	Migrants, gangmasters, mobilisation strategies	May 2015 60 mins
	Union influence, labour standards	September 2015 60 mins
Gangmasters' Licensing Authority	Enforcement	June 2015 60 mins
Equality and Human Rights Commission (EHRC)	Access to tribunals, inequalities	May 2015 85 mins
Low Pay Commission (LPC)	Compliance, awareness, unpaid work, low-wage work	June 2015 55 mins
Local Government Association (LGA)	Subcontracting, public sector pay, living wages	May 2015 55 mins (1 interview with 2 managers)
Arbitration and Conciliation Service (ACAS)	Social dialogue	July 2015 57 mins
Low Incomes Tax Reform Group	Tax and social security issues facing people in precarious employment	September 2015 50 mins
Citizens Advice	Benefits, social integration	September 2015 45 mins
Recruitment & Employment Confederation	Agency work	October 2015 85 mins

The inclusion of a wide plurality of organisations at this stage of the research reflects the underlying fragmentation in the system of worker representation and rights in the UK, along with the challenges faced by existing forms of joint regulation through trade unions and employers associations. The inclusion of Civil Society Organisations (CSOs) allows us to begin to map their involvement and importance in issues of work regulation and employee voice, and also to frame the second stage of the research involving case studies of emerging forms of social dialogue in parts of the labour market most affected by precarious work.

As traditional industrial relations institutions such as trade unions have declined in size and coverage attention has turned to the role of 'new actors' such as civil society organisations (CSOs) in protecting workers from exploitation, and giving otherwise marginalised groups a voice. Many CSOs attempt to improve rights and representation in the workplace by championing the interests of particular communities or groups of workers such as migrants and homeworkers (Heery et al 2012). Many of these organisations have a campaigning and lobbying role round specific issues such as bringing pressure to bear on employers over non-payment of the living wage (Holgate 2009).

Despite the ambition of the incoming UK government of 2010 to create stronger networks of volunteer and civil society organisations under the umbrella of 'the big society', the reality of cuts to funding streams and grants and the continued marketization of public services means that very little progress has been made¹⁶. From the perspective of understanding the wider civil society context, our interviews with organisation such as Citizen's Advice pointed towards a growing trend of clients seeking help for with issues which were the direct consequence of poor employment standards and weak enforcement of employment rights such as debt and rent arrears resulting from low earning or problems with self-employment. At the same time the capacity of CSOs such as Citizens Advice to provide face-to-face support was made more challenging by a lack of funding and internal restructuring which increasingly directed clients to help and advice line. At the same time voluntary sector support organisations which were expected to pick up some of the 'slack' from retreating state institutions (under the banner of the Big Society) were also struggling due to a lack of funds:

'...within those networks offering advice and guidance...we did see quite a lot of those organisations dropping away.....' (Policy officer, Citizens Advice).

¹⁶ http://www.civilexchange.org.uk/wp-content/uploads/2015/01/Whose-Society_The-Final-Big-Society-Audit_final.pdf

4. Protective gaps

This chapter applies the analytical framework of *Protective Gaps* to explore the character of labour market inclusiveness in the UK. The framework has been jointly developed with other partners in this European project and it forms a common analytical point of reference for all six country reports. Figure 4.1 represents the four protective gaps associated with regulation, representation, enforcement, and social protection and integration.

Figure 4-1- 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)	

4.1. Employment rights (or in-work regulatory) gaps

Over the last two decades, the approach towards British employment rights can be characterised by flexibility underpinned by minimum standards of fairness. Unlike other European countries, in Britain not since the 1970s has collective bargaining been seen as the best way of developing and sustaining employment rights. The Thatcherite period of deregulation presented an ideological attack on collectivism and, while not dismantling the thin framework of established individual rights, it did

weaken their content and reduce their coverage in ways that were especially damaging for workers in non-standard employment.

During the following period of New Labour governments (1997-2010), the reversal of the UK's opt out from the EU social chapter¹⁷ and legal intervention on the minimum wage and family friendly policies represented 'significant legislative development' (Dickens and Hall 2010: 302). At the same time, however, Labour retained much of the 1980s Thatcherite legislation that curbed strikes and dismantled statutory support for collective bargaining (McCann 2008); collective bargaining and union membership continued their steady decline meaning that especially in private sector workplaces many British workers do not enjoy supplementary protection negotiated by unions and employers in collective agreements (such as more generous severance pay, sick pay or maternity leave, for example). One very significant reform under New Labour did strengthen protection for many workers located in the legal area between employee and self employed status by establishing the new category of 'worker'. Applied to several types of 'dependent self employment', such as agency workers, casual workers and some categories of freelancers, the reform extended many employment rights beyond the narrow status of employee (e.g. working-time, minimum wage rules, statutory sick pay, protection against discrimination) (Freedland 2003). However, persons running their own business are excluded so that the bulk of self employed, and especially the dubious status of false self employed (see chapter 5.4), do not benefit. The spirit of the EU's suggested 'targeted approach' has not been met:

'The traditional distinction between forms of dependent employment that require protection and forms of self-employment that do not has therefore been partially maintained [in the UK], while Supiot's proposal to establish basic protection for all people who personally provide services within the context of a relationship characterized by economic dependence was not implemented' (Buschoff and Schmidt 2009: 154).

The right-wing coalition government in office during 2010-15 sought to reverse or diminish many dimensions of employment rights, but since many are underpinned by European directives it faced significant constraints. In response, the new Conservative government is currently negotiating opt outs from the EU social charter. One labour market trend that has facilitated the government's deregulatory agenda is the large rise in numbers of self employed during the post-crisis jobs recovery (chapter 2 above) who only have very limited employment rights. Overall, the problem of individual employment rights in the UK context is that for many workers they form a ceiling since employers limit provision to what is required by law (Dickens and Hall 2010) and they do not offer realistic protection for highly disadvantaged groups who may be fearful of complaining (Pollert and Charlwood 2009). Table 4.1 sets out the main individual employment rights provided under the legal framework as of 2010 and changes since then.

¹⁷ In 1991, the Thatcher government negotiated an opt out from the social chapter of the Maastricht Treaty on European Union, although several other EU measures impacted upon British workers' employment rights, such as equality and discrimination legislation.

Table 4-1- individual adult employment rights for employees: changes since 2010

Rights in place in 2010	Changes since 2010
National minimum wage, fixed and monitored by the independent, tripartite Low Pay Commission	First ever legal intervention by government on rate fixing –will legislate to take control of MW rate for workers aged 25+
Statutory limits on working time (EU)	None yet but government plans to negotiate a complete opt out of Working time directive
Paid annual leave (EU)	--
Paid rest break during work time	--
Protection against dismissal and right to redundancy payment	Reduced consultation period for collective redundancies from 90 to 45 days; reduced eligibility for unfair dismissal from 12+ to 24+ months tenure
Time off work for trade union duties	New limit for civil servants to 50% of paid work time and overall 0.1% of each department's paybill
Maternity leave and pay and right to return to work	--
Parental leave (EU)	Shared parental leave will now run alongside maternity leave and pay
Paternity leave and pay	--
Flexible working (right to request) for parents and carers	Extended to all employees
Adoption leave and pay	--
Statutory sick pay	Abolished provisions for employers to claim sick pay back from government
Equal pay between men and women	Delayed enactment of 2010 provisions to require employers (250+ employees) to publish average gender pay gap
Equal treatment for part-time workers (EU)	--
Protection for fixed-term employees (EU)	--
--	Equal treatment for agency workers (EU)
Protection against discrimination on grounds of race, sex, disability, age, religion/belief or sexual orientation (EU)	Repeals of several elements of legislation under the 'Red Tape Challenge' (e.g. customer harassment of employees; pre-tribunal questionnaire procedure; tribunal power to make wider recommendations to the employer to improve practices)
Preservation of acquired rights on the transfer of undertakings (EU)	New restriction of TUPE transferred rights to 12 months Two-Tier Code abolished (had previously extended TUPE-protected conditions to all workers in contractor firms)
--	New 'shares for rights' rule enables employers to offer company shares to employees in exchange for renouncing workers' rights – new legal status of 'employee shareholders'

Source: authors' compilation building on data from Dickens and Hall (2010) and Grimshaw (2015).

Minimum standards gaps

While the UK sets minimum statutory standards for a range of employment conditions, some were only introduced relatively recently and most are set at a low level. Minimum standards on wages and working time were only introduced in the late 1990s and represented a significant development of employment rights in the UK. The introduction of a national minimum wage (NMW) in 1999 was a much delayed response to the need for protection against exploitative pay in large areas of the economy where unions had no effective presence. It is generally perceived as having been successful to date both in establishing trust in the procedures of the Low Pay Commission (the independent tripartite body charged with researching, evaluating and fixing the NMW each year) and in gradually uplifting the NMW value against the median wage (Brown 2009). However, it acts as a relatively isolated wage-fixing instrument, particularly in the private sector where there is very limited collective bargaining; as such there is widespread misuse of the NMW by employers as the 'going rate of pay' for many low paid jobs (Grimshaw et al. 2014). In terms of its value, the adult rate was

55% of median earnings and 42% of mean earnings in 2014, up from 53% and 40%, respectively, prior to the recession in 2007.¹⁸

The 1998 implementation of the EU Working Time Directive established the first statutory entitlement to paid holidays in the UK of 28 days (for full-timers), which include the eight public holidays. The legislation also provides for a rest break at work (not necessarily paid), of at least 20 minutes for a shift over six hours for workers aged over 18 years old, as well as restrictions on night and shift work. Given the rise in workers with zero-hours contracts, it is significant that working-time legislation does not specify the right to a minimum daily or weekly volume of hours. Moreover, as with minimum wage rules, most workers in the private sector are not covered by a collective agreement that might provide more generous protection. Where collective agreements apply it is common practice to find additional days of annual leave to be added for years of tenure; for example, the National Health Service collective agreement provides all new starters (nurses, administrative workers, cleaners, etc) with 35 days annual leave, rising to 37 after five years tenure and 41 days after ten years.

Minimum standards of employment protection, covering unfair dismissal and redundancy compensation, apply after a minimum period of continuous service; this was 12 months as of 2010 but was then extended to 24 months with the government arguing it was a disincentive to hiring. Government has also made seeking redress for unfair dismissal more difficult by introducing fees - 2015 rates were £250 for making a claim and a £950 fee for having the claim heard. Research from the charity Citizens Advice suggests 70% of potentially successful claims are now not going ahead¹⁹. Statutory sick pay was modified in 2014 so that employers must foot the total cost. Previously an employer could claim from government the element of pay above 13% of the monthly national insurance contributions for the employee.

Family support policies –maternity leave, parental leave (required by the EU Directive) and flexible working –are also set at a very low minimum statutory level, so that again in the absence of collective agreements many private sector employees face difficulties managing exits for childbirth. Statutory provision for maternity leave for example is 12 months but only nine months is paid (up from six months in 2007). For the first six weeks, maternity pay is set at 90% of weekly earnings. Then for the next 33 weeks the woman receives the lower of £140 or 90% of earnings (2014-15). The same rates apply for arrangements between couples to share parental leave. Standards for paternity leave are lower since only two weeks is allowed and it is paid at the lower of £140 or 90% of earnings from day one.

Rights to equality in employment were considerably extended and strengthened under the New Labour governments, mostly in response to EU directives. Extended anti-discrimination legislation and new equalities for part-time, fixed-term and agency workers has encouraged more equal employment practices and, for now, these are still in place.

Eligibility gaps

Now that statutory interventions in employment are more important in shaping standards for most workers in the UK than processes of collective bargaining, it is necessary to interrogate potential

¹⁸ Data for April 2014, all employees, gross hourly pay excluding overtime (ASHE data, own calculations).

¹⁹ <http://www.theguardian.com/money/2014/aug/17/workers-cant-fight-employment-tribunals>

gaps or failures in legal standard-setting to encompass all workers. It is significant that the NMW, working-time rules and anti-discrimination legislation apply to workers, not just employees. For the NMW, this means it covers casual labourers, agency workers, all part-time workers, homeworkers and trainees for example. However, self-employed workers are not covered, despite minimum wage thresholds being incorporated into new benefit rules (see chapter 4.4). Other excluded categories include workers on government programmes (such as Work Programme job entry schemes or Job Centre work trials), workers aged under 16, students on work placements up to 12 months, armed forces and prisoners. There are separate rates for young workers (aged 16-17 and 18-20) and apprentices. Also, the premium rate announced by government (see below) will only apply to workers aged 25 and over, reflecting a government desire to focus on 'experienced workers'. It has therefore effectively discharged the Low Pay Commission of its remit in setting a universal minimum wage and reduced their wage-fixing powers to young workers aged 16-24.

Working-time rules have a similarly wide coverage of workers. In practice, however, there is a greater discrepancy between rule-making and rule-enactment since British law allows employers to ask individual employees if they wish to opt out of the 48 hours weekly limit (averaged over 17 weeks); no opt outs are allowed however for road transport workers, airline staff or security workers responsible for vehicles carrying high-value goods. While the share of workers working long hours has fallen since the mid-1990s, the UK still sits near the top of the OECD average –male full-timers work on average 44.2 usual hours per week, the second highest in the EU after Greece²⁰ –, which suggests use of the 48-hour opt out is widespread. Again, the law does not cover self-employed workers. Also, some sectors are excluded, including security/surveillance, domestic servants and the armed forces, and for trainee doctors the 48-rule is averaged over 26 weeks, not 17. Stricter rules govern 16 and 17 year olds who must not work more than eight hours per day or 40 hours per week.

Eligibility to other rights is more restrictive. To qualify for statutory maternity pay and other family support rights such as flexible working, the individual must have at least 26 weeks of continuous employment with the same employer and pass the earnings threshold, set at the lower earnings limit for National Insurance contributions.²¹ This earnings threshold (£111 per week 2014-15) is equivalent to 17 hours at the NMW so it excludes many part-timers on short hours (see chapter 2). The earnings threshold is also the key criteria for entitlement to statutory sick pay. Self-employed workers have no right to employer provided maternity pay, but can claim a maternity allowance from government provided they can show at least 26 weeks of earnings in the previous 66 weeks, averaging at least £30 per week over any 13-week period; women with discontinuous employment may also claim maternity allowance. Women who do not meet these criteria may qualify for a minimum maternity allowance of £27 per week for 14 weeks (reduced from £30 per week in 2009). Certain eligibility rules must also be met for equal treatment between workers with non-standard contracts and workers in standard employment. For example, continuity of 12 weeks with the same hirer is required for agency workers to enjoy equal treatment with in-house employees.

²⁰ OECD 2014 data place 10 out of 32 countries higher than the UK for usual hours worked by male full-timers: Turkey (52.5), Mexico (50.1), Korea (48.8), Chile (48.4), Iceland (47.3) South Africa (47.1), Israel (46.8), Greece (46.1), New Zealand (45.0) and Australia (44.3) (data missing for Canada, Japan, Russian Federation and the United States).

²¹ At the lower earnings limit (£111 pw), the person is treated as if they have paid national insurance. Contributions are only actually paid above the 'primary earnings threshold' (£153 pw).

Upgrading gaps

There is no uniform process or formula for upgrading the value of various employment standards, nor is there a consistent trend over recent years. For example, the NMW value has to date been decided by the Low Pay Commission, which represents an independent form of tripartite negotiation. It tends to consider price inflation, average earnings growth and the general state of the labour market, but has at times also pursued the redistributive goal of upgrading the NMW relative to median earnings. Its remit has radically changed in the wake of the July 2015 budget because the government announced it will unilaterally introduce a premium rate, referred to as a 'national living wage', from April 2016. This is the first time government has intervened in this way, bypassing the Low Pay Commission. It intends to pass legislation to raise the statutory NMW from the October 2015 hourly rate of £6.70 to £7.20 in April 2016 (a 7.5% rise) and to 'over £9.00 by 2020', forecast to be equivalent to 60% of median earnings (an average annual rise of 5.7% up to the end of the current parliament).²²

Other standards are adjusted as a matter of routine in the government's annual budget decisions, generally through applying an inflation index. For example, maternity pay, paternity pay, the maternity allowance and statutory sick pay have in recent years been indexed to the Consumer Price Index, the government's favoured inflation measure. The measure is controversial since it excludes housing costs –mortgage, rent, council tax, home insurance –which are picked up an alternative measure, the Retail Price Index, which tends to be higher than the CPI. Nevertheless, standards have risen against earnings, reflecting the downturn in real wages; for example, the 2014-15 weekly maternity payment of £140 is around 23% of average gross earnings, a slight rise on the 21% level in 2009 (authors' calculations, ASHE data). But in other respects, standards have stagnated. For example, the basic equation for payments for maternity leave (90% first six weeks, minimum fixed payment next 33 weeks) has not been improved since it was introduced in 1987 (Smith 2010).

Overall, the substitution over the last couple of decades of legal interventions for joint regulations (collective bargaining, etc) has made workers in Britain peculiarly vulnerable to government reforms and reliant on employer goodwill to upgrade employment conditions. It is likely that both regulatory and non-regulatory interventions are needed 'simply because it is not possible to legislate for high quality employment or high trust workplace relationships' (Coats and Lekhi 2008: 8, cited in Colling 2010).

Integration gaps

Some progress has been made in the UK with regard to provision of standards to close integration gaps but many gaps remain. A strengthening of rights for workers in non-standard forms of employment –part-time, fixed-term and agency work –has established a broad equality of terms and conditions of employment with workers in standard employment. All enjoy the right not to be treated less favourably. For example, part-time workers and workers on fixed-term contracts have the same rights to holiday entitlement (pro rata), pension benefits and hourly rate of pay, as well as

²² Government documents describe its intervention as setting a 'premium' for experienced workers (defined as aged 25+ years) that will provide a 'national living wage' (BIS 2016). As many commentators have observed this is political rhetoric. The imposed rate will fall short of the actual living wage, which is set by the Living Wage Foundation; for the period November 2014 – October 2015 it is fixed at £7.85 outside of London and £9.15 in London, considerably higher than the £7.20 announced for 2016-17. It would seem the government has confused the target of fixing the minimum wage at 60% of the median wage (by 2020), as specified in the new remit for the LPC, with the notion of a living wage.

for promotion opportunities; however, part-timers' right to overtime pay only applies after a full-time hours threshold. Fixed-term workers have the right to a permanent contract after four years of successive fixed-term contracts with the same employer (unless the employer submits objective justification otherwise). Rights for agency workers are more restrictive since they must have worked at least 12 weeks with the same client organisation before enjoying equal treatment on pay, holidays and working time (despite the absence of a waiting period in the terms approved by the European Parliament²³). The definition of pay is rather narrow, however. It includes overtime, holiday pay, bonuses and other payment vouchers but excludes sick pay, maternity pay, redundancy pay (where paid above the statutory rate) and bonuses linked to company performance. Also, the 12-week qualifying period can easily be broken where the agency worker is assigned a 'substantively different role' or has a break from the hirer for more than six weeks. Moreover, where an agency pays the agency worker between assignments (that is, treats them as an employee), there is no entitlement to equal pay due to the so-called 'Swedish derogation' in the Agency Workers Regulations²⁴. The degree of integration is therefore significantly limited in practice.

The recently extended flexible working rules mean there is now greater potential for the integration of job roles between full-time and part-time workers. This is especially beneficial for working parents and, in particular, for mothers returning to paid work. While the rules only establish a right for workers to request flexible working and an obligation on employers to consider the request, a string of court cases have found employers' refusals to be unjustifiable on grounds of mishandling applications, discriminating against women returning from maternity leave and failing to redesign jobs around part-time or job share working.²⁵ However, several factors may easily undermine positive change. Now that tribunal cases require applicants to pay high-level fees poor management practices are more likely to go unchallenged. Also, now that all employees can request flexible working an employer may claim they cannot help carers as it might be challenged as unfair by non carers. Moreover, employers may agree to working time adjustments but switch job and career paths to 'mommy tracks' that damage pay and career prospects (see chapter 5.2).

A further set of integration gaps arise when an organisation decides to outsource a service to a contractor company. Statutory rules provide some protection. TUPE rules²⁶ protect the in-house workforce by providing continuity of employment and associated terms and conditions. Its application was limited to the private sector in the 1980s, but then widened to the public services following a series of ECJ rulings. There are many gaps associated with this legislation. First, 2014 reforms have restricted the continuity of protection both by widening the reasons justifying employer changes to conditions and limiting protected duration of collectively agreed conditions to 12 months only (chapter 5.4). Second, pensions were excluded from protection, which was especially important for workers transferring from public to private sector organisations. Third, contractors could always recruit new workers on inferior terms and conditions. For a limited period (2003 to 2010), outsourced services in the National Health Services applied a Two-Tier Code in local joint agreements with contractors had to employ staff on conditions that were 'overall no less

²³ See Hyman (2010: 68).

²⁴ The term refers to a request by the Swedish government to enter the clause into the European regulations.

²⁵ *Personnel Today*, 11/06/14, <http://www.personneltoday.com/hr/right-request-flexible-working-changes-10-things-employers-can-learn-existing-case-law/>

²⁶ The Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE) was implemented to conform with the 1977 European Acquired Rights Directive (revised in 1998 and 2001).

favourable' than other staff on TUPE protected conditions. While some agreements still contain the clause it is no longer negotiated in new agreements.

4.2. Representation gaps

There are different types of employment representation in the UK. The Workplace Employment Relations Survey (WERS)²⁷ has identified four overlapping forms: a recognised union, an on-site representative of a non-recognised union, a joint consultation committee and/or stand-alone union representation. However, the relative scarcity of alternatives makes unions by far the most prevalent form and this chapter will therefore mainly focus on their role. At the same time, rates for unionization and collective bargaining have seen a long-term decline such that a majority of workers is neither represented by a union nor are their working conditions shaped through collective bargaining. Overall, there are few positive legal rights to collective representation per se and this illustrates how a declining union role has not been replaced by greater legislative forms of employment representation in spite of some developments in that direction. One can therefore argue that a large majority of workers, including those on permanent contracts, hold a precarious position in terms of representation compared to many of their counterparts in Europe.

Institutional gaps

Trade unions remain the most prevalent form of employee representation in the UK. The vast majority of unions (accounting for around 90 per cent of members) are affiliated to the TUC, the only union confederation in mainland UK (unions in Northern Ireland are affiliated to the Northern Ireland Committee of the ICTU, the Irish trade union federation). Two unions stand apart in terms of the size of their membership, namely Unite and UNISON, each with over 1.3 million members. Other large unions are the GMB, with around 615,000 members, and USDAW with around 425,000 members (TUC website). There is substantial variety in the basis for organisation among UK unions. Some unions organise specific occupations, specific industries or even workers in a single company but the majority of unions have members across different sectors. The latter has become more prevalent because of a large number of mergers.

Where employers recognize unions this usually has happened voluntarily without resorting to any legal procedures. However, unions can organize a ballot and apply to the Central Arbitration Committee (CAC) for statutory recognition if such a voluntary agreement proves impossible. A successful application requires that the union has made a formal application for recognition, the organisation employs at least 21 workers, the union has at least 10 per cent membership and is likely to attract majority support in a ballot, and the union consents to an employer request for involvement by ACAS. Employers can apply for union de-recognition under certain conditions, for example, when the number of employees falls to less than 21 or when the share of union membership in the bargaining unit falls below 50 per cent.

There has been a long-term decline in the unionisation rate. After its peak of 13 million in 1979 membership has declined to 6.4 million employees in 2014. This amounts to 25 per cent of employees being a union member, compared to 32 per cent in 1995 (BIS 2015). Trade union membership is higher among female than male workers (28% vs. 22%), among UK born than non-UK

²⁷ The WERS Survey is a major official survey of workplace employment relations among workplaces with five or more employees. The last two surveys were undertaken in 2011 and 2004.

born workers (26% vs. 18%), among those with higher education qualifications than those without formal qualifications (34% vs. 20%), among those in larger workplaces (more than 50 employees) than those in smaller workplaces with less than 50 employees (33% vs. 16%), among full-time than part-time employees (27% vs. 21%), among permanent than temporary employees (26% vs. 15%), and, most strikingly, is higher among public sector than private sector workers (54% vs. 14%) (see Table 4.2).

Table 4-2 - trade union membership as a proportion of all employees (2013)

	All employees	Male vs. Female		Full-time vs. Part-time	
		Male	Female	Full-time	Part-time
All employees	25.0	22.3	27.7	26.6	20.6
Sector					
Private	14.2	15.6	12.4	15.7	10.0
Public	54.3	52.7	55.1	58.2	45.4
Workplace size					
Less than 50 employees	15.7	11.9	19.1	16.7	13.8
50 or more employees	33.4	30.7	36.4	33.9	31.4
Flexible working hours					
Flexible working hours	31.4	28.2	34.2	32.8	27.2
Not flexible working hours	36.9	32.9	39.4	43.8	26.9
Permanent or temporary status					
Permanent	25.7	23.0	28.6	27.1	21.8
Temporary	14.5	12.0	16.9	15.8	13.3
Weekly earnings in the main job					
Less than £250	13.4	8.5	15.2	12.0	13.9
£250 to £499	26.0	21.9	30.1	23.1	42.3
£500 to £999	37.0	31.7	46.2	36.9	37.9
£1000 and above	22.4	20.1	29.4	22.3	*

Source: BIS (2015: 25-26)

In accordance with the decline in unionization, the WERS survey shows a decline in the share of workplaces with any union members (from 28% in 2004 to 23% in 2011) and in the share of workplaces where a majority of workers are union members (from 13% to 10%). At the same time, the share of workplaces with union recognition did not decline and remained at 22 per cent. There is once more a strong difference between the private and public sector as the latter accounted for the majority of all workplaces that recognise unions (52%) while only accounting for 12 per cent of all workplaces in the WERS survey.

Employers are legally required to engage in collective bargaining over pay, hours and holidays in workplaces where a union has been recognized. The union side to collective bargaining may include several unions who normally will have agreed a shared position in advance. There are no rights of collective bargaining extension. This explains why the decline in unionization has been mirrored in the collective bargaining coverage from 36 per cent in 1996 to 28 per cent in 2013. The respective declines in the private and public sector over these years were from 23 to 15 per cent and from 74 to 61 per cent. Table 4.3 presents detailed data on collective bargaining across different categories of workers.

Table 4-3 - collective agreement coverage by employment status (2013)

	All employees	Full-time vs. Part-time		Permanent vs. Temporary	
		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)

In the private sector there has been a strong decentralization of collective bargaining which now tends to be at the level of the company or the individual workplace. In the public sector, national agreements are more common although some public sector employers bargain at the organizational level. Many public sector workers are not covered by collective bargaining but by independent Pay Review Bodies which make recommendations to the government. Where national agreements exist they are not binding, even to members of the employers' organization that has signed the agreement. Collective agreements can be agreed for any period but the majority (91% in 2013) tend to run for one year.

The WERS survey also provides information on the scope of collective bargaining. Managers in organizations with a union present were asked whether they normally negotiate, consult, or inform the union on seven issues: pay, hours, holidays, pensions, training, grievance procedures, and health and safety. Table 4.4 shows the share of managers who answered that they negotiated on none, some or all of these issues. It illustrates how in 2011 there was no collective bargaining on any of these issues in half the organizations with a union presence. This figure even rises to 62 per cent among private sector organizations in 2011. The share of unionised workplaces which negotiate over the three items covered in the statutory union recognition procedure - pay, hours and holidays - declined from 32 per cent in 2004 to 25 per cent 2011. This fall was particularly strong in the private sector, from 27 to 18 per cent. On the other hand, in almost two thirds (64%) of the public sector in 2011 there was collective bargaining over two issues or more and there was even a rise from 4 to 7 per cent in public sector organizations where all seven issues were covered.

Table 4-4 - scope of collective bargaining where unions are present

	None	Some	All
All workplaces			
2004	49	47	5
2011	51	45	4
Public sector			
2004	35	59	4
2011	36	57	7
Private sector			
2004	57	39	5
2011	62	36	1

Source: WERS (2014: 22)

Recognized trade unions have various rights. This includes the right to information for collective bargaining purposes, on health and safety, and occupational pension schemes. Unions also have the right to be consulted on training and workers have a right to be accompanied by a trade union official (or a fellow worker) where they are required or invited by their employer to attend certain disciplinary or grievance hearings. Industrial action requires a ballot before the union asks members to take or continue taking action. The ballot must be open to all members targeted by the union to take action and must be organized by post. Employers must be given at least one week's notice of the start of the ballot and to be informed about the result as soon as it becomes available. The new Conservative government has published a new Trade Union Bill on 15 July 2015 to further tighten the balloting regulations. If accepted, it would pose two further requirements. First, at least 50 per cent of all members who are eligible to vote must take part in any strike ballot for it to be lawful (currently there is no minimum percentage defined). Secondly, an additional threshold is introduced for so-called 'important public services' (health services, education of those aged under 17, fire services, transport services, border security and nuclear decommissioning) where at least 40 per cent of those eligible to vote must support strike action.

As mentioned, non-union forms of representation play a limited role (WERS 2014). Employers are legally required to consult with employees on a range of issues, including the transfer of undertakings, health and safety and planned redundancies. However, the legislation does not specify how the representation should be structured or representatives should be elected. The main form for ongoing consultation and information is the joint consultative committee (JCC), also known as an employee forum, staff council or works council. They are made up of managers and employee representatives who meet on a regular basis to discuss issues such as changes, working conditions and training. So-called 'joint working parties' (JWPs) are set up to address a specific issue. Seven per cent of workplaces in the 2011 WERS survey had a JCC while another 18 per cent had a JCC at a higher organisational level in the case of multi-site organisations. The latter share was a strong decline from 26 per cent in 2004. As a consequence, the share of workplaces covered by JCCs fell from 33 to 25 per cent. The share of JCCs in which union representatives had a position was 28 per cent in 2011.

An important development has been the introduction of the Consultation of Employees (ICE) Regulations in April 2005, described as 'legally induced voluntarism' (Gall 2012). They apply to businesses with 50 or more employees and give employees the right to request their employer for information and consultation arrangements. A pre-existing arrangement may be acceptable under the new legislation but it must be in writing, cover all the employees in the undertaking, set out how the employer will inform and consult employees or their representatives, and be approved by employees. The agreement should also set out which issues are to be discussed and when and how often discussions take place. These issues are left for employers and employees to agree upon. There is a fall-back provision (known as the 'standard provisions') if no agreement can be reached. It requires the employer to inform employees about the organisation's economic situation and to inform and consult employees about decisions that are likely to lead to substantial changes in work organisation, employment prospects or contractual relations. Employees can raise a complaint with the Central Arbitration Committee (CAC) if employers fail to reach an agreement or to uphold the standard provisions.

There are a few other types of employee representation. In 2011, 16 per cent of workplaces that operated in more than one country were covered by a European Works Council (EWC), down from

21 per cent in 2004. And seven per cent of all workplaces in both 2004 and 2011 had 'stand-alone' representatives who were not connected to the trade union and did not operate within a JCC. The WERS study includes these types together with union representation and JCCs in a combined indicator which identifies the presence of any representative arrangement. The percentage of all workplaces with any such arrangement fell from 43 to 35 per cent between 2004 and 2011. However, as the decline was concentrated in small workplaces, the proportion of all employees working in an establishment with any such arrangement was in fact relatively stable.

Eligibility gaps

As indicated by the above data, there are clear differences in unionization across workforce groups, in particular between the private and public sectors and between small and large firms. There are also important differences between employment types and groups of workers with important differences because of gender, place of birth (in or outside the UK), education, full-time or part-time status, and permanent or temporary status.

Overall, the proportion of workers belonging to a trade union is much lower among low-paid workers than among any other group. Table 4 above illustrates how unionization among workers earning between £500 and £999 per week is around three times higher than among workers earning less than £250 per week (37% vs. 13%). Simms (2010) discusses how only one in nine workers earning less than £7 per hour belonged to a trade union compared to two out of five workers earning between £10 and £20 per hour. Several factors contribute to this outcome. First, there is a small union wage premium as unions, when present, are often able to push up wages through collective bargaining. Secondly, the lowest paid workers are concentrated in the private sector where unions have a much weaker presence. Finally, there are important structural challenges with little unionisation in those sectors with large numbers of precarious workers and the need to overcome fragmented employment such as workers within the same workplace having different employers.

'I think from a trade union point of view, when workers can't get together and talk about pay and conditions, then that's very difficult. And obviously, the whole structure of this form of employment, that's shift based, that keeps people separate from one another, working very antisocial hours, it means it's very hard for union organising, and it places a lot of challenges on unions to be there... And, this short term employment means that unions all the time are facing a big churn turnover in terms of membership' (TUC Interview).

The TUC (2008: 67) report on vulnerable employment acknowledges that *'the characteristics of the average trade union member are almost the opposite to those of many vulnerable workers'*. Finally, even where precarious workers are organized it remains to be seen to what extent unions are willing or able to further their interests.

Heery and Abbott (2000) provided a useful classification which distinguishes five different union strategies towards what they describe as 'contingent workers': exclusion, servicing, partnership, dialogue, and mobilization.

1. *Exclusion*: unions oppose precarious types of employment and refuse to organise these workers in an attempt both to prevent workers having to accept insecure employment and to protect existing members from increased labour market competition. It involves *'the identification of opposing interests between the hitherto secure and contingent workers and a determination to protect the jobs and pay levels of the former from external threat'* (Heery and Abbott: 2000: 158). The response seems logical but unions have often had little success as they lack the

bargaining power to stop these developments nor developed the membership base among contingent workers to argue for better working conditions. The exclusion strategy has become less prevalent over time. The TUC (2008: 67) report on vulnerable employment speaks about *'a shift in trade union attitudes towards vulnerable workers'* and *'a growing recognition in the union movement that until now unions have largely failed to reach those in vulnerable employment, and that if they are to offer protection to vulnerable workers new strategies for organising among these groups are necessary'*.

2. *Servicing*: trade union provision of services to members is especially relevant where it targets workers with specific needs. It is an acknowledgement that collective bargaining may be hard to achieve for these workers. At the same time, it can also be considered as legitimization of precarious employment and therefore is a contested strategy within many unions. It may also result in an individualization of services that risks the collective aspects of organisation.
3. *Partnership*: partnership between labour and management refers to attempts by unions to reduce *'future risk of precarious work for members through conceding flexible working arrangements in exchange for agreements about future job security'* (Simms 2010: 25). However, it does not necessarily improve the position of contingent workers. Moreover, partnership agreements have been very rare in the UK.
4. *Dialogue*: this strategy is different in character as it is not directly aimed at the employer. Instead unions try to influence government policy and regulation. A major example concerns the negotiations over the implementation of the Agency Work Directive in the UK (see chapter 5.3).
5. *Mobilisation*: this strategy concerns the direct organization of precarious workers and has become a much more dominant approach since the 'turn to organising' in the mid-1990s (Simms 2010). The TUC (2008: 5) report of vulnerable employment made the ambition very clear: *'Unions must act to ensure they represent the interests of vulnerable workers. Unions should organise all workers in workplaces where there is a union presence, whoever employs them and whether their employment is direct or temporary. Unions should also focus on areas of the economy where exploitation is rife and where trade union membership is low. Trade unions should commit to a TUC co-ordinated drive to boost membership among vulnerable workers'*. This has been a highly challenging strategy, with little reliable data because of decentralized collective bargaining. Simms (2010) identifies three types of bargaining: by unions whose membership has always included precarious workers and have long sought to bargain on their behalf, by unions where precarious work has emerged among their core membership, and by unions which have expanded membership to include precarious workers. But progress remains difficult in spite of some successful cases.

'There are a whole range of reasons why unions now are finding it much more difficult to recruit and organise, even though the need is more than ever, unions are facing a lot of difficulties around where they put their resources in' (TUC Interviewee).

An adjusted classification was provided by Heery (2009). It distinguishes three alternatives to the aforementioned strategy of exclusion: subordination, inclusion and engagement. This classification is more explicit in the way that precarious workers are treated within the union as they refer to both the rules for membership and participation (the internal strategies of representation) and the attempts to regulate the employment relationship (the external strategies of representation). As pointed out by Simms (2010: 26) such a distinction is of crucial importance because of the growing

awareness that *'what happens to new groups of union members after they have been recruited to the union is central to understanding the union's approach not just to recruiting these workers but to representing them'*. In the case of 'subordination', unions accept contingent workers but *'on a secondary basis'* (Heery 2009: 431). In this context, there is often an acknowledgement that these workers may be considered an employment buffer that helps to protect the employment of core members. The attitude of unions changes rather fundamentally under the other two strategies. In the case of 'inclusion', unions accept precarious workers as equal members to workers on standard contracts, with the same membership status and rights of participation. Finally, 'engagement' also fully accepts precarious workers as union members but stresses the need for 'tailored systems of representation' that acknowledge the different interests of these workers (Ibid.). This last strategy also differs from 'inclusion' in its acceptance of the legitimacy of contingent work.

Finally, there are no clear data on the coverage of other forms of representation (JCCs, European works councils, 'stand-alone non-union representation') among different groups of employees. However, such structures are more prevalent in larger organisations as indicated by the relatively high share of JCCs at higher organisational levels across multi-site organisations, the presence of EWCs at multi-national organisations, and the ICE regulations only affecting organisations with 50 or more employees. The WERS survey also confirms how the decline among small workplaces was responsible for the share of workplaces without any representative arrangement falling from 43% to 35%. The lack of specific regulatory requirements for the different mechanism for information and consultation means that the position of precarious employment forms is ambiguous. However, as explained in the next chapter, the right for union or workplace representatives to be informed or consulted about collective redundancies or transfers of an undertaking is limited to employees rather than workers and therefore does not apply to many temporary workers.

Involvement gaps

The involvement gaps largely relate to attempts by unions to organise precarious workers. To some extent, these gaps can be related to strategies of exclusion by unions but, as mentioned, these are no longer prevalent. Instead the main issue of involvement concerns the structural aspects of the labour market and the union movement that hinder the organizing of precarious workers, mostly because unions do not have a strong presence in the relevant industries. The limited bite of the regulation plays a role here as well. For example, ICE regulations only apply to businesses with 50 or more employees and even here implementation is not automatic. Moreover, there are no requirements on the topics to be included albeit that there is fall-back position. All these aspects illustrate the low involvement of a majority of employees.

4.3. Enforcement gaps

The UK relies heavily on employment law as the only widespread form of regulation for employment rights and protection. However, there is no systematic monitoring of the extent of enforcement gaps so it is necessary to rely on ad hoc or piecemeal surveys or on reports relating to a specific regulation to estimate the extent and character of enforcement gaps. Here we provide a flavour of this piecemeal evidence. We provide general evidence for all workers and employees when disaggregated data for workforce groups are unavailable, but where general enforcement is low one can anticipate that the problems of enforcement for non-standard workers would be greater. The overall picture is one of significant problems in ensuring that workers and employees on standard and non standard contracts receive the rights to which they are by law entitled. We begin with an

overview of evidence of enforcement of key rights and then turn to assessing the weakness associated with mechanisms, awareness, power and coverage following the schema in figure 6 above.

Empirical evidence of enforcement gaps

- Minimum wage

There has been a great deal of activity recently to map and understand patterns of non compliance with the NMW more precisely. First, government reports to the Low Pay Commission compile numbers of workers' complaints to the Pay and Work Rights Helpline. These show 2,522 complaints in 2008/9, falling to 2,243 in 2012/13 and rising to 3,294 in 2013/14.²⁸ Second, official earnings data show that 208,000 adults aged 21+ were paid less than the MW in 2014. However, these figures do not capture non compliance for three reasons: some adults are involved in apprenticeship programmes and therefore exempt from the adult MW; unlawful underpayment in the formal economy is under-reported; and payments in the informal economy are not reported (LPC 2015: 211). More useful, therefore, are detailed earnings analyses. Le Roux et al. (2013), for example, show that 6% of the bottom decile of adults did not earn the MW entitlement during 2000-11. Third, particular problems of non-compliance face apprentices, estimated to affect 9-14% of all apprentices in the country. Fourth, many employers of care workers have been shown to be non-compliant due to non-payment of travel time during working hours and deductions from wages for uniforms and accommodation). Fifth, unpaid internships are estimated to account for at least one in seven positions (LPC 2015: 221). Sixth, migrants in domestic and other workplaces are a key area of concern, especially in the agriculture and meat packing industries. Finally, there is evidence of mis-reporting of hours so as to align piece rate payments with MW rules, especially in the textiles and hospitality sectors.

- Pregnancy

In a 2015 survey of 3,254 mothers with a child under two, and 3,034 workplaces across the UK, 11 per cent of women 'reported being edged out of work or treated so poorly on their return from maternity leave, they had to leave their jobs' (BIS/EHRC 2015).

- Discrimination

The incidence of discrimination is only effectively recorded through employment tribunal statistics: since the introduction of fees race discrimination claims have fallen by 59 per cent and sex discrimination claims by 81 per cent.²⁹ Case law has improved protection for disabled employees working for an agency, clarifying that their rights not to be discriminated against by the client are the same as for permanent employees. By international standards, the UK has a strong track record in bringing in disability rights but these are quite difficult to enforce at tribunals as reasonable adjustments are determined according to the circumstances of the employer. This could restrict the enforcement of rights for disabled workers on temporary contracts, for example.

- Holiday pay

²⁸ Data reported in various years government reports to the LPC.

²⁹ <http://www.cipd.co.uk/pm/peoplemanagement/b/weblog/archive/2014/08/11/employment-tribunal-claims-almost-halved-over-the-past-year.aspx>

In a CIPD (2013) survey on zero hours contract employers, only 59% thought the staff were entitled to annual paid leave even though only the self employed are excluded and among the same employers only 3% classified those on zero hours as self employed. In a parallel survey of workers on zero hours contracts only 46% thought they had entitlement to annual paid leave This suggests both a lack of enforcement of entitlements and a lack of awareness of entitlements with respect to casual workers. There is evidence that the working time directive did have an impact on entitlements to paid leave particularly for women in part-time work; prior to the legislation around 16% of all women had no paid holidays but that fell to just over 4%; the male incidence of no paid leave fell from around 8% to just under 4% (Charlwood and Green 2011).

- Unpaid wages

In 2013 before the rise in tribunal fees around a fifth of claims were for unpaid wages of some form (including holiday and sick pay) and 17% for deductions from wages. This implies a fairly widespread problem. The high tribunal fees are likely to deter such claims as they are often for relatively small amounts. More use may now be made of the small claims courts, but these will then not be recorded in employment law statistics data.³⁰ After the introduction of fees, unpaid wages claims are reported to have declined by 80 per cent.³¹

- Unfair dismissal

In 2013/14, unfair dismissal claims accounted for 15% of settled claims in Employment Tribunals. However, in this same year unfair dismissal claims to tribunals dropped by 62 per cent.³²

- Agency regulations

A government review (department of Business, Innovation and Skills) of employers' attitudes towards employment regulation states that, *'In most cases, employers that regularly used agency workers (these tended to be large employers in sectors with fluctuating resource needs such as hospitality) had changed their practices by shortening assignment lengths to less than 12 weeks, by bringing in different workers each week and by using fixed-term contracts for longer term cover'* (BIS: 2013: ii).

- Health and safety

The UK has a strong record on safety at work with among the lowest rates of fatal injury in Europe (2011 rate was 0.74 per 100,000 workers compared, for example, to a rate in France of 2.74) and below average rates of work-related injuries (1.8% compared to the EU27 average of 2.2%) and work-related illness of 2.9% (EU27 average of 5.5%) (HSE, 2014: 2). The Health and Safety Executive provisions cover all at a work site, that is including non standard workers. Moreover, until recently all self employed workers had an obligation to protect themselves and others for health and safety risk. However, in its efforts to reduce regulation the government has now excluded those self employed whose work does not pose a risk to others. The good record with respect to safety is at

³⁰ <http://www.cipd.co.uk/pm/peoplemanagement/b/weblog/archive/2013/11/25/employment-claims-find-a-different-route-to-justice.aspx>

³¹ <http://www.cipd.co.uk/pm/peoplemanagement/b/weblog/archive/2014/08/11/employment-tribunal-claims-almost-halved-over-the-past-year.aspx>

³² <http://www.cipd.co.uk/pm/peoplemanagement/b/weblog/archive/2014/08/11/employment-tribunal-claims-almost-halved-over-the-past-year.aspx>

risk from severely reduced funding, the ending of regular inspections and reduced provision for trade union representatives (Rubery and Cartwright 2015; TUC 2014).

- Working time directive

The work life balance survey conducted by BIS found that *'One in ten businesses reported that they had non-managerial employees who had worked more than 48 hours per week over a continuous four-month period or longer over the past 12 months. Half of these employers had not had any non-managerial employees sign an opt-out of the Working Time Regulations with regards to the 48-hour working week. However, given that there are some exemptions from the requirements, it is impossible to deduce the extent of non-compliance'*. (BIS 2014: 12).

- Payment of legal compensation

The Citizens Advice Bureau has highlighted the problem of non payment of compensation even for those who win their employment tribunal cases. Their lobbying led to the Ministry of Justice undertaking research which revealed in 2009 that almost half of employment tribunal awards were not paid before enforcement action was taken in county courts. A new enforcement system was set up that the successful litigants could access at a cost of £60, but take up has not been high and only 50% of claims referred have been settled (CAB 2013). Compensation agreed through conciliation by ACAS appears to be more frequently paid without court action (over 93%) (see ACAS 2015a).

Enforcement mechanisms gaps

As we discussed in chapter 4.2, there are significant weaknesses in the ability of trade unions to monitor and enforce employment, welfare and other citizenship rights. Here we discuss the main mechanisms and organisations, including significant charitable organisations, government appointed licensing and/or monitoring bodies and legal routes for enforcement.

Employment Tribunals

Employment tribunals are the main route for legal enforcement of rights. They were set up to provide an easier route to enforcement of rights, with tribunals chaired by experts in the field of employment. However, appeals go through the standard court procedures. Cases may be single or multiple and they may be taken by individuals or supported by trade unions. With respect to non standard employment, one of the key problems is knowing before taking a case whether or not the person will be deemed to be under a contract of services -that is, an employment contract. These cases are decided primarily on the question of whether there is mutuality of obligation. This problem was emphasised by the EHRC interviewee:

'At what point can you imply a contract between a cleaner who's worked in the same place for 20 years but via an agency, either with the company for whom they're cleaning, or for the agency?there seems to be more cases coming through, where the question isn't, was there an unfair dismissal, but was this person an employee to begin with?' (EHRC)

'And you come back to this same base question of, is there an obligation on the employer to provide work, is there an obligation on them to take it? And it's quite often on a case by case basis, it's very hard to say hard and fast rules. If people are paid throughout the summer then that's fairly obvious, but more and more you get people who their status just isn't clear, and they go to a tribunal and the tribunal will need to decide, and they'll have to do it on the particular evidence.' (EHRC)

Access to tribunals is now dependent on being willing and able to pay fees which are high both in relation to potential settlements and in a context where a high share of compensation payments are not actually paid, certainly without further and potentially expensive avenues through the court system. There are two bands of fees depending on the nature of the case and also two parts to the fee- a fee to issue a complaint and a fee to take the case forward. The higher total fee is currently £1200. The fees were introduced in 2013 and in the first year the number of claims fell by 64%. There is a possibility of remission of fees but eligibility involves two tests –disposable capital and household income. In practice, in the first year only 3,913 cases out of 93,815 complaints were given remission of fees. From the perspective of non standard workers, they not only face the problem of paying a high fee but also that their case may fail on the issue of whether or not an employment contract is deemed to be in place. The tests for fee remission are also household based and any household (which includes non married as well as married partners) that has over £3000 or £4000 (for higher fee) disposable capital (any saving or assets apart from the family home, in practice) will not be eligible for any remission. This means that access to the law is not available on an individual basis even though judgments refer to individuals' willingness or not to prioritise their case and to adjust their consumption accordingly; for many part-time or flexible workers the decision is likely to rest with their partners not with themselves as it is likely that their partners will be the main breadwinners and have contributed most to disposable capital, given the low pay of many of these potential complainants.

The Government's own equality impact assessment recognised that the introduction of fees might have potentially discriminatory effects:

'It is possible that these proposals impact on the duty to advance equality of opportunity if potential claimants with protected characteristics are put off from taking forward discrimination cases due to the introduction of fees.' (Quoted in House of Commons 2015: 18)

However, so far a range of cases taken by trade unions and lawyers to challenge the legality of the changes have failed, partly because of a lack of actual cases where there is unambiguous evidence that an actual complainant has withdrawn because of the fee. However the judgment in the appeal proceedings failed notably to recognise the household-based nature of the decision making:

'The question many potential claimants have to ask themselves is how to prioritise their spending: what priority should they give to paying the fees in a possible legal claim as against many competing and pressing demands on their finances?' (Quoted in House of Commons 2015: 26)

In 2014 Citizens Advice (see below) undertook a six week survey of potential tribunal cases brought to the CAB. CAB advisers were asked to assess the strength of the claim; the likelihood it would be taken to the tribunal and provide reasons for their assessment. In 80 per cent of cases advisers assessed the cases as having a Very good, Good or 50/50 chance of success at an employment tribunal but less than a third of these promising cases were likely to be taken forward (less than a quarter of those where the claims was less than £1000). Fees or cost were given as the main reason for not taking cases forward in over 50% of cases not being pursued. Around two fifths were considered potentially eligible for fee remission and 43 per cent were not in employment at the time of contacting the CAB, with 25 per cent claiming benefits consequent upon the alleged complaint against the employer (CAB 2014).

ACAS

The Advisory Arbitration and Conciliation Service was originally primarily concerned with collective disputes and their conciliation. Their orientation, however, has increasingly focused on individual rights and providing advice and conciliation in relation to these rights. It runs an individual telephone helpline and currently fields one million queries a year, though it could take more if more funding were available. The helpline provides advice within the capacities of the staff and cases are not followed through with further action. Many queries are referred to other agencies- HMRC for the minimum wage and CAB for other employment rights.

ACAS now has a statutory role in providing early conciliation before a case is taken to employment tribunals; this was introduced in 2014 after the major collapse in number of cases being taken following the rise in fees. Early conciliation was always available but is now mandatory; the impact on the number of cases taken is yet to be determined but in the first year Early Conciliation (EC) dealt with over 83,000 cases and EC notifications received between April and December 2014 show that 63% did not proceed to a tribunal claim, a further 15% resulted in a formal settlement (known as a COT3) and 22% progressed to a tribunal claim. Overall, 48% who used EC either reached a formal settlement or were otherwise helped by ACAS to avoid a tribunal claim and 96% of agreed financial sums as part of their settlement had been paid, a much higher rate than for financial awards at tribunal (63%) (ACAS 2015b). About a quarter of those who did not go to tribunal despite not settling their claim at early conciliation gave tribunal fees as the reason for not taking the claim further, but 20% said that their reason was that their issue had been resolved.

Citizens Advice

Citizens Advice is a charity that provides advice on housing, work, benefits and consumer issues through online, phone and face-to-face services. It is made up of a national organisation, which funds campaigns, online services, research and consumer advocacy, and an association of local Citizens Advice organisations which raise local funding to support advice on housing, welfare and employment issues. Total funding in 2014/15 was £88.2 million, 14% higher than the previous year. Government funding accounts for close to 90% of the total and this has increased due to new consumer and pension advice programmes.

According to its annual report, in 2014-15 it helped 2.5 million people (excluding website views) with 6.2 million issues, half of them directly in person. Most issues concerned benefits and tax credits (29%) and debt (26%), followed by consumer (15%), housing (7%) and employment (6%).³³ The bulk of services are delivered by volunteers –around 22,000, averaging 300 hours work per year. Debt issues have changed in recent years from problems paying mortgages to paying basic household bills, such as utilities and rent. Citizens Advice provides courses in financial management, raises awareness about energy tariffs and introduced a new pension service in 2015.

Gangmasters' Licensing Authority

Set up in 2006 in response to the deaths of 23 Chinese cockle pickers in 2004, the Gangmasters' Licensing Authority (GLA) aims to protect vulnerable workers in the shell fish, agriculture, food and food packaging sectors. It was initially governed from within the government Department of Environment, Food and Rural Affairs, and is now within the Home Office. Its central role is to

³³ https://www.citizensadvice.org.uk/Global/Migrated_Documents/corporate/annual-report-201314-web-1-.pdf

manage a licensing scheme that regulates agencies, labour providers and gangmasters in the above mentioned sectors to ensure they meet the statutory employment standards (health and safety, pay, working time, accommodation, transport and training). Without the GLA license, the labour provider cannot operate legally in the sector.

The regulated labour providers for the most part oversee a workforce of migrant workers (estimated currently to be around 98%, GLA interview). As such, the GLA works closely with organisations such as the UK Human Trafficking Centre, Migrant Help, Oxfam and the Modern Slavery Stakeholders' Group. Moreover, under new legislation (the Modern Slavery Act, 2015), it has a statutory role to refer potential victims to the National Referral Mechanism.

Its operational work has two main strands. One strand involves criminal investigation -seeking to identify labour providers in the target sectors operating without a GLA license and making a criminal prosecution where necessary (a maximum ten-years imprisonment). A second strand involves compliance inspection -seeking out licensed companies that are non-compliant with GLA employment standards. At a typical fortnightly meeting, the GLA team will assess around a dozen new cases requiring inspection of some sort. Issues include operating without a license, withholding holiday pay, charging work-finding fees. In both cases, the GLA does not have the power to prosecute on the basis of labour exploitation; such issues are passed on to the police, which is a potential weakness since the GLA have considerably more expertise to address the problem. It is also currently developing better sources of information from labour users such as the supermarket chains so that retail chains can help to prevent labour exploitation also. The relatively limited powers of monitoring and enforcement agencies to prevent unscrupulous employment practices is underlined by the low number of 'prohibited people' banned from running employment agencies according to a recent publication by the Employment Standards Inspectorate³⁴.

HMRC (for minimum wage enforcement)

While responsibility for national minimum wage policy rests with the government department of Business, Innovation and Skills, enforcement is managed by the tax office (HM Revenue and Customs) on its behalf. Therefore, unlike other employment rights, except health and safety, the state actively enforces compliance rather than requiring individuals to go the employment tribunals.

In practice, enforcement is triggered either by a complaint from a worker or is the result of risk profiling and inspection of a low-wage workplace. In response to evidence that penalties on employers that flouted the law were too low to serve as a deterrent (TUC 2014³⁵), new rules in 2014 raised the maximum penalty from £5,000 to £20,000. Also, in 2011 and 2012 the government revised its scheme of naming employers who broke the law (BIS 2015³⁶). This has meant that after some considerable delay (with less than 40 employers named by late 2014), more regular monthly announcements now appear to be occurring (Jan, Feb, March, July 2015) with a total of 285 employers named to date. Nevertheless, enforcement problems remain: the advertising budget to raise awareness is just £100k per year; the enforcement team numbers around 200 staff, too small, according to the TUC, to manage the growing number of complaints (TUC 2014); the maximum civil

³⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/403653/employment-agency-standards-inspectorate_prohibited_people_list__4_.pdf

³⁵ https://www.tuc.org.uk/sites/default/files/ImprovingNationalMinimumWag%20Enforcement_0.pdf

³⁶ Available at, www.gov.uk/government/uploads/system/uploads/attachment_data/file/429737/

action fine remains low; and unions are still sidelined due to their absence in most workplaces –the TUC has called for the duty of ACAS to encourage collective bargaining to be reinstated.

EHRC and GEO

The Government Equalities Office (GEO) is the department within government responsible for equality strategy and legislation. In contrast, the Equality and Human Rights Commission (EHRC) is an independent body -known as an 'Arms Length Body' -with 'the mandate to challenge discrimination, and to protect and promote human rights'. The EHRC was formed in 2007 in the wake of the wider European directive on discrimination to encompass not only gender, race and disability (which corresponded to three separate commissions in the UK) but also to include sexual orientation, age, and religion and following on from the passing of the 1998 Human Rights Act. The equality and discrimination rights were also brought together into the 2010 Equalities Act which established a general public sector duty to promote equality (replacing the separate gender, race and disability duties).

The EHRC provides an advice service for individuals on equality issues and also undertakes research and monitors legal cases. It also has some statutory duties and powers that enable it to enforce certain employment rights. More specifically among its duties and powers are: to provide assistance to those taking legal proceedings in relation to equality; to take legal cases on behalf of individuals or intervene in litigation to test and extend the right to equality and human rights; to apply to the court for injunctions and interdicts where it considers it likely that an unlawful act will be committed; to conduct inquiries, investigations and assessments to examine the behaviour of institutions; to enforce the public sector equality duty, and to issue Compliance Notices where it is believed the law has been breached.

The EHRC interviewees clarified that most of their role in recent legal cases has been to intervene to clarify a point of law rather than simply to assist in the bringing of cases. However, in some circumstances the EHRC will fund a case in order to clarify a point of law -see box 4.1. The EHRC has conducted two notable enquiries of recent date into sectors making considerable use of precarious and non standard workers, namely meatpacking and commercial cleaning (EHRC 2010; EHRC 2014). The EHRC has carried out some monitoring of the public sector equality duty reporting and has undertaken one inquiry under the public sector equality duty into Job Centre Plus.

Box 4.1. EHRC legal case concerning the rights of disabled workers working for agencies

An agency worker was awarded over £35,000 for disability discrimination and unfair dismissal by an Employment Tribunal in a case funded by the Equality and Human Rights Commission.

The agency worker, Corinda Pegg, had been dismissed after 44 weeks service due to absences caused by depression. The case was taken to the Employment Appeal Tribunal on the legal question of whether equality law protects agency workers from being discriminated against by an organisation they are supplied to. The EHRC commented that

'This case clarifies that agency workers are entitled to the same degree of protection from discrimination at their place of work as permanent employees'.

Source: EHRC 2013

Enforcement awareness gaps

A 2002 study (Meager et al. 2002) found that 70% of respondents felt they were reasonably well informed about employment rights, with over 90% aware of the national minimum wage and over three quarters able to cite four out of five areas of employment rights. Those on temporary contracts were less well informed than those on permanent contracts, but those on low wages were more likely to know what level the minimum wage was set and the disabled to know more about disability rights. A 2005 follow up study (Casebourne et al. 2005) found a similar level of awareness and found 42% had experienced a problem at work over the past five years, half of those reporting a problem with pay. Just under one in ten (9%) respondents had left their employment because of a problem. The first port of call for respondents if they had a problem would be a manager or HR officer for around two in five; in contrast only one in ten would go first to a trade union, which is lower than the share who would go to the Citizens' Advice Bureaux (14%), while 16% would consult the internet.

The likelihood is those on non-standard or marginal contracts will have less awareness of their rights than the average employee even though they are more in need of protection. This problem was stressed by one of the EHRC interviewees: *'What we would say is that given some of the newer employment scenarios that it looks like people find themselves in, there is an increased importance for them to be aware of their rights.'*

A recent survey by ACAS (2015c: 2) of agency workers found that many were *'unaware of their rights, particularly around holiday pay, notice periods and, critically, the "twelve week threshold"'*. They cite one caller to the helpline who had been on the same assignment for over four years and was unaware of the entitlement to be paid the same as an equivalent permanent employee,

Enforcement power gaps

As well as a lack of understanding, enforcement gaps may also arise because actors 'find space beyond its reach to avoid its requirements' (Colling 2010: 324). ACAS has used the term 'effective exclusivity' to refer to those on zero hours contracts who although not formally bound by exclusivity contracts nevertheless feel that if they are not available to work when asked, particularly if due to other employment commitments they would lose their jobs.

'We developed a concept called effective exclusivity, which I think is a very important concept in the world of atypical working, and it's been quite widely cited, and it genuinely came out of our analysis of calls. And basically what it says is that exclusivity clauses in contracts, you know, you're not allowed to work for anyone else, blah, blah, didn't actually feature that much in our calls; that might be because people didn't know they were on them, or they did and they'd got used to it. But what was clearly the case was when things changed for someone they might have put their head above the parapet and asked why is this happening, or they might fear raising their queries, and their fear of being zeroed down, even if they're not on exclusivity clauses, and it amounted to effective exclusivity; and that's what we mean by it. And it's very important, I think' (ACAS interview).

The fear factor is also a problem with respect to enforcing other rights such as minimum wages (care workers), working time and rest periods, unpaid wages etc. These fear factors were also affecting agency workers who were reported (ACAS 2015c) as being afraid of asserting their statutory rights due to the perceived imbalance of power in the employment relationship.

Moreover, the power of exploitative employers has arguably increased since 2010 in light of the government's 'red tape challenge' on government agencies, which has reduced funding in the name

of 'lighter touch regulation'. Funding to the GLA is estimated to have been cut by one fifth during 2010-15.

Enforcement coverage gaps

One criticism of the role of the GLA is that its remit has not been extended to cover other sectors where there is evidence of employment agencies and labour providers operating illegally, such as in hospitality, social care, domestic work and construction (Craig et al. 2009). Moreover, many of the gangmasters operate across multiple sectors so the GLA's powers are severely restricted:

'When [the GLA] investigates a case of forced labour in its sector...but the company is operating across sectors, in order to conduct a proper criminal investigation (to meet the requirements of the Criminal Procedures and Investigation Act), we need to examine every avenue of that investigation. Now what that would mean is we would have to look at where they supplied workers in whatever sector. And if they operate an exploitative model here, it's going to be here and here and here and here. ... The problem is actually that most of the people who are provided into those industries are provided through employment agencies, and it's the employment agency temporary work model that is behind everything ... not these silos of what they are doing (GLA interview).

This view is supported by evidence from the Human Trafficking Centre. They report that among victims of trafficking who reported labour exploitation, around four in ten have no identifiable industry of employment since '[they] have been enrolled with an employment agency and therefore the type of work can be varied or unspecified unskilled labour' (UKHTC 2014: 15).

If what [a gangmaster] does it can do by providing workers into everything else, because they are low paid, low skilled, and therefore the product isn't changed. It's just [a question of] where you shove it to. ... It doesn't matter whether they are packing apples or packing shoes' (GLA interview).

Other issues arise in respect of enforcing legal standards and tackling exploitation in the 'black economy' where workers are employed informally, illegally or even under conditions which would be regarded as 'slavery' (through forced labour in a domestic setting or bonded labour in sex work). Informal employment in areas such as agriculture and construction present a specific set of challenges in ensuring businesses comply with regulations and workers are aware of their rights but identifying and tackling exploitation where employers depend on human traffickers for a supply of labour requires more-wide ranging and sophisticated interventions. The 2015 modern slavery bill³⁷ recognises the extent of exploitation among both legal and illegal migrants, but the impact of these new legal powers are stymied by the same lack of resources for enforcement agencies as found with the NMW, unpaid wages and long hours working. Similarly, the new bill is directly contradicted by changes to the entitlement to legal aid (which prevents many from initiating legal proceedings) as well as new restrictions on domestic overseas workers which prevents workers changing employer (in effect a 'tied visa') which gives significant powers to individuals as employers over workers who are entitled to reside and work in the UK.

4.4. Social protection and integration gaps

The UK system of social protection has a number of distinct characteristics, which as we will demonstrate interact in important ways with forms of non standard and precarious employment. The first characteristic is the relatively low level of contribution based benefits and the much greater

³⁷ <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

importance of household means-tested benefits- particularly housing benefits- , which are paid to those claiming both contribution and non contribution based benefits. In line with the limited nature of contribution based benefits, it should be noted that access to health care is based on residency not on social insurance. A second characteristic is the importance of in-work benefits (tax credits), especially since reforms under the past new Labour government (1997-2010), in part as a response to the disincentives to enter work posed by high levels of means-tested benefits. A third characteristic is the importance of employer provided benefits to supplement low state level provision.

The social protection system is also in the throws of major structural changes, which will again be shown to have implications for and interactions with both non standard employment and the conditions associated also with the standard employment relationship. The key change is the integration of out of work and in-work benefits in the new universal credit system (see box 2). This is being introduced at a slower pace than anticipated due to IT problems but in the meantime the implications of the system have been dramatically changed by reductions in the generosity of the tax credits announced in the latest July 2015 budget.

Instead of providing ‘carrots’ for people to enter work the main focus of welfare reforms is to be on the stick of requiring those on benefits to seek and take any form of work including zero hours contracts, as we explain below. The stick is already being applied in the form of increased requirements on those claiming benefits to be available for and to seek and accept work. This has produced new issues with respect to lone parents where now they have to attend work focused interviews from their child’s first birthday onwards, undertake work-related activities once their child reaches age 3, and they must seek work once their youngest child reaches the age of 5. Another group subject to the stick are those claiming disability benefits as many have been reclassified (under a controversial disability re-evaluation scheme) as able to work and required to seek and accept work. A further change has been the rather rapid decline in employer-provided occupational pensions apart from in the public sector, though this provision is also being eroded. It is notable that pension provision is excluded from TUPE protection, which has a major impact on outsourced public sector workers. A new mandated scheme of pension savings for employers and employees, albeit at a very low levels, has however recently been introduced. One particular consequence of the rise in unemployment following the recession and recent reforms of welfare to work is the strengthening of employers’ discretion to impose flexible and precarious work on employees who may feel they have little choice but to accept whatever jobs are on offer:

‘Everything is focused on getting people into work....and that’s opening up a lot of gaps in the market for [employers] to take advantage of....’ (Policy officer Citizens Advice)

Eligibility/entitlement gaps (for access to pensions, unemployment benefits, tax credits)

- Employee/worker/self-employed distinctions

Contract status may affect eligibility for social protection because people in different employment statuses pay different types of national insurance contributions. Employees pay Class 1 and the self employed class 2; the latter provides access to the same benefits as class 1 with the exception of contribution-based Jobseekers’ allowance. Self-employed persons are also not eligible for auto enrolment workplace pensions. Those who may be in an ambiguous position- that is workers who

are neither direct employees or self employed -may in practice pay either class 1 or class 2 contributions; for example those on zero hours contracts or working for a temporary agency may be treated as employees when on shift and pay class 1 but may not be treated as employees for purposes of employment rights due to lack of continuity. However for access to social protection it is the class of contributions together with the continuity of contributions that matters (see below). The low and flat rate level of state pensions means that many rely on occupational or personal pensions. Over half (52%) of employees contribute to an additional pension either on an individual basis or via their employer but only 31 per cent of self-employed people do so (Resolution Foundation 2014a). In general those in precarious work are less likely to have access to employer occupational pensions or to have the funds to take out an individual private pension.

- Weekly income thresholds and continuity requirements for pensions and unemployment benefits

Income thresholds

In 2014/15, those earning less than £112 per week are not eligible to pay national insurance class 1 contributions (although can continue to pay class 2 if self employed). This means they do not accumulate credits for unemployment benefits or pensions, but they may be eligible for class 3 credits which count for pensions if a parent and carers (mainly up to when a child is 12 one parent can have credits). For these low earners there is no need to determine if someone is self employed or employed, thereby contributing to employment status ambiguity.

For weekly earnings between £112 and £155 no contributions need to be paid, but credits are given for both unemployment benefit and pensions if the individual has employee status. Above £155 payments are made by both employee and employer at varying rates.

For the new auto enrolment workplace pensions employees must earn above £10k annual earnings for auto enrolment to apply but employees can request enrolment and employers must also contribute if earnings are at least £5,824 annually. Below this level employees are not eligible.

Continuity and duration thresholds

Thirty years of pension credits are needed for a full state pension (albeit a low flat rate pension). Some of these credits can be earned as a carer of children up to age 12 so there are large numbers of people who are not concerned about pension credits in relation to their employment, particularly women with children, which may be a factor in explaining short hours low paid jobs in the UK. However the contribution years will rise to 35 from April 2016.

To be eligible for contribution-based jobseekers' allowance one must have paid contributions for approximately half the weeks in the previous two tax years. Those in precarious jobs and working variable hours may not meet these requirements due to dipping below the lower earnings threshold or because of breaks in employment. The self employed and those paying class 2 contributions are not eligible. Non contributory jobseekers' allowance is dependent on household means testing, resulting in many women and young people being ineligible

In-work benefits

Eligibility for in work benefits (tax credits) currently is subject to various hours thresholds: for single parents and those aged over 60 it is 16 hours per week; for singles and couples without children 30 hours; for couples with children at least 24 hours in total; and for couples with only one partner

working at least 16 hours. The self employed are eligible but from April 2015 to meet the hours thresholds they will must have earned at least the national minimum wage times the minimum hours of work needed for eligibility.

Universal credit is being phased in from 2015 and will eventually replace existing means-tested benefits for those out of work or in low paid work. The outcome will be to remove the hours thresholds for in-work credits thereby integrating in-work and out-of-work benefits and allowing for predictable changes in benefits according to changes in earned income. However, as box 2 outlines, the changes announced in July 2015 mean that the incentives to work, even after the associated announced increases in the national minimum wage are factored in, will be very low. This suggests even greater reliance will be placed on the stick of requiring claimants to seek work and indeed more hours of work (see box) even if work is provided on a variable basis such as zero hours contracts or face sanctions. Employers meanwhile have increased opportunities to vary hours and income as the state will provide a more flexible subsidy, though at relatively low rates post the July 2015 budget.

The main impacts of universal credit with respect to precarious and non standard work can be expected to be as follows.

- The removal of the hours thresholds means that there is more scope to work short hours and to top up on benefits
- Likewise there is more possibility of taking jobs where the hours of work are not guaranteed at 16 or above, such as zero hours contracts
- Employers may be motivated to reduce guaranteed hours and to vary hours according to demand as their workers on low wages are likely to be eligible for top ups through UC
- To reduce the possible effects of employers offering more short or variable hours jobs those claiming benefits will have to enter into a claimant commitment which requires them to seek work that pays equivalent to the national minimum wage for 35 hours . If their weekly earnings fall below this they will need to seek additional hours of work to make up the difference between their earnings and this proxy for full-time work at the national minimum wage. There is no obligation on employers to offer more work or to hold the job open if the claimant finds other jobs which render him/her less available for the current flexible job.
- The self employed will be deemed to have earned at least 35 x NMW and this income will be assumed for purposes of claiming UC in all cases including where the actual declared income from self employment falls below.
- Many single parents and second income earners may be reluctant to seek work for more than very short hours as they will face an extremely high clawback of their benefits on UC particularly after the changes announced in July 2015- see box. This could in the end reduce availability of labour and increase very short hours working.

Migrant/posted work/ non migrant distinctions

Migrants from the EEA who have the right to reside as a jobseeker are not eligible for income related benefits for a period of three months and even when eligible can only claim benefits for 91 days. Since 2014 all EEA nationals who enter as jobseekers have not been eligible for housing benefits. Support for EEA nationals who become unemployed from a job in the UK is limited to six months. To gain recognition as a worker, which provides rights to claim benefits, EEA nationals have to demonstrate that they have been earning above the primary threshold for national insurance, around £155 a week (2014-15).

Universal credit is available to British citizens and to EEA nationals who have either had significant work in the UK and have the right to reside or have a permanent right to reside. It is only available to non EEA migrants who are not subject to immigration controls and pass an habitual residence test. Some visas state 'no recourse to public funds'. There are exceptions e.g. for domestic abuse.

Box 4.2 Universal Credit

Universal Credit is being phased in from 2015; it has been much delayed due to IT problems and the feasibility of the overall project is still in doubt. Furthermore major changes to the proposed scheme were announced in July 2015, which have implications for its likely effects. Here we outline the main objectives of the reform and its likely impact for precarious work and for vulnerable groups.

The universal credit system will bring together in-work and out-of-work household means-tested benefits including: Income Support; Income-based Jobseeker's Allowance; Income-related Employment and Support Allowance; Housing Benefit; Child Tax Credit; Working Tax Credit. Hours thresholds for out of work and in work benefits will thereby be removed.

Recipients will have to sign a claimant commitment (including both people in a couple) which requires them to seek work that will generate at least an income equivalent to working 35 hours at the national minimum wage (with some reductions for one partner if there are young children). If employed in work that generates less than this income, then claimants must make up the equivalent of 35 hours of work in job seeking activities (or less if a carer) under the supervision of the job centre.

In its original planned form UC was designed to provide a significant incentive for the main breadwinner of a couple or single parent to work by providing a work allowance that could be earned before benefits were reduced. In July 2015 these allowances were cut drastically; the outcome is that the Resolution Foundation (2015) has estimated that single parents will only be able to work 5 hours if receiving housing benefit or 10 if not before facing very high claw back rates of 76 pence in every extra pound earned. There is less impact on work incentives for the main breadwinner in a couple as they tend to be working full-time but nevertheless they lose income even after the associated increase in the minimum wage is factored in.

In the original design the incentives to work were high for main breadwinners but low for second income earners; the announced rise in the national minimum wage from April 2016 marginally increases incentives for second income earners but they still lose 65% of every pound earned until UC is reduced to zero.

Contribution gaps

The spread of low wage and intermittent jobs considerably reduces the contributions received under both national insurance (social security) and income tax to the Treasury. Reducing or eliminating the tax take on low earnings has been a deliberate policy of the coalition and now the Conservative governments. They have continued the policy of exempting both employers and employees from making any payment to national insurance on earnings below £156 per week and only charging on earnings above that threshold. They have further reduced the tax take from low earnings by pursuing a persistent policy of raising the personal income tax threshold. Already the consequences of these changes in rules combined with the spread of low wage work has had a major impact: the Resolution Foundation estimates that in 2006 only 1.9 million people in work were not paying income tax and national insurance (the thresholds being at this point the same), but by 2015/16 this is estimated to rise to 4.7 million not paying income tax and 3.5million not paying national insurance (Resolution Foundation 2014b). These figures include the rising share of self employed who tend to have low earnings and also pay limited national insurance contributions. One of our interviewees

expressed a view that this direction of tax reform runs counter to the collectivist ethos underpinning a healthy welfare state:

'My personal view is that the personal tax allowance –national insurance tax free allowance –should be as low as possible and that everyone should contribute to society because taxes pay for services we receive. Everyone receives services. And yes the tax rate should rise as you go up the [income] distribution' (Low Pay Commission).

These trends are set to increase further as the government is now making a commitment to pass legislation that those earning no more than 30 times the hourly national minimum wage, per week, will be exempt from income tax. As this coincides with a policy of significantly increasing the minimum wage the implications for the tax base are very considerable particularly as the main beneficiaries of raising the personal income tax threshold are high earners. It should be noted that the contribution system in the UK is highly regressive with high earners making very limited contributions to national insurance above a threshold. Thus job and income polarisation in the UK is reinforcing a pattern of low tax revenues to support social protection.

Integration gaps

There is evidence that those on temporary contracts, self employment or contracts not guaranteeing volumes of work and income have considerable problems in accessing credit and accessing mortgages or tenancy agreements for housing. Indeed without a family member to guarantee a tenancy agreement or underwrite a mortgage, most might be firmly locked out of both the renting and buying market for houses. Some powerful private sector landlords are reported to exclude those on zero hours contracts from eligibility for tenancies (*The Guardian* 31.10.2014). Even when there is one person in a household with a permanent job the income from temporary, freelance or variable hours work is often not taken into account in determining the amount of a mortgage that is offered. The self employed have to provide past financial statements to be offered a mortgage, while employees have the opposite problem, to provide evidence of future work guarantees even if they have been working for a long period and their contracts are regularly renewed. The Resolution Foundation summarises the situation for the self employed as follows:

'The architecture has not shifted towards flexible work... There are issues around personal credit, tenancy agreements [based on research for people who are self-employed]. There is a longstanding concern that people's income is lumpier and it is hard to prove regular flow of income. One in five people who are self-employed have had a mortgage declined, 15% have had problems with personal credit and 6% with rental tenancy.' (Conor D'Arcy, Resolution Foundation quoted in REC (2014:54)).

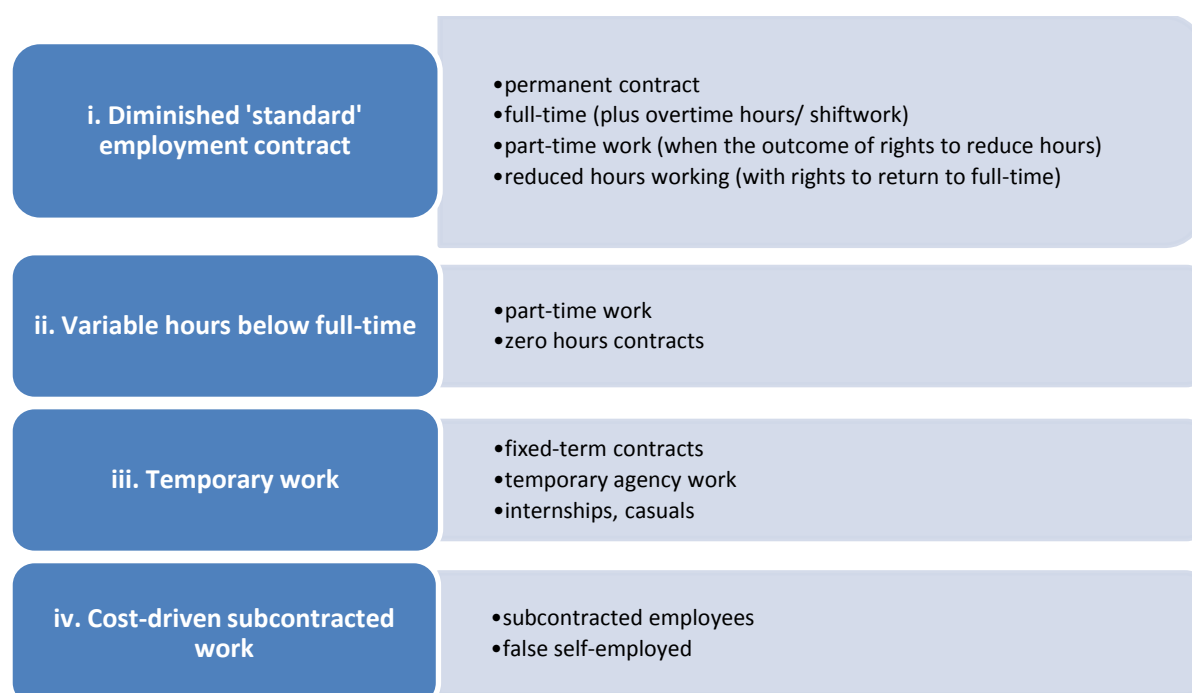
In addition to not being able to access credit or enter long term financial arrangements to enable them to be fully integrated as citizens and consumers, variability in income also puts them at risk of needing to resort to so-called payday lenders making loans at extortionate interest rates to address major fluctuations in income. According to IPPR survey some 80% of low income Londoners did not think they could access loans from regular financial institutions (IPPR 2014: 7).

5. Types of precarious work

Now that we have established the characteristics of protective gaps in the UK and the tendency in recent years towards an opening of gaps in all four areas as a result of multiple social, economic and especially political pressures, this chapter aims to interrogate in detail how these gaps apply to different employment forms. We specify four specific employment forms –three flexible forms and one standard form –that may all be associated with precarious working conditions of one sort or another. The inclusion of standard employment forms in our analysis, that is full-time, permanent contracts, responds to evidence that new work arrangements and employment practices, sometimes designed to evade legal responsibilities (Doellgast et al. 2009, Stone and Arthurs 2013), place even those working in standard jobs at risk of precariousness.

Figure 5.1 displays the four employment forms and types of contracts under investigation. A key distinction running throughout this chapter is between ‘employees’ (either full or part-time who are generally accorded full rights and protections) and ‘workers’ such as those engaged through an agency or a casual contract who are typically excluded from certain conditions such as a notice period, maternity leave, and protections from unfair dismissal.

Figure 5-1 - four employment forms at risk of precariousness



5.1 Diminished standard employment relationship

If we consider the standard employment form to cover permanent, full-time employment (employees not workers), as well as the particular form of part-time work resulting from the right to request reduced hours, then it is necessary to enquire the degree to which a) standards have been sustained in recent years and b) standards are shared among different workforce groups. Rising precarity is clearly shaped by contract type (part-time, temporary, etc), but may also be evidence among the ostensibly protected core workforce. This chapter therefore seeks to distil what the

patterns and trends in protective gaps described above imply for individuals with a standard employment relationship (SER).

i) Employment rights gaps

The UK employment system provides a relatively low floor of statutory employment rights so that, in the absence of joint employer-union bargaining (at least in the private sector), employees in full-time permanent jobs are strongly reliant on either the conscientiousness of an employer or their own individual bargaining power to establish top-ups to their rate of pay, the conditions for maternity/paternity leave, benefits for sickness and pensions, and so on. This places even SER employees in a relatively fragile position. Thus, while statutory provision is not a reflection of the wide experience of employment conditions it nevertheless plays a strong role in anchoring employment policy and practice and of course protects against exploitative practices.

The right to non-exploitative pay for employees in a SER has been underpinned by a statutory minimum wage since 1999. Aside from a dip during the crisis years, the minimum wage has tended to rise against median earnings thereby providing stronger protection against exploitative pay. However, it has not yet acted as a sufficient mechanism to erode the high incidence of low pay among full-timers (and the problem is obviously more severe among the part-time workforce). Relative to median earnings the minimum wage increased from 48% to 55% during 1999-2014, but the share of full-time employees in low-wage employment (less than two thirds median earnings of all employees) has hovered, remarkably, around 13% throughout the entire period. This suggests that as the minimum wage has risen, more and more full-timers are being paid at or just above the minimum wage. The new government legislation to raise it to 60% of median earnings by 2020 is likely to lend the extra traction needed to reduce the share of low-wage work, although this only encompasses workers aged 25 and over, raising questions about the status of young adults in the UK labour market.

Other positive changes to statutory rights include the right to request reduced hours, which is now extended to all employees not just those with dependent children (after six months tenure), improved parental leave with the option for parents to share take-up, stronger health and safety rules and stronger and more encompassing equality rights (addressed below).

However, several areas of rights for the SER employee have diminished. Employment protection was weakened in 2010 by extending the period of continuous employment necessary for rights to redundancy protection and to claim unfair dismissal. Moreover, while public sector employers may have sought to avoid the practice of compulsory redundancy in the past, the scale of post-2010 austerity spending cuts has changed behaviour and whittled away job security norms enjoyed by the SER workforce. There is evidence, for example, of the practice of collective dismissal and re-engagement onto inferior terms and conditions of employment in parts of the local government sector (Johnson 2015). In the case of working time, SER workers still face only weak protection given the UK option for individual opt out. The evidence suggests that while the directive has brought significant improvement in the number of days of annual leave taken in practice, it has only had a small effect in reducing long working hours. Full-time employees rank top of the European league table for the longest average weekly hours (42.4 versus the EU27 average of 40.4) (Green 2013:

table 1) and top among European countries listed in OECD data on the share of employees working 50 or more hours per week –a 13% share in the UK (OECD Better Life Index 2015³⁸).

ii) *Representation gaps*

Channels of access to forms of representation in the UK have changed significantly in the last generation (Heery et al. 2012a, 2012b). SER employees are nowadays likely to lean on a multitude of civil society, equality and campaigning organisations, as well as trade unions and non-union bodies within their workplace, in order to defend their fair treatment at work. Union representation and collective bargaining coverage remain, on average, at a higher level among full-time and permanent employees compared to other employment forms but exhibit the same downwards trends since the 1980s. As a proportion of all employees, union density has fallen from one in three to one in four over the last two decades (from 32% to 25%, 1995-2014³⁹). It stands at twice the share among full-time employees in permanent employment (27%) compared to part-time employees in temporary employment (13%). But this pattern of stronger union representation for full-time employees does not always hold. For employees in low-wage jobs, union density is in fact higher among part-time than full-time employees (14% and 12%, respectively), explained by the significantly higher union density among women in low paid jobs compared to men (see table 4).

As described in chapter 4.2, union representation and collective bargaining coverage are polarised between the public and private sectors -strong and weak, respectively, -which raises the question as to whether the ‘standard’ model of collective representation is most applicable today in the UK public sector and, moreover, applies more to women than to men (given their higher share of the public sector workforce)? The answer is complicated by the complex and fragmented structures of collective representation on the one hand and, on the other, the government imposed pay freeze and then 1% pay cap from 2010 to 2020. For most public sector workers, pay is set by independent ‘pay review bodies’, designed to collect the competing views of trade unions, professional associations, employers and government and make a recommendation to government. Since 2010, the government changed their remit to ensure a coordinated pay freeze (a real pay cut from 2011/12 to 2013/14) and then a 1% maximum rise in the paybill (2013/14-2015/16), subsequently renewed for a further four years in the 2015 budget -all alongside pressures to freeze seniority pay increments and targets on public authorities to downsize workforces. The ability of trade unions and professional associations in representing their members is thus very much restricted in this period. Protests, strikes and other campaigns have to date not shifted the course of government policy to shrink the size of the public sector workforce, its contribution to the UK economy and its value as a site of employment.

Across the private sector, SER employees are more likely to have their interests represented by non-union forums, such as a Joint Consultative Committee, especially following the 2004 ICE regulations (Information and Consultation of Employees, following the EU directive, which guaranteed for the first time a legal right to consultation) applicable to workplaces with 50 or more employees. Around one in four workplaces had a JCC either at local or higher level in 2011 (see chapter 4.2). Factors positively associated with JCC presence included union presence, a sophisticated HRM approach (as evidenced by Investors in People accreditation) and foreign ownership/control. Comparing WERS

³⁸ <http://www.oecdbetterlifeindex.org/topics/work-life-balance/>

³⁹ LFS data reported in BIS (2015) ‘Trade union membership 2014: Statistical Bulletin’, Table 1.2b.

surveys from 2004 to 2011 suggests that JCCs have proven resilient (thanks in part to the ICE regulations) and, while JCC worker representatives tend not to be union members (by a ratio of around two to one), Adam and colleagues' (2014: 49) analysis highlights union presence as a key factor underpinning JCC stability and effectiveness; non-union reps to often have no external advice or training. Moreover, despite (or because of) the economic crisis, their analysis reveals no evidence of JCCs being 'hollowed out' by managers, either by restricting topics for discussion or holding the meetings less frequently (Adam et al. 2014: 31-35).

iii) Enforcement gaps

Access to, and sustained experience of, standard employment rights is also a function of the quality of enforcement of those rights. Here, we find a mixed picture. First, the diffusion of the SER across all workforce groups to ensure equal treatment has experienced a bumpy road of progress. The 2010 Equality Act legislation seeks to protect against direct and indirect discrimination for nine 'protected characteristics' –sex, race, age, sexual orientation, disability, religion, pregnancy/maternity, gender reassignment, marriage/civil partnership. The 2013 introduction of fees to take a case to an employment tribunal has arguably damaged the effectiveness of the Act. Discrimination and equal pay claims now command a fee of £250 (issue) and £950 (hearing), introduced, the government claimed, to reduce numbers of 'nuisance claims'; the dramatic reduction in claims brought (chapter 4.3) suggests that many ordinary claims are also now not being heard because of the costs. The result is a likely diminishing of access to, and progress within, full-time permanent contracts of employment among diverse workforce groups.

Second, since 2010 the government has cut funding for those bodies charged with monitoring and inspecting employment rights, which cuts into the resilience of the SER. For example, funding for the Equalities and Human Rights Commission has almost halved from £48m in 2010/11 (actual expenditure) to £27m in 2014/15⁴⁰. Funding for the Health and Safety Executive was cut by a third (£85m over 2010-15), with new pressure on HSE to raise commercial revenue from high risk employers. And at HM Revenue and Customs, responsible for minimum wage compliance as well as tax services, cuts reduced the workforce from 67,000 to 56,000 (2010-15).⁴¹

However, there are some signs of positive change. In fact the government since 2015 has clearly sought to accompany its newly found support for a higher minimum wage with improved capabilities for the inspection team at HMRC. Minimum wage enforcement now involves higher penalties for non-compliance (up to £20,000 per worker), a 30% increase in the annual budget (£9m, said to support an additional 70 inspection officers) as well as new 'name and shame' public listings of offending employers. The new measures fall short of those called for by the TUC (e.g. a maximum penalty of £75,000 and a government guarantee to pay arrears when the company goes bankrupt), and significantly does not include measures to tie in unions so that problems can be remedied quickly (TUC 2014). Government also proposes to further raise the budget for 2016 and 2017 and to create a new coordinating role (a Director of Labour Market Enforcement and Exploitation) to oversee enforcement of the minimum wage, agency standards and gangmasters. Combined with the

⁴⁰ Part of this funding cut was caused by transferring the EHRC telephone helpline service to the Government Equalities Office, see the 'Comprehensive budget review of the EHRC', https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/86430/Comprehensive_Budget_Review_of_the_EHRC_.pdf

⁴¹ Channel 4 factcheck, <http://blogs.channel4.com/factcheck/factcheck-has-hmrc-been-spared-from-the-cuts/10314>

raised minimum wage, stronger enforcement ought to ensure the risk of low pay among full-time employees (and other workers) is reduced in the near future.

iv) *Social protection and inclusion gaps*

Several policy reforms in recent years heighten the risk that employees in full-time, permanent jobs fall out of standard social security protection. Analysis of these risks depends in part on type of employer (e.g. small/large size), worker (e.g. migrant/home) and type of job (e.g. level of pay). A first major change concerns the likelihood that an employer provides a pension as a standard employment condition. New auto-enrolment rules apply to large firms from 2012 and firms of all sizes from 2017, under the Pensions Act 2008. A 2013 survey found one third (32%) of private sector employers offering some form of pension scheme and one third (35%) of private sector employees were active members of a company pension scheme and/or benefited from employer contributions. While low, the 2013 level is higher than 2011 and appears to mark the beginning of a reversal of a downward trend in pension coverage recorded in prior surveys (Forth and Stokes 2014). There nevertheless remain major gaps in provision. Half of existing occupational schemes are closed to new members. Small firms tend not to provide pensions; 81% of non providers were employers with less than five employees (op. cit.: 35). And a growing share of employers complain that pension provision is too costly.⁴²

A second trend affecting the quality of the SER is the risk that employers may be less likely to treat full-time working hours as guaranteed in the context of new welfare policy reforms. Universal credit rules (when and if implemented across the country) will abolish the minimum working hours eligibility that applied for tax credits (16 hours, 24 hours, 30 hours depending on claimant conditions of age, single/couple, dependent). Although conditionality rules will exert pressure on minimum wage workers to sustain 35 hours or more a week (chapter 4.4), employers may be likely to practice increased hours flexibility in the knowledge that welfare benefits will top up lost hours on a month-by-month basis. One of the architects of universal credit argues that a key benefit for employers is that abolishing the hours rule will mean ‘employees can be much more flexible’⁴³ –which of course risks being interpreted as encouraging a less stable approach to full-time working hours, as much as encouraging employees to work more than the fixed 16, 24 or 30 hour thresholds.

Other policy reforms appear likely to restrict the entry of certain workforce groups to standard social security protection. In 2014 welfare reforms restricted access to EEA migrants in the country less than five years: job seekers are limited to three months unemployment insurance benefits, not six, and have no entitlement to housing benefits; and EEA workers must meet a new minimum income threshold (£153 pw over three months) for automatic entitlement to housing benefit, unemployment benefit, among others.

5.2 Less than full-time guaranteed hours

Employment on contracts that guarantee less than full-time hours include both jobs that provide for regular and guaranteed hours and those where the number of hours may vary frequently, sometimes from zero guaranteed hours as in the increasingly discussed category of zero hours contracts. We divide the types of jobs for the purposes of this discussion into part-time work and

⁴² Forth and Stokes (2014: 36) report 22% of employers stating this reason in 2013, up from 15% in 2009.

⁴³ Speech by Lord Freud in 2014, published at <https://www.gov.uk/government/speeches/universal-credit-rolling-out-what-it-means-for-employers>.

zero hours contracts, while recognising the potential for overlap between the two categories: many part-timers may see their hours vary to meet demand fluctuations and many zhc staff may work part-time on a regular basis (or indeed full-time or over) .

Institutional factors that explain the relatively high incidence and peculiar form

The UK has long had a high incidence of **part-time work** particularly among women with responsibility for children. This high incidence can be explained using a four-way framework for analysing the reasons for the incidence of non standard work (Rubery 1989). The key issues are the incentives to part-time work that come from the social protection system and the high costs of childcare. The exemptions of low paid workers from income tax and national insurance have been intensified rather than reduced over recent years, thereby increasing opportunities to work somewhat longer hours before the tax bites (except if one is a second income earner in a household receiving in-work tax credits).

There are contradictory moves with respect to policy to address the high costs of childcare; some additional free childcare is being made available for children aged 3-4 years old, but in general state support for childcare through tax credits is being further cut back. The majority of part-time jobs are still designed as part-time work; nearly two in five part-timers work in establishments where over 50% of the workforce is part-time (BIS 2014: table 3.9). The possibilities of working part-time in high level jobs is constrained by the practice of long hours working in the UK (the fourth work lie balance survey found that ten per cent of male employees and 2 per cent of female worked more than 48 hours per week, with the share rising to 15% for those with a post graduate degree and 24 per cent of those earning more than £40k per annum). This is likely to be further constrained by job losses in the public sector where most of the women working part-time in jobs paying above a low hourly rate are located (Rubery and Rafferty 2013).

Table 5-1 – the factors shaping the presence and form of part time work

Part-time work	
Labour market regulation	The industrial system
<p><i>Legal and fiscal</i></p> <p>Due to the exclusion of low paid part-time work from national insurance contributions, part-time work often has an ambiguous character of neither being illegal nor included formally within tax and social security systems due to income falling below the relevant thresholds.</p> <p>Part-time work in service sectors such as retail often did not attract premiums for unsocial hours and was thereby used to substitute for full-time work (over time the premiums for full-time workers have been eroded).</p> <p>Since 2002 there have been new rights to request flexible working which has been associated with more opportunities to reduce hours in a full-time job.</p> <p><i>Voluntarist</i></p> <p>Part-time work has been generally accepted by trade unions and has therefore been found both in unionized and non unionised environments.</p>	<p><i>Demand</i></p> <p>Part-time work is found in service sectors and has been used extensively to match employment to demand across the day, week, season etc.</p> <p><i>Industrial structure</i></p> <p>High concentration in the service sector in the UK led to early use of part-time to match labour to demand. The public sector provides more opportunities for part-time work to meet employee needs but also increasingly uses part-time also to meet demand without unsocial hours premiums.</p> <p><i>Employer policy and competition</i></p> <p>Part-time work is associated both with lean service provision and with employer recognition of work life balance issues. Part-time work may be both stable and unstable; when stable it is still often associated with relatively low pay and progression (mommy tracks)- some part-time work is used to meet variations in demand resulting in unstable</p>

	schedules, income or both. Part-time work is often not available in high level jobs due to long hours of work in these jobs.
Labour market conditions	Social reproduction and income maintenance
<p>Labour demand conditions</p> <p>Most part-time work in the UK is reported as voluntary part-time work but since the recession there has been a growth in involuntary part-time work for both women and men</p> <p>Recruitment, screening and training systems</p> <p>Part-time work divides into those jobs designed as part-time which offer few opportunities to progress into full-time or more skilled work and part-time work which is reduced hours in a job held for at least 26 weeks previously- again there are no rights to return to full-time so the move is considered permanent.</p>	<p>Household demand for part-time work</p> <p>Domestic part-time work only constitutes a small share of part-time work in the UK</p> <p>Supply of labour for part-time work</p> <p>Labour supply is mainly women with children – (and after children grown up as difficult to return to full-time) plus young people. Reasons lie in role of men as breadwinners, tax subsidies for part-time and high cost of childcare in the UK.</p> <p>Household-means testing for out of work and in-work benefits reduces labour supply of second income earners.</p>

The recent rise in the use of **zero hours contracts** has been documented in chapter 2. This increase does not relate to any change in regulations but may instead suggest both that employers in the context of recession and further support from a government towards flexible labour markets may be making more active use of existing opportunities to reduce their commitments to employees and that recent publicity has made more staff aware of these contracts and the fact that they may be on such a contract.

Table 5-2 – the factors shaping the presence and form of zero hours contracts

Zero hours contracts	
Labour market regulation	The industrial system
<p>Legal and fiscal</p> <p>There is no regulation with respect to minimum guaranteed working hours in the UK nor any minimum length of shift requirements. This provides the legal basis for offering zero hours contracts though there are problems in determining whether this is an employment relationship as it does not fit with the notion of mutual obligations to provide and carry out work. However the work is very much directed by the employer and the workers are often dependent on the employer as a single source of work (particularly if they are required by exclusion clauses only to work for one employer- or w if they are constrained by what ACAS calls effective exclusivity where the workers would expect to lose their job or a result of future work opportunities if they were not available when asked to work. In most cases ZHC staff are workers – that is they are not independent self employed staff- but there are issues which can only be resolved on an individual case basis as to whether they are employers or workers. In practice many ZHC staff are treated as employees when undertaking work but then the work ends because there is no obligation to provide more work they may</p>	<p>Demand</p> <p>ZHCs are used extensively to match employment to demand across the day, week, season etc.</p> <p>Industrial structure</p> <p>ZHCs are found primarily in the service sector in the UK and in those where demand is variable such as retail, hospitality and social care</p> <p>Employer policy and competition</p> <p>ZHCs are almost universal in private sector domiciliary social care and are linked to the commissioning practices of local authorities who provide low fees linked only to time spent in clients' houses and with no guarantees of volumes. Providers use ZHCs in part to legitimise numerous unpaid breaks within the working day and the non payment of travel time. Among other service sector companies the use is variable dependent upon company policy; some use ZHCs only for a minority of staff to manage variations in demand, unsocial hours and/or cover for absence but others use it as general policy even when they have minimum staffing needs which could allow some to</p>

<p>not be deemed to have a continuing employment relationship. This lack of continuity combined with the risks of earnings falling below the lower earnings thresholds means that ZHC staff are at risk of not being eligible for many employment benefits – though this does not affect rights to the NMW or to holiday pay. Surveys have revealed considerable confusion however over whether these staff are entitled to certain rights. Employers may also reduce hours in the run up to redundancy or to maternity leave to reduce or eliminate eligibility for benefits.</p> <p>For one group of ZHC staff- domiciliary care workers- these contracts are used in part because of the fragmented and variable nature of the work but NMW regulations require that travel time between jobs is paid for. However this is widely not complied with and the definition of whether travel is taking place in work time or outside of work time is not clearly defined.</p>	<p>be offered guaranteed hours.</p>
Labour market conditions	Social reproduction and income maintenance
<p><i>Labour demand conditions</i></p> <p>High rates of unemployment in the recession may have increased the use of ZHCs.</p> <p><i>Recruitment, screening and training systems</i></p> <p>Some employers use zhc for new entrants as a screening process and offer permanent contracts and/or guaranteed hours when opportunities arise or if the starter provides satisfactory. Other organisations however only offer zhcs and on a continuing basis over many years to their core staff. This particularly applies to social care but also some retailers and hospitality employers.</p>	<p><i>Supply of labour for ZHC</i></p> <p>The supply of labour for ZHC is affected by the state of labour demand and by practices in the sector. Thus social care workers have few alternatives if they want to remain in social care. However where alternatives do exist- such as in cleaning , hospitality, catering, there appears to be more recourse to either migrants or student labour by companies staffing their whole workforces on ZHCs. Where ZHC is a possible route to a permanent contract there is wider pool of available labour. The government and employers stress how the flexibility suits some people- but this is confusing employer-oriented flexibility with employee-oriented flexibility- as ACAS points out ZHCs often work on effective exclusivity clauses so that refusing a shift may risk loss of employment. The arrangement may appear mutually convenient when there are good interpersonal relations but if these break down the employee has no guarantees of continuing or convenient work or compensation for loss of work. In some cases those who request flexible working for work life balance reasons are asked to move to a ZHC.</p>

Protective gaps

i) Employment rights gaps

The main cause of exclusion from basic employment rights for **part-timers** is low earnings; that is when access to employment rights is linked to social protection where weekly earnings limits apply for contributions which in turn determine access to benefits such as sick pay, paid maternity leave (that is at a higher rate than the maternity allowance) and auto-enrolment into pensions saving scheme. Access to basic employment rights such as unfair dismissal and redundancy used to be for

part-timers with 16 hours of work but this was challenged in the European Court of Justice and found to be indirectly discriminatory by sex so that thresholds were removed for unfair dismissal and redundancy. Some part-timers work variable hours, with only minimum guaranteed contractual hours; this could result in lower entitlements to redundancy pay and even holiday pay if employers reduce hours for the relevant time periods over which benefits are calculated.

In addition part-time workers often face problems in securing full integration and full rights compared to what can be considered the standard employment relationship. This applies because of three distinct processes, each of which may result in part-time workers being less likely to enjoy the same benefits and opportunities as those working full-time but for different reasons and to different degrees.

The first tendency is for part-timers to be employed in different organisations from full-timers – especially in some key service sectors such as cleaning, catering, retail and care- and in these organisations and sectors there may be fewer benefits and opportunities for both full- and part-timers but this has a disproportionate impact on part-timers due to their concentration in these sectors (Devins 2014).

The second tendency is for some part-time workers to pay a penalty for accommodation to their work life balance issues within an organisation. This can include less favourable treatment with respect to terms and conditions of employment if the part-timers can be considered to do different work from full-timers. One example here is that those employed as teaching assistants or support staff in schools are treated as part-time workers who are not entitled to pay or full pay over the vacation time even though teachers are. More commonly the different treatment of part-timers arose out of practice rather than policy. For example many who request reduced hours of work may find that they are working on different types of work with fewer opportunities for promotion or pay progression; this is sometimes referred to as a ‘mommy track’. The recent work life balance survey found that 32% (28% women, 37% men) agreed or strongly agreed that those who worked flexibly were less likely to get promoted (BIS 2012: table c4.14)

The third tendency is for part-time work opportunities not to be offered in many high paying/ high level jobs due to expectations of very long and flexible working hours. This means part-timers tend to be excluded from the upper echelons of the employment spectrum.

Standard employment relationships have traditionally been expected to entail regular and predictable working times which some may characterise as rigid working time. Part-time work may create a deviation from the SER but in two different ways. Where part-time work is designed to meet employee needs it may be considered to offer some advantages over the ‘rigid’ work patterns associated with the SER. However not all part-time work fits this mould; in other contexts part-time work may be used to provide employers with flexible scheduling and may be more involved in unsocial and apparently non family friendly working time (though the practice of parents working shifts with respect to wage work and child care is quite common in the UK so not all unsocial hours can be deemed not to fit with family schedules). However in general where working time schedules are driven by the employer they may be less compatible with work life arrangements than when working time is fixed or rigid. In Eurofound’s company survey the UK had a particularly low share of companies reporting that the main factor in their use of part-time was employees’ wishes at just over 30% compared to over 60% for the Netherlands. The other organisations were fairly equally

divided between those that said the main purpose was to meet company objectives and those that said both employee needs and company needs were equally important.

The complexities of the relationship between non standard schedules and work life balance is summarised in an ILO working paper:

'Some parents opt for evening, night or week-end work to allow informal child care by spouses working at different times (so-called 'shift-parenting'), or by grandparents and other family members or friends, in order to minimize child-care costs or in accordance with their preference for informal rather than formal care (Fagan, 1996; Fagan et al., 2008; Harkness, 2008; Presser, 2006; Deutsch, 1999). However, many would prefer not to work such schedules. For example, La Valle et al. (2002) found that three quarters of mothers in the United Kingdom who regularly worked at atypical times did so because it was a job requirement rather than a deliberate choice. Nearly half of the mothers who usually work shifts would prefer different or regular hours (47 per cent), two-thirds of those who work every Saturday would prefer not to (67 per cent), and over three quarters of those who work every Sunday would prefer not to (78 per cent). Mothers with partners working atypical schedules would also prefer their partners not to do so. (Fagan et al. 2011:32)

One problem with regarding evidence of part-time working as providing opportunities for work life balance is that this approach fails to take into account the changing patterns of working time which may be making work life balance more difficult to achieve due to the 24/7 economy and the lack of collective regulation of working time (Fleetwood 2007).

Many **zero hours contracts** staff are treated as workers not employees when it comes to employment rights. In a recent survey (CIPD 2013) 64% of employers said they classified zero hours staff as employees, 19% as workers, 3% as self-employed and 14% have not classified them. However, it is unclear if they are thereby accepting the existence of global or umbrella contracts that carry with them employment rights. In total 21% said the ZHC staff were not entitled to any benefits, much above the 3% who say they treat the zero hours staff as self-employed. Moreover although both workers and employees are entitled to the NMW and holiday pay only 59% of organisations employing ZHC staff said they believed them to be entitled to annual paid leave (and only 46% of the ZHC staff said they were entitled to annual paid leave (CIPD 2013). ZHC may also be particularly at risk of underpayment of the NMW due to ambiguities over the payment of travel time, a particular problem for social care workers. Employers do not have to compensate for travel to and from work at the beginning and end of a shift but this also seems to apply for zero hours staff who may travel in to find there is no work and not be compensated for out of pocket expenses. For domiciliary care staff time travelling between clients should constitute working time for the purposes of eligibility for the national minimum wage but may not be paid for as only face-to-face care time may be paid for by commissioners. It is also not clear how many times a day staff could be expected to travel from home to work on unpaid time.

Zero hours contracts may also be used as a basis for cutting short an existing shift or for offering split shifts during the day according to demand. The rules according to the Advisory, Conciliation and Arbitration Service (ACAS, 2012) are that it is not legal to ask staff to clock off and not be paid if they are required to stay on or near the premises waiting for work but it is legal to cut short shifts and send staff home without pay. Even if they are waiting to be called back into work, time spent at home does not count as working time provided they are free to be at home. Some unpaid rest breaks can be expected and required under law but it is not clear if frequent unpaid breaks that still

do not allow the worker to return home without either high cost or risk of not meeting the next appointment could be considered working time or not.

A ZHC implies that neither side has obligations to offer or accept work but only six in 10 employers in the CIPD survey said staff are not contractually obliged to accept work with 15% saying they are contractually obliged and a further 17% that they are sometimes obliged to accept work (6% do not know) (CIPD, 2013). Moreover a quarter of organisations said staff in practice are obliged to accept work and only 50% said staff could turn down work (80% of employees said they could turn work down without penalties, but 17% said they would sometimes be penalised and 3% that they would always be penalised). Only one third of organisations using ZHCs had a policy on notice period for asking staff to come into work (40% do not have a policy and the rest answered that they did not know). Almost half surveyed ZHC staff said they had no notice or may even find out only at start of shift that it is cancelled (CIPD 2013).

The government is legislating to prevent the inclusion of exclusivity clauses in zero hours contracts. Only 9% of zero hours staff in the CIPD survey said they were never allowed to work for another employer, while 60% said they were allowed, and a further 15% said they were allowed under certain conditions (17% did not know). However ACAS maintains that 'effective exclusivity is a more important issue as employers can penalise staff for not accepting work.

ii) Representation gaps

Part-timers are less likely be trade union members than full-timers (20.6% compared to 26.6%) (BIS 2014⁴⁴). However the main determinants of trade union membership are being employed in the public sector: 45.4% of part-timers in the public sector are union compared to only 15.7% of full-timers in the private sector. Nevertheless there is a lower per cent of part-timers than full-timers in union membership in both sectors. Part-timers are also less likely to be covered by a collective bargaining agreement (23.1% compared to 29.1.%) but again the main differences are sectoral with 51.7% of part-timers covered in the public sector compared to 16.9% of full-timers in the private sector. The vulnerability of part-timers to lack of representation is very high in the private sector where only 10.0% are trade union members and only 10.9% covered by a collective agreement. Alternative forms of voice and representation such as the living wage movement -as discussed above- do have a greater impact on part-timers than full-timers due the concentration of part-time work at close to the national minimum wage.

The problems in organising and representing the interests of **zero hours contract** staff are even greater than for part-timers due to the more casual nature of their contracts and even when in practice regularly employed, their vulnerability to taking any action against employers. Trade unions in the UK have been active over the past two years in calling for more regulation and responded to the government's consultation on zero hours with various suggestions for reform (e.g. compensation for flexibility from the TUC, limiting the percentage of time one can be on call and ensure that time spent waiting to work, for example in a car, counts as working time from UNITE 2014). Other actors have also called for reforms: the employment law firm Thompsons suggested amending the NMW regulations (Thompsons, 2014) and the Citizens Advice Bureau Scotland setting up a 'Fair Employment Commission' to ensure that employment rights are protected. Even employers'

⁴⁴ <https://www.gov.uk/government/statistics/trade-union-statistics-2014>

organisations have recognised the need to accept some changes. The CIPD (HR professionals association) suggests that under good practice employers should pay travel costs and one hour's pay. However the main employers' body the CBI (2014) only conceded that a regulation requiring, for example, two hours compensation for a cancelled shift might be preferable than required notice periods without explicitly recommending this change

iii) Enforcement gaps

The low representation of **part-timers** in trade unions and collective bargaining has led to part-timers among other groups being a target for union organising activity. There are ongoing debates on the effectiveness of different approaches to organising and also differences in view over the extent to which trade unions are still dominated by male-specific interests or have adapted to the needs and priorities of women workers and part-timers (Heery 2011). A study by Heery and Conley (2007) (quoted in Heery 2011:351) argues that trade unions have made significant adaptation and describe the 'development of bargaining and legal policy on behalf of women part-time workers' as non trivial. This contrast with other more critical perspectives on gender and democracy in trade unions (McBride 2001).

Unfair dismissal legislation treats a dismissal as automatically unfair if it is because an employee works part-time or is seeking to exercise rights to request to work flexibly. However, this does not mean that the law is fully observed as dismissal protection is weak in the UK particularly where there is not trade union presence. The system of fee remission for employment tribunals is based on joint income and earnings of the household and is therefore not linked to the likely size of financial reward if the case is proven. This may provide an additional disincentive for part-timers to take a case particularly as the limits to savings that preclude any remission of fees is low (at £3000 or £4000 between the claimant and their partner if present – and including non married partners). However research has shown that there is a low awareness of the possibility of remission even among those who would be eligible (CAB 2014). This household based means testing could be considered to undermine individual rights in a job and make it essentially a household decision whether to contest unfair deprivation of rights in the job to one household member. The chances of spending household savings in the interests of pursuing rights for part-time workers are almost certainly lower than for full-timers.

Awareness of rights among part-timers may also be more restricted, simply because they spend less time in the workplace. Meager's 2002 study overall found part-timers less likely than full-timers to have awareness of their employment rights and also less confident about the likelihood of the systems delivering justice. A further study in 2005 (Casebourne et al. 2005) found little difference between full-timers and part-timers in an overall scoring of awareness of rights but as women and those working in the public sector tended to have higher scores than men and those in the private sector, the dominance of women and their over representation of the public sector in women's employment may explain the lack of an aggregate gap.

There are major problems of enforcement of employment rights for **zero hours contracts** staff due to ambiguity over their employment status, lack of awareness of rights, the weakened position of ZHC staff and the ability of employers to manipulate the employment relationship to minimise rights for example to redundancy pay or maternity leave even for staff who were regular and continuous workers before the issue of redundancy or maternity arose. Use of zero hours contracts also increases the risk of not being paid the National Minimum Wage (NMW) for all work-related time if

employers fail to pay for travel time or for other work-related time specified under the NMW regulations, such as training time or time spent on-call, at, or near premises. An investigation by Her Majesty's Revenue and Customs (HMRC, 2013) into the care sector found that underpayment of wages under the NMW regulations was high (48% non-compliance rate) (HMRC, 2013). Work for the Low Pay Commission also pointed to the risk of underpayment of NMW if travel time was not funded (Bessa et al, 2013). Underpayment of holiday pay is also highly likely if one takes into account low awareness of rights to holiday pay among both employers and ZHC staff (CIPD 2013). There were even higher rates of respondents saying that there were no rights to unfair dismissal protection, redundancy and statutory maternity leave but while this may be true for individuals, there seems to be a low awareness that ZHC staff may be eligible if treated as an employee and given regular work; in short it is practice not the contract that matters in law but this appears not to be widely known and so rights are highly unlikely to be enforced if no-one is really aware of their existence.

A significant minority of ZHC staff are said to be paid less than comparators on more secure contracts -though the share of employers reporting this practice in the CIPD survey was 10% compared to 21% for the CIPD staff survey. If the regular workers are full-time then the zero hours staff would potentially have a claim as part-time employees for equality of pay between full and part-time workers under the part-time workers' directive.

One area of rights that appears not to be enforced in any way is the potential right to compensation if called into work; this could give rise to an implied contract to provide work and some paid work should be provided.

iv) Social protection and integration gaps

Part-time workers are more at risk of falling below the weekly income thresholds for social security contributions than full-timers. The proposed changes to the benefit system through universal credit are likely to have mixed effects on the take up of part-time work: the removal of the in-work, out of work benefit distinction should allow more of those currently on out of work benefits to take up some wage work, which is likely to be part-time, especially for single mothers. However the recent changes announced in the UC scheme may mean more are disincentivised to work more than very short hours, and the higher disincentives associated in general with second income earners could reduce the supply of labour for part-time jobs from low income households. These trends may be to some extent offset by requirements for those claiming benefits to seek more work through the claimant commitments. This could also lead some who are currently working part-time and claiming benefits to seek to move towards more full-time work. Part-time work is normally counted towards credit, mortgage and rent applications provided it is a secure part-time job.

Zero hours contracts staff not only face major problems of meeting income, hours and duration thresholds for access to benefits but they also face ambiguity over whether they have a job and how that job relates to the social benefit system. For example if a ZHC worker is not offered any work it is not clear at what point they can say they are unemployed rather than being treated as someone who has voluntarily quit. Moreover if expected to look for additional work under the UC claimant commitment system, it is not clear if they can turn down additional work if they think it might lead them to lose their current job. Currently the unemployed claiming benefits are not required to accept a zero hours contract job (FOI3022, 2013; House of Commons, 2014), but this means that many jobs being created are not currently available to those who are in need of a job and also claiming benefits. The government has now made clear that under UC, benefit claimants will be

expected to take a ZHC job and according to a Freedom of Information request the Department for Work and Pensions has said that if a claimant were to refuse a particular vacancy then they would need to look into the circumstances of the case and consider whether they had a good reason before deciding whether a sanction applies. The implication is that a zero hours contract would no longer be considered a good reason. This new benefit system might encourage employers to offer more flexible hours jobs as those employed will be partially compensated for hours reduction by increased benefits.

Zero hours staff may also be legally denied access to important private resources, particularly credit, mortgages and rental agreements as credit providers can legally treat the zero hours contract as a risk of default.

5.3 Temporary work

Temporary employment in the UK predominantly concerns fixed-term contracts and temporary agency workers, as well as zero-hours contracts discussed above. There tends to be less detailed data on temporary than other forms of employment and very little data on casual employment and apprenticeships. However, the available data and case studies suggest that workers on temporary contracts are likely to have low pay, both because of low hourly wages and a lack of hours, low National Insurance Contributions (NICs) insufficient to claim full social security payments in terms of pensions⁴⁵, contribution-based Jobseeker's Allowance (JSA), and maternity leave and pay. The TUC report on vulnerable employment (TUC 2008) found in 2008 that around 41 per cent of temporary workers were low-paid (defined as £6.50 per hour).

The LFS estimated that in the first quarter of 2015 there were 1.69 million workers on temporary contracts, 6.4 per cent of total employment. This share has been relatively stable between 5.4 and 7.9 per cent in the period since March-May 1992. The WERS survey also finds no indication that firms have changed their use of temporary contracts with 25 per cent of workplaces in 2011 using temporary contracts compared to 22 per cent in 2004. However, this overall stability may mask important underlying changes between industries and employment types with, for example, a decline in Education and a rise in Manufacturing. As discussed in chapter 2, there has been a general shift away from fixed-term work and an increasing use of temporary agency and casual workers.

There has been much debate about the importance of temporary work in the labour market, especially when involuntary, and the implications for workers. As pointed out by Resolution Foundation (2015b: 6), '[r]elatively small groups of workers (compared to the overall workforce) are affected in each case. For example, only 4 per cent of workers are involuntarily part-time, only 2 per cent are involuntarily temporary employees and only 2 per cent are on a zero hours contract (with some overlap between these groups). But the implication is that a sizeable minority are facing particularly acute forms of insecurity'. In this context, the Resolution Foundation makes a difference between the breadth and the depth of insecurity with the former remaining relatively stable while the latter has risen substantially for a significant minority of workers. The TUC (2014b) has pointed out how the increased use of zero-hours and agency workers has made it particularly difficult for young workers to find a permanent job. Table 5.3 presents the share of different age groups among permanent, zero-hour contract, agency and temporary workers⁴⁶ in 2014. It shows how, for

⁴⁵ There is an alternative means-tested Pension Credit.

⁴⁶ Including fixed-term, seasonal and casual workers

example, younger workers are markedly over-represented among zero hours contracts and temporary workers.

Table 5-3 - the distribution of permanent, zero-hour contract, agency and temporary workers by age 2014 (percentage)

		16-19 yrs	20-24 yrs	25-29 yrs	30-34 yrs	35-39 yrs	40-44 yrs	45-49 yrs	50-54 yrs	55-59 yrs	60-64 yrs	65-69 yrs	70+ yrs
Working population	age	3.2	9.8	11.9	10.9	9.4	10.3	10.9	10.1	8.3	7.0	5.6	2.5
Permanent workers		2.9	9.5	12.6	12.2	10.6	11.8	12.9	11.6	8.7	4.9	1.7	0.6
Zero-hours contract workers		14.1	25.5	10.7	8.5	6.5	5.5	5.9	6.5	7.6	4.6	4.0	0.6
Temporary workers		11.9	18.7	13.8	10.1	7.5	8.3	6.8	6.7	6.4	5.0	3.5	1.4
Agency workers		3.2	20.2	13.7	12.5	6.8	12	7.8	8.4	8.0	4.0	3.0	0.4

Source: TUC (2014b). Data based on the Quarterly Labour Force Survey, April-June 2014

There are at least two important aspects that negatively affect the labour market position of many temporary workers. First, there is the highly relevant distinction between 'employees' and 'workers'. 'Employees' have a direct employment contract stating the term and conditions of employment with an employer. But this is not the case for 'workers' although they also perform work for an organisation. The distinction between employees and workers is often not clear and only a court or Employment Tribunal can then determine the status of temporary workers.

'You come back to this same base question, is there an obligation on the employer to provide work, is there an obligation on them to take it? And it's quite often on a case by case basis, it's very hard to say hard and fast rules... more and more you get people whose status just isn't clear... Part of the problem, I think, is that there is...the difficulty that keeping up with the admin is not something that lots of institutions are good at' (EHRC Interview).

The distinction is important because employees have many rights that do not exist for workers. Besides the aforementioned employment contract stating conditions such as pay and hours of work, this includes the right to grievance and disciplinary procedures, statutory minimum notice periods, the right not to be unfairly dismissed or unfairly selected for redundancy, the right to statutory redundancy pay, rights to maternity leave and to return to the same or an equivalent job, protection from dismissal on grounds of pregnancy or maternity pay, the right to request to work flexibly, and protection from unfair dismissal on grounds of trade union membership or activities. Many temporary workers will be considered workers and thus have fewer rights and little employment security. Moreover, the ambiguity about their status is likely to discourage many workers to take legal action. This inequality between 'employees' and 'workers', and the self-employed for that matter, is behind the call by the TUC (2008: 5) for an urgent review to 'examine employment status rules in order to improve the rights and protections available to 'workers' (as opposed to 'employees'), including recognition of the exploitation caused by bogus self-employment'.

A second aspect that affects many temporary workers concerns the existence of rights that are not acquired at the first day of employment. Several rights only exist after a qualification period such as the right to claim unfair dismissal which requires a minimum of two years of service. Another example concerns statutory maternity pay which requires that a woman must have been continuously employed by the same employer for at least 26 weeks into the 15th week before the baby is due and earn an amount which at least equals the lower earnings limit (£102/week in 2011-12) (Simms 2010). Few temporary workers will qualify for these rights.

Another issue is the voluntary or involuntary character of temporary work. The LFS surveys why people opted for temporary employment. 34.9 per cent answered that they could not find a permanent job while 21.9 per cent answered that they did not want a permanent job. The remaining group either had a contract with a period of training (7.3%) or had some other reason (36.0%). However, the TUC (2014b) offers alternative data that differentiates between age groups. The next table provides the data for agency workers and shows that a large majority of workers between 20 and 59 work temporary because they could not find a permanent job.

Table 5-4 - reasons given by agency workers for doing temporary work by age, 2014 (percentage)

		16-19 yrs	20-24 yrs	25-29 yrs	30-34 yrs	35-39 yrs	40-44 yrs	45-49 yrs	50-54 yrs	55-59 yrs	60-64 yrs	65-69 yrs	70+ yrs
Contract training included		0	1.4	1.3	5.8	3.0	7.1	0	0	0	3.7	7.0	0
Contract for probationary period		0	1.3	1.5	2.0	1.9	0	0	0	0	0	0	0
Could not find permanent job		38.6	80.6	64.1	60.3	54.4	57.4	71.6	64.9	68.5	26.9	21.0	0
Did not want permanent job		23.8	2.9	6.6	11.7	18.9	8.3	13.7	20.1	5.4	53.6	59.8	100
Some other reason		37.7	13.8	28.0	20.7	21.7	25.4	14.7	15	26.2	15.8	12.2	0

Source: TUC (2014b). Data based on the Quarterly Labour Force Survey, April-June 2014

It is possible that temporary employment functions as a stepping stone to permanent types of employment. This would be in accordance the high share of temporary employment among younger workers. However, the TUC (2008) study on vulnerable employment, drawing on earlier research by the Treasury in 1999 found that this effect to be limited as 'those in vulnerable work are unlikely to leave it' but risk to be stuck in 'low pay, no pay' cycle as they move between low-paid temporary jobs and unemployment. This was confirmed by recent research by the JRF which also recognised a group that frequently tended to move in and out of work and thus to be stuck in this low-pay, no-pay cycle (Shildrick et al, 2012). They refer to another study by Wilson et al. (2013) which estimates that nearly 5 per cent of the UK workforce was at risk of cycling between low paid work and unemployment.

A final issue that affects many temporary workers is the challenge to enforce their rights. This particularly follows from the 'worker' status of many temporary workers. As pointed out by Simms (2010: 21) *'A profound challenge that affects workers in general in the UK labour market, and precarious workers in particular because of dynamics explained below, is access to enforcement of labour rights. Even if a worker is classified as an 'employee' and therefore is entitled to the broader range of employment rights, enforcing them is challenging'*. When relevant we will discuss the specifics of this challenge for the different types of temporary employment.

5.3.1 Temporary agency work

The number of agency workers has been very hard to estimate with any reliability. Forde and Slater (2014) using LFS data calculated that there were around 320,000 agency workers, 1.27 per cent of the employed workforce in the winter of 2012 and the highest share since figures were first collated in 1981. However, LFS data undercounts the number of agency workers. The main industry body, the Recruitment and Employment Confederation estimates that at any given day in the UK recruiters place 1.1 million people into temporary work assignments. The huge discrepancy in the data mainly exists as many temporary workers will not work for the full reference week so are unlikely to be captured by the LFS sampling procedure. The proportion of workplaces that made use of agency

workers has also been rather stable, 12 percent of workplaces in 2004 and 11 per cent of workplaces in 2011, although there are differences across industries (e.g. the share of workplaces in the health and social work sector with agency workers declined from 18% to 10%).

The rights of agency workers are largely shaped by the aforementioned distinction between 'employees' and 'workers' as they are classed as 'workers' and thus don't have the rights reserved for employees as listed above. However, there has been a major attempt to strengthen their rights through the Agency Workers Regulations 2010, based on the 2008 Temporary Agency Workers Directive. They came into effect in October 2011 and require that agency workers achieve equal treatment with their directly employed counterparts after 12 weeks of service. As pointed out by Forde and Slater (2014), the Directive was initially opposed by the UK as it negatively affected the existing 'balance between flexibility and protection' (DTI 2002) and potentially the TWA industry. The initial resistance informed extensive negotiations between the TUC and CBI which resulted in the twelve week qualifying period as compromise. The equal treatment particularly relates to issues of pay - including any fee, bonus, commission, or holiday pay relating to the assignment - and basic employment rights such as holidays, working time and maternity rights. However, it does not include the right to claim unfair dismissal, statutory redundancy pay, contractual sick pay, and maternity, paternity or adoption pay in accordance with the status as 'worker' rather than 'employee'. The legislation also requires that agency workers have access to the same facilities as directly employed workers from day one such as staff canteens, childcare and transport, and are entitled to be informed about job opportunities. The regulations include no requirements regarding training even though they are included in the Agency Worker Directive.

An important issue has been the Swedish Derogation or 'Pay between Assignments' (PBA) model. This refers to the situation when a Temporary Work Agency offers agency workers an ongoing contract of employment and pays them between assignments. These workers are not entitled to the same pay as directly employed employees even when they have worked for more than 12 weeks in the same job for the same employer. There is no direct data on the use of these contracts but Forde and Slater (2014) present the number of agency workers that are paid by the agency rather than the company where they are placed as a proxy measure. This number has risen from 194,996 to 221,427 employees between the introduction of the legislation in 2011 and winter 2012. Forde and Slater (2014) also found the use of so-called 'split' contracts with firms using derogation contracts for a 'core' of temporary workers and a 'standard' agency contract for workers on a more short-term basis. There are several requirements for a pay-between-assignment contract. It requires an open-ended contract with the agency which defines minimum pay rates, the type of work, expectations in terms of area and travel, and the expected, minimum and maximum hours of work. The pay between assignments must be at least 50 per cent of the pay on the last job or the national minimum wage rate for the hours worked on the last job, whichever is the greater. The agency must also try to find and offer suitable jobs and cannot end a contract until at least four weeks have passed since the last job.

The regulatory guidance also includes several stipulations against avoidance strategies such as the movement of workers around a series of roles within the same firm or around different subsidiaries within the same organisation. However, many problems have been brought forward in relation to the Swedish derogation. For example, an agency may invent jobs as it does not have to pay the employee if a new job is found within one week. Agencies can also not force workers to sign a pay between assignments contract although it can be conditional to be offered work. A 'zero hours'

contract does not count as a derogation contract 'although it seems from the BIS guidance that contracts of greater than "one hour" per week may provide a sufficient amount of mutuality of obligation to meet the requirements of the derogation contract (BIS, 2011)' (Forde and Slater 2014: 15). Enforcement is also considered very weak as it requires that workers take their case to an Employment Tribunal. Workers also had very little knowledge about the implications of the regulations and in particular on issues such as the Swedish deregulation. Forde and Slater (2014: 42-3) therefore conclude that 'despite the difficulties getting these regulations into force and the support given by unions to the process, it seems unlikely that they will dramatically change the most precarious end of agency work'.

As mentioned, the TUC has played an important role in the development of the Agency Workers Regulations through its negotiations with the CBI. Unions have also tried to raise workers' awareness of their rights and pointed out loopholes in the regulations. Both the TUC and unions like GMB have expressed concerns that the regulations do not reflect the spirit of the EU Directive and leave much scope for the exploitation of agency workers. Most unions particularly argue that the twelve week qualification period leaves workers vulnerable and that the Swedish Derogation 'is being abused and denying workers equal treatment' (GMB). The TUC even submitted a formal legal complaint to the EU Commission in September 2013 which is still being considered. The GMB organised action against the use of the Swedish derogation at the M&S distribution Centre in Swindon including a visit with several shop stewards towards the European Parliament (GMB 2015). At the same time, the REC has argued that the Swedish derogation is not a 'loophole' but explicitly agreed during the negotiations between the CBI and the TUC, which provided continuity of earnings for workers and that its removal would 'potentially damage the UK labour market' (REC 2015).

Unions have also implemented various organising strategies to try and improve terms and conditions for agency temps and some of these attempts have been successful, for example resulting in the offer of permanent contracts to agency workers. Unions such as GMB, Unite and Unison have been able to negotiate recognition agreements with certain agencies (TUC interview). Well-known examples include the agreement between the education union ATL with ELS, the agency that provides lectures and teaching staff, and the agreement between TGWU (now Unite) and Manpower (Simms 2010). However, these successes have been relatively rare and usually require high membership among agency workers and the development of a dialogue with both the agency or agencies and management at user firms (Forde and Slater 2014).

A specific issue concerns the enforcement of rights in the food production sector (i.e. agriculture, horticulture, shellfish gathering, and associated processing and packaging). For this purpose the establishment of the Gangmasters Licensing Authority (GLA) in 2006 as a direct response to a tragic incident in 2004 when at least 21 migrant Chinese workers drowned in Morecombe Bay as they were picking cockles. The GLA operates a licensing scheme for agencies in this sector and this has been considered to effectively enforce labour standards. The TUC has therefore called that the same approach could be applied to other sector with vulnerable workers.

Table 5-5 – the factors shaping the presence and form of temporary agency work

Temporary agency work	
Labour market regulation	The industrial system
<i>Legal and fiscal</i>	<i>Demand</i>
Most agency workers will be considered as 'worker' and	There is important ambiguity on the number of

<p>therefore miss out on those rights reserved for 'employees' such as a written specification of conditions, the right to grievance and disciplinary procedures, statutory minimum notice periods, rights to maternity leave and to return to the same or an equivalent job, protection from dismissal on grounds of pregnancy or maternity pay, and protection from unfair dismissal on grounds of trade union membership or activities.</p> <p>Agency workers are unlikely to qualify for rights that only exist after a qualification period such as the right to claim unfair dismissal or statutory maternity pay.</p> <p>The Agency Workers Regulations require that agency workers achieve equal treatment with their directly employed counterparts after 12 weeks of service. This relates to issues of pay and basic employment rights such as holidays, working time and maternity rights but does not include the right to claim unfair dismissal etc. in accordance with the status as 'worker'. This requirements does not apply to agency workers with ongoing contract of employment with a Temporary Work Agency and payment between assignments (the Swedish Derogation or 'Pay between Assignments' (PBA) model).</p> <p>Voluntarist</p> <p>Unions such as GMB, Unite and Unison have been able to negotiate recognition agreements with certain agencies.</p>	<p>agency workers with a huge difference between the LFS data (around 320,000 agency workers in the winter of 2012) and the estimates by the Recruitment and Employment Confederation (around 1.1 million people placed into temporary work assignments each day). However, the number of agency workers appears to have been rather stable since 2000.</p> <p>Industrial structure</p> <p>Agency employment is an important form of employment in manufacturing (17% of total employment) and real estate and business services (21%), Subsequent industries in order of importance are Health (13%), Education (9%), Transport (9%), and Wholesale and retail (7%) (Forde and Slater 2010).</p> <p>Employer policy and competition</p> <p>Some employers use agencies as full substitutes for internal staff and expect agencies therefore to take over their recruitment and selection functions. In other cases agency workers are only used to supplement directly recruited staff (e.g. to provide cover or are used for trial periods for selection of more permanent staff). Some firms combine the long-term use of agency workers on derogation contracts with agency workers on 'standard' contracts for short-term fluctuations (Forde and Slater 2014).</p>
Labour market conditions	Social reproduction and income maintenance
<p>Labour demand conditions</p> <p>Data from the LFS shows that 35% of all temporary workers were employed as such because they could not find a permanent job. However, the TUC (2014b) shows that a large majority of agency workers between 20 and 59 work temporary because they could not find a permanent job, up to over 80% for those between 20 and 24 years.</p> <p>Recruitment, screening and training systems</p> <p>The Agency Worker Regulations include no requirements regarding training even though they are included in the Agency Worker Directive.</p>	<p>Household income</p> <p>A small but significant group tends to frequently move in and out of temporary work and thus stuck in this low-pay, no-pay cycle.</p> <p>Supply of labour</p> <p>Agency employment is relatively prevalent among young workers, with the 20-24 year group responsible for 20.2% of all agency workers but only 9.8% of all workers. The groups from 25-29 and 30-34 also tend to be overrepresented among agency workers. However most (81% of 20-14 year olds) do not want a temporary job so the main reason is a lack of more permanent vacancies.</p> <p>In industries regulated by the GLA the vast majority of workers (98%) is from other EU countries [Interview GLA].</p>

5.3.2. Fixed-term contracts

A fixed-term contract lasts for a specified time or will end when a specified task or event has been completed. Workers who have a contract with an agency rather than the organization they work for or who work as student or in an apprenticeship are not considered as fixed-term employees. Figure 2.5 shows that the number employed on of fixed-term contracts has been in decline since 2000.

Table 5-6 – the factors shaping the presence and form of fixed-term contracts

Fixed-term contracts	
Labour market regulation	The industrial system
<p>Legal and fiscal</p> <p>Fixed-term employees are entitled to equal conditions and rights to those doing the same or a similar job on an open-ended/permanent contract such as a written specification of conditions and the same protections around notice periods and maternity pay. They are also entitled to information regarding any permanent vacancies and protection against unfavourable treatment. However, an ‘objective justification’ may allow for less favourable treatment.</p> <p>Fixed-term contract employees are less likely to qualify for rights that only exist after a qualification period such as the right to claim unfair dismissal or statutory maternity pay.</p> <p>Voluntarist</p> <p>Most fixed term contract employees would be covered by collective agreements at the company or workplace, where these exist. -</p>	<p>Demand</p> <p>The use of fixed-term contracts is declining, possibly because employers are switching to temporary agency workers and other types of casual or zero hours contract.</p> <p>Industrial structure</p> <p>Fixed-term contracts are important in Education (32%% of total employment), Health (17%) and Real estate and business services (11%) (Forde and Slater 2010).</p> <p>Employer policy and competition</p> <p>As open ended contracts provide only limited employment protection in the UK and not until two years of service are completed, fixed-term contracts are not always widely used as those on open ended contracts can be easily dismissed. They are more frequent in the public sector where employers have traditionally provided more permanent employment.</p>
Labour market conditions	Social reproduction and income maintenance
<p>Labour demand conditions</p> <p>LFS data show that 35% of all temporary workers were employed as such because they could not find a permanent job. However, the TUC (2014b) data on agency workers and zero-hour contracts suggest that these percentages may be much higher, especially among certain age groups.</p> <p>Recruitment, screening and training systems</p> <p>Employer use of fixed-term contracts can be a valuable tool in screening employee performance prior to transferring to a permanent contract</p>	<p>Supply of labour</p> <p>Temporary employment is particularly prevalent among young workers. Those aged 19-19 Those aged 16-19 and 20-24 constitute respectively 3.2% and 9.8% of the working population but 11.9% and 18.7% of all temporary workers (not including agency workers).</p>

Employers are required to treat fixed-term employees equally to those doing the same or a similar job on an open-ended contract and fixed-term employees are entitled to the same pay and conditions, the same or equivalent benefits, information regarding any permanent vacancies, and

protection against unfavourable treatment. However, less favourable treatment may be objectively justified when there is a good business reason for doing so, known as 'objective justification'. Fixed-term contracts will normally end when they reach the agreed end date and the employer does not have to give any notice. If the work ends before the agreed end date and the contract allows the worker to be dismissed then the employer should give the appropriate notice period. The law defines minimum notice periods of 1 week if the employee has worked continuously for at least 1 month and 1 week for each year if the employee has worked continuously for two years or more. But the contract can state longer periods. Employees must hand in their notice one week in advance if they have worked continuously for a month or more but the contract may once more state a longer period. If nothing is written in the contract on early dismissal, the employer may be in breach of contract. Fixed-term employees can also qualify for some additional rights. If they work for the same employer for two years or more, they have the same redundancy rights as permanent employees, and after four or more years they automatically become a permanent employee, unless the employer has a good business reason not to do so, or a collective agreement removes the automatic right.

Employees who feel they have been treated unfavourably need to ask for a written statement of the reasons for this treatment. If the issue remains unresolved, they can bring their case to an employment tribunal. Such a claim needs to be made within three months of the date the less favourable treatment occurred.

5.3.3 Other temporary workers: apprentices, casual workers

The LFS survey also presents data on other types of temporary workers, including casual and seasonal workers. During the first quarter of 2015, there were 326,000 casual workers, and 70,000 seasonal workers. However, there is little further data and discussion on these types of employment. Something similar holds for apprenticeships. 105,000 were on government supported training and employment programmes in the same quarter. However, this does not include all people on those programmes but only those engaging in any form of work, work experience or work-related training. Moreover, it does not even include all apprenticeships.

Apprentices count as 'employees' and are granted all the accompanying employment rights. The main exception is the National Minimum Wage which has a special rate for those on apprenticeships (since October 2014 the rate is £2.73/hour rather than £3.79/hour for those under 18, £5.13/hour for those 18-20, and £6.50/hour for all others). A casual worker has no contractual obligation to commit to specific working hours but has the freedom to accept work that is being offered. The employment rights can be hard to assess in accordance with the informality of the relationship but usually depend on the qualification as 'employee' or 'worker', with the latter much more likely, or as self-employed. To count as an employee, there must be a 'mutuality of obligation' that will run counter to the casual character of employment.

5.4 Subcontracted work: subcontracted employees and self-employed workers

Cost pressures are often a motivating factor behind organisations' decisions to subcontract part of their production activity and this can under certain conditions increase the risk of precariousness of employment conditions for affected workers. We consider two general forms here -the subcontracted workforce, defined as employees of the contractor organisation, and the self-

employed. The latter may take various forms ranging from independent, freelance contractor to false self-employment where the line dividing employee and self-employed status is blurred. Those in self-employment are covered by the same basic employment rights as afforded to ‘workers’ but are often excluded from certain social protections such as pensions and national insurance. Owing to the highly contingent nature of sub-contracted work in certain sectors such as construction, many are at risk of low incomes and variable hours. A further issue resulting from changes in the welfare system as part of the move to Universal Credit (UC) is that self-employed workers will have to report their income monthly instead of yearly. This means that peaks and troughs in earnings over the year which would have been ‘smoothed’ out by annual calculations will now create an earnings gap in some months. Interviews with both a tax reform specialist and with a policy officer at Citizens Advice (a civil society organisation) indicated that the extra administrative burden may mean that some self-employed workers experience problems with miscalculations and overpayments, or simply do not claim at all.

i. Institutional factors explaining presence and form

Table 5.7 describes how features of Britain’s production system shape employment experienced by **subcontracted employees**. TUPE rules (see chapter 4) play a critical role in underpinning minimum standards but as we explore below only for a fraction of subcontracted employees and in an increasingly narrow and circumscribed manner. While cost pressures typically mean the subcontracted employee experiences job insecurity and limited pay prospects, in some situations client organisations may take on an interesting role in pressing contractors to improve job quality, often in response to trade union campaigns. Examples include the promotion of living wages along the supply chain, requiring health and safety training and/or ensuring minimum qualifications. While there continue to be concerns in the UK that such provisions may contravene the European procurement directive, HR provisions that contribute to ‘social value’ or are defined as ‘socially sustainable sourcing’ are seen as feasible (Druker and White 2013; Koukiadaki 2014; Wright and Brown 2013).

There remain major problems of inequality and inconsistency of employment conditions among a contractor’s workforce since where a contractor has multiple clients it typically inherits multiple sets of TUPE protected terms and conditions, and these sit alongside its own conditions. What is lacking is a set of arrangements that can provide for greater consistency across the supply chain, perhaps organised at a local or regional level, and centered on hub clients in particular industries. As many studies now argue, the single focus on the legal employing organisation is out of sync with the new dynamics of the employment relationship.

Table 5-7 -the factors shaping the presence and form of subcontracted employees in the UK

Subcontracted employees	
Labour market regulation	The industrial system
<p>Legal and fiscal</p> <p>TUPE rules establish an important principle of employment continuity for workers whose activity is outsourced to an external contractor organization. However, loop holes mean that transferred workers may experience changes in working time, job tasks, and training and career opportunities. Also, a 2014 amendment means TUPE will apply to a narrower range</p>	<p>Demand</p> <p>Outsourcing is triggered by a range of factors that may include cost pressures, but also the need to access specialist skills, technologies and management capabilities, as well as pressures to access labour more flexibly and to avoid trade unions.</p>

<p>of cases (the work must be ‘fundamentally the same’ after transfer) and conditions protected under a collective agreement (of the client) can be changed after 12 months. There is no legal protection for other subcontracted employees not TUPE transferred.</p> <p>Fiscal conditions are very important in driving the outsourcing of public services where public authorities use outsourcing to cut costs with the knowledge that the incidence of low-wage work is higher and union protection lower among private services firms than in the public sector.</p> <p>Voluntarist</p> <p>Unions unsuccessfully resisted the outsourcing of public services in the 1980s and 1990s, but did win a new government ‘Two-Tier Code’ in 2003 designed to extend conditions in local government and NHS collective agreements to contractors. It was abolished in 2010.</p>	<p>Industrial structure</p> <p>Subcontracted work is found across all sectors of the economy and across all levels of occupation by level of skill or pay. Public sector outsourcing was precipitated by legislation in the 1980s has always been contested by unions.</p> <p>Employer policy and competition</p> <p>Subcontracted employees often face competing demands from their employer (contractor organization) and the client which may act like an ‘indirect employer’. Client managers may direct the careers and performance of subcontracted employees, and service contracts may pressure the employer (contractor) to adjust terms and conditions. Short service contracts and risk of non-renewal inject job uncertainty.</p>
Labour market conditions	Social reproduction and income maintenance
<p>Labour demand conditions</p> <p>As more and more organisations have outsourced activities, there has been an expansion of specialist business services outsourcing firms in many areas of services provision. Some organisations may require contractors to meet minimum job quality criteria (e.g. living wage).</p> <p>Recruitment, screening and training systems</p> <p>Subcontracted employees divide between those who enjoy some form of protected terms and conditions under TUPE rules and those who don’t. In low-wage services, the latter are typically on inferior conditions. Where subcontracted employees work on the client site they may be screened for jobs in the client or enjoy shared training provision.</p>	<p>Household income</p> <p>It is in the area of subcontracted work where the UK’s living wage campaign had its initial successes, arguing that wealthy client organisations (London banks) ought to pay contractors enough to fund living wages for their staff.</p> <p>Supply of labour</p> <p>Labour supply spans the entire range of workforce groups, although with concentrated segments in particular activities and regions—e.g. migrant workers in low-wage services in London.</p>

There are far higher risks of protective gaps facing **self-employed workers** who are exposed to subcontracting arrangements for their employment. Here, we are interested in ‘false self employment’, defined narrowly as ‘subordinate employment disguised as autonomous work’ (Frade and Darmon 2005: 111) and more widely as persons who are ‘not in business on their own account, come under the control and supervision of their engagers, are paid wages rather than work for a client under contract, and in most cases, continue to work for the same engager of their labour on successive construction projects, and for long periods of time’ (Harvey and Behling 2008).

The assumption is that an employer deliberately classifies the person as self employed and makes a sales transaction for work provided in order to save on social insurance costs and/or curtail labour rights (Buschoff and Schmidt 2009); much of the research refers to these types of transactions as ‘labour-only subcontracting’. In the UK it is a highly used form in the cultural sectors (actors, musicians, performing artists, journalists), construction and IT (Heery et al. 2004; see chapter 2), as well as by temporary work agencies supply workers to all sectors of the economy.

In general, self employed workers are for the most part not covered by labour law but by civil and commercial law; they therefore do not enjoy employment rights, aside from legal protection covering discrimination and health and safety and a low level statutory maternity allowance (chapter 4). They are also not protected to the same extent as dependent employees by social security schemes. One of the major problems of allowing labour-only subcontracting to flourish in certain industries with limited employment rights is that it becomes associated with the most vulnerable workforce groups in society. This is as true in the UK as in other European countries. Cremers (2009) sums up the risks as follows.

‘A strategy based on the use of labour-only subcontracting with the aim of fixing reduced prices carries the risk that sooner or later undeclared labour and illegal foreign work enter the market. Groups of undeclared workers are recruited via post-box companies, advertising and informal networking. The lower stratum is then an irregular supply of cheap labour via agents or gang masters and distortion of the labour market is substantial’ (Cremers 2009: 205).

Table 5-8 - factors shaping the presence and form of false self-employed workers in the UK

False self-employed workers	
Labour market regulation	The industrial system
<p>Legal and fiscal</p> <p>The Employment Rights Act (1996) provides the legal definitions of ‘worker’ and ‘employee’ although there is a great deal of confusion in case law about how these definitions are applied and therefore considerable ambiguity in determining the legal status of self employed.</p> <p>Fiscal rules mean employers do not pay 13.8% NI contributions for labour-only subcontracting, nor do they have to deduct income tax and employee NI contributions. Specific tax rules for the construction industry encourage false self employment. Self employed pay Class 2 (fixed weekly rate, low profits) or Class 4 (% contribution, higher profits) NI contributions. Unlike employees’ Class 1 contributions, Class 2 does not provide for the additional state pension, statutory sick pay or unemployment benefits (contributions-based Jobseekers’ Allowance). Class 4 contributions do not provide for any social security rights.</p> <p>Voluntarist</p> <p>Very limited union role, although some success in campaigning for stricter tests of ‘onshore intermediary companies’.</p>	<p>Demand</p> <p>Like all kinds of subcontracting, demand is triggered by a range of factors -cost pressures, the need to access specialist skills, technologies and management capabilities, and the desires to access labour more flexibly, avoid unions and curtail employment rights.</p> <p>Industrial structure</p> <p>False self employment is found in three key sectors of the economy –the cultural industries (e.g. media, publishing), construction and ICT services. It is also associated with temporary work agencies in all sectors.</p> <p>Employer policy and competition</p> <p>Employers may expressly aim to reduce their employer obligations by switching their workforce to self employed status, possibly to meet cost and flexibility competition of competitors. Employer use of temporary work agencies to meet staffing needs may also involve false self employment.</p>
Labour market conditions	Social reproduction and income maintenance
<p>Labour demand conditions</p> <p>The more that employers seek to shed their employer responsibilities, the more risk there is that people fall into the status of false self employment; bad employment practices drive out the good in highly cost competitive industries.</p> <p>Recruitment, screening and training systems</p>	<p>Household income</p> <p>While self employed may earn higher gross income than comparable employees, there is no provision for holiday pay, sick pay or maternity/paternity pay.</p> <p>Supply of labour</p> <p>Labour supply spans the entire range of workforce</p>

When employers switch workers to false self-employment status they are selecting a casual, hire and fire at will practice. No evidence that employers screen self employed for possible employment, nor that training is extended.

groups, but has especially large concentrations of migrant workers owing to visa entry and sponsorship conditions.

ii. Protective gaps

i) *Employment rights gaps*

Two key issues arise in the consideration of employment rights gaps for **subcontracted employees**. First, because job security for subcontracted employees is contingent upon contract security (between client and contractor) they face a far higher risk of job loss with the transfer, loss and/or renewal of each contract. Unlike other employees, job security for subcontracted employees is strongly influenced by financial pressures flowing from the client organisation and the duration and cost-revenue margins of the outsourcing contract (Grimshaw et al. 2014). There is of course specific protection at the point of transfer in the form of TUPE legislation (chapter 4.1), which prevents them being fired and protects their terms and conditions of employment. However, the legal protection is limited in scope. Research highlights the tight interaction between recurrent contracting and job insecurity. In their study of the voluntary social care contractors, Cunningham and James (2009: 370) find,

‘A remarkably consistent picture emerged from both phases of the research concerning how the current contract culture in social care was intimately connected to increased levels of employment insecurity. All the regional organizers interviewed, for example, identified organizations outwith the study which had made redundancies because of the loss of significant contracts.’

Case-study research also shows that TUPE does not afford protection for many of the qualitative characteristics of an employee’s job, such as working time, the specific bundle of tasks and codes of customary practice (Colling 1993; Cooke et al. 2004). Hebson and Grugulis (2005) show for example how post-transfer changes to hospital ancillary services cut the hours of part-time cleaning staff. Moreover, 2014 reforms have further weakened the strength of protection: the outsourced job is now only protected if it is ‘fundamentally the same’; dismissals due to change of location are easier for the new employer to defend; protected conditions that were collectively agreed under the previous employer can be renegotiated after 12 months providing that ‘overall the contract is no less favourable’; and pre-transfer redundancy consultation between new and old employers is now allowed (ACAS 2014).

The second employment rights gap concerns the fact that TUPE legislation only protects one part of the subcontracted workforce –namely, those who transfer. Other employees of the contractor organisation along with all new recruits are excluded until the moment when they are also the target of a staff transfer process. Case-study research on low-wage outsourced services points to systematically inferior conditions among unprotected subcontracted employees (e.g. Escott and Whitfield 1995; Rubery and Earnshaw 2005; Unison 2000; Whitfield 2002). The reason is largely institutional: contractor organisations are less likely to be covered by a collective agreement than the client organisation, which generates opportunities for contractors to worsen employment conditions. Moreover, fragmented protection results in multiple sets of terms and conditions being generated over time as contractors win a series of contracts and inherit new cohorts of transferring staff (Hebson et al. 2003). Trade unions campaigned successfully for stronger protection for subcontracted employees providing outsourced public services, resulting in the New Labour

government introducing a Two-Tier Code in 2003 (see chapter 4.1). The Code encouraged contractors to extend public sector client's terms and conditions to all subcontracted employees working on the specific site, thereby creating equal conditions between TUPE and non-TUPE protected staff. However, the Code was abolished in 2010.

The experience of **false self employment** within the tiers of subcontracting of services and production activities is well-known for gaps in employment rights. Employment law does not provide protection for the self employed. For an organisation, the major benefit of using self-employed persons other than the cost savings of not having to pay social security contributions is that it frees them of any statutory obligations (Burchell et al. 1999). This means the self employed are not entitled to statutory paid annual leave, statutory sick pay, statutory maternity, paternity and parental leave, among others. There are nevertheless three significant areas of protection. First, the self employed are protected against unlawful discrimination because of a 'protected characteristic'. Second, there is protection for health and safety insofar as a self-employed person is covered by an organisation's common law duty of care or occupier's liability. Third, self-employed women may be entitled to the statutory maternity allowance.

UK research and union campaigns have mostly focused on the construction sector, which is well known for its fragmentation and displacement of employer responsibilities -such that main contractors manage the project and finances but pass employer responsibilities down the chain to gangmasters, agencies and the false self employed (Harvey 2001). The main union for the sector, UCATT, has long campaigned against false self employment, arguing that businesses register workers as self employed to avoid both tax/social security costs and legal obligations and ought instead to recognise them as employees (see evidence of employer behaviour in MacKenzie et al. 2010). False self employment in the industry is widespread: Behling and Harvey (2015: table 4) estimate that around half of all self employed, approximately one in four of all construction workers, are false self employed. Today UCATT describes it as 'the biggest employment rights challenge in the industry' and an 'immoral' practice.⁴⁷

Construction firms make widespread use of two routes to using false self employment. First, hundreds of so-called 'payroll companies' have emerged to assist businesses in switching their workforce from employee to self employed status. Agencies supplying workers to construction firms may also make use of these payroll companies. An undercover UCATT investigation exposed one of the leading payroll companies, and found that fees were deducted from the worker's earnings and that the payroll company erroneously claimed a change of legal status did not require a change in working arrangements (i.e. continuous work for a single company). One exchange between undercover reporter and payroll company manager is illuminating:

"In a way they are not really self-employed because they are working just for us," we said to a Hudson Contract Regional Account Manager about the actual status of our workers, were they to agree to become 'freelance operatives' and sign the Hudson contract. "Correct," the Account Manager replied. "Hudson takes the risk on. We eliminate the risk for you by our contract because it's been through the judicial process and we've won our case. And yes, the guys are working for you for as long as you want them to work for you really, and there's nothing the revenue can do about it." (Elliott 2012: 4).

⁴⁷ <http://www.ucatt.org.uk/false-self-employment>

Second, specific tax rules for the construction industry further encourage false self employment. The Construction Industry Scheme allows construction firms to make a flat rate income tax deduction from the pay of self-employed contractors.

Associated research has focused on the likelihood that migrant workers are exposed to precarious forms of 'false self employment' (Ruhs and Anderson 2010). Anderson (2010) points to the way immigration controls directly mould the character of precarious employment relations: conditions of entry (e.g. entry as 'own account self-employed') and stay (ability of employer to withdraw 'sponsorship' of work permit holders at any time) place migrant workers in an especially vulnerable position and make them more likely to be compliant.

ii) Representation gaps

Subcontracted employees in the UK face significant gaps in representation, reflecting failings in institutional arrangements, eligibility conditions and unions' mobilisation efforts. Several studies of subcontracted work point to the inability of unions to gain a foothold in the contractor organisations. This is particularly a problem where unions see members moving out of well organised public sector organisations into the private sector. Nevertheless, other studies point to unexpected outcomes. A case-study of subcontracted services at a major hospital highlights the challenges unions faced in seeking to move into a powerful, private sector, specialist outsourcing services firms, but in fact shows that the need for the contractor to resolve problems of unequal pay, to harmonise disciplinary procedures and to combat a looming industrial dispute eventually lead to a union recognition agreement (Bach and Givan 2010). Also, as in the United States (Erickson et al. 2002), UK studies of living wage campaigns show that unions have benefited from teaming up with community and 'non-worker' organisations (Freeman 2005; Wills and Simms 2004).

The living wage campaigns, as well as wider research on corporate social responsibility (e.g. Wright and Brown 2013), are especially useful in illuminating the need for a redirecting of the target of wage and work justice campaigns towards the client organisation, what Wills (2009) calls the 'real employer'.

The nature of short-term contracts and increased competition means that contractors are forced to cut back on employees' pay and standards of work. Moreover, given that they are no longer directly employed, these workers have no industrial relations contact with their "real employer." ... Subcontracting works to break the mutual dependency between workers and employers that has been so central to the labor movement in the past. When a company directly employs the staff on whom they depend, there is the potential to negotiate over matters of work. Each needs the other, and they have to co-operate, to at least some extent (op. cit.: 444-5).

The problem, however, with this new focus is that it means unions must now work with multiple 'real employers' for the workforce of each contractor organisation, gaining recognition agreements and then negotiating collective agreements that satisfy all parties. The fragmentation of organising and negotiating across different workplace sites and varying services contracts raises significant challenges.

Because 'union representation is often coterminous with employment' (Heery et al. 2004: 23), the **false self employed** face significant representation gaps. Union campaigns to better represent false self-employed workers have been particularly vocal in the construction sector, notably through efforts since the late 1990s by the construction union UCATT (Boeheim and Muehlberger 2006). However, the largest trade union, Unite, in its response to the government's HMRC consultation on

reforms, warned that the practice of false self employment was spreading to other sectors (although the document provides no illustrations)⁴⁸. The union for media workers, BECTU⁴⁹, has a long tradition for organising freelance workers (around 40% of its members –Heery et al. 2004), a subset of whom are likely to be false self employed. In response to union campaigns, especially the highlighting of lost tax revenues, in 2014 the government set out clearer criteria for the treatment of persons as employed by the agency or payroll company ('onshore employment intermediaries'). UCATT responded that this was a first step but a better policy would require that 'if a worker satisfies the conditions to be in receipt of "employment income", then he or she should be acknowledged to be an employee and gain all of the entitlements and obligations which an employee has'.⁵⁰

iii) Enforcement gaps

Gaps in the enforcement of TUPE regulation are of special concern to **subcontracted employees**. A first gap arises where organisations act to redesign services for subcontracting so that TUPE regulations are less likely to apply. For example, research on local government outsourcing shows that public authorities use legal strategies of 'fragmentation' to reduce the possibility of associating a defined group of incumbent staff with the subcontracted service such that the regulations do not apply. For example, managers were found to have divided care services by geographical location or outsourced incrementally over time as a series of small contracts (Grimshaw et al. 2015).

A second enforcement gap arises because even when the regulations are applied, they focus on the point of staff transfer, which provides managers ample space before and after to renegotiate employment conditions. Research points to two specific points where employment continuity is undermined. First, prior to staff transfer the client organisation may seek to weed out underperforming or costly staff. In one study of IT outsourcing, client managers in six out of 16 cases reduced the number of IT staff by targeting senior, expensive posts –even though this subsequently caused problems of expertise gaps for the new contractor firms (Grimshaw and Miozzo 2009). Second, post-transfer the contractor may apply leverage on HR costs to increase productivity and meet contractual cost-revenue margins, which directly leads to cuts in hours or redundancies during the life-cycle of the contract (Grimshaw et al. 2014).

Gaps in enforcing legal regulations of employment status are significant, leaving many workers with **false self employment** status exposed to exploitation. One problem is the dwindling level of public resources invested in site inspections. For the construction industry, for example, the number of employer compliance reviews opened where employment status was shown as a risk fell from 1,205 in 2009/10 to just 433 in 2011/12.⁵¹ Time and again, research on the construction sector expresses an exasperated sense of alarm at the persistent and large-scale enforcement problem.

'... the case of one very large site in the London South East region, with 1500 manual construction workers of which 900 are self-employed, 350 of these migrant, is perhaps the most striking evidence of the evasion economy. It is not as if it is hidden – everyone knows what is going on. The sheer scale of the illegality and

⁴⁸ http://centrallobby.politicshome.com/fileadmin/epolitix/stakeholders/Unite_submission_to_HMRC_consultation_on_Onshore_Employment_Intermediaries_False_Self_Employment_February_2014.pdf.

⁴⁹ Broadcasting, Entertainment, Cinematograph and Theatre Union

⁵⁰ <http://www.ucatt.org.uk/false-self-employment>.

⁵¹ HMRC response to UCATT Freedom of Information Request: 30.08.12 (cited in Elliott: 1).

the tolerance of it by employers and taxation authorities alike is a demonstration of how entrenched and normalised tax evasion and deprivation of employment rights have become (Harvey and Behling 2008: 20).

iv) Social protection and integration gaps

Research suggests that **subcontracted employees** face two main issues concerning social protection and integration gaps. First, because the subcontracting arrangement heightens the tendency for organisations to displace cost-cutting pressures onto the workforce, subcontracted employees are more likely to face radical changes in employment practices governing working hours and earnings. Less employee control over working hours increases the risk that they might fall below minimum hours/earnings thresholds required for auto pension enrolment and contributory based unemployment benefits, among others. Second, despite the protection afforded by TUPE regulations, the recurrent pattern of subcontracting means that subcontracted employees face considerably greater job insecurity: research highlights clear organisational practices for managing both pre- and post-transfer redundancies among workers associated with the subcontracted activity. Again, the uncertain contracting environment increases the risk of non-entitlement to social protection transfers.

As with employment rights, the employment status of a person, whether employee, worker or self employed, is critical in determining the level of social security protection. This means there are major social protection and integration gaps for the **false self employed**. Some important protections are universal –namely the basic state pension (although set at a very low level and as such not a safeguard against poverty) and healthcare (citizenship entitlement financed by general taxation). Other social protections exclude the self employed, such as the additional state pension and access to the contributory-based unemployment benefits system (job-seekers allowance).

6. Conclusions: the Role of Social Dialogue in Closing Protective Gaps

Part one of this report has reviewed extensive evidence that suggests the layers of protections associated in principle with a standard employment relationship –encompassing employment rights, social security rights and forms of collective representation –do not describe the real world experiences of many workers employed in a variety of different occupations and sectors of the UK economy. Instead, the evidence points to a range of types of precarious employment, which expose workers to ‘protective gaps’. The difficulties they face include not only securing eligibility for employment rights but also in finding support through collective representation, in having rights properly enforced at their workplace and/or in enjoying full social security protection. The purpose of this conclusion is to raise questions about the character of social dialogue and its role in closing these protective gaps and reducing precarious work.

First, a note about the term social dialogue is needed. From a British perspective, the term is very much associated with the language of the European Commission and has not to date entered into the common vocabulary of employment relations. Narrowly conceived, social dialogue may be defined as any form of consultation, negotiation or dispute between employer and trade union. More broadly, however, it may be construed as encompassing a wider range of organisations, influences and institutional pathways that better captures current employment relations developments in the UK. Figure 6.1 suggests an extended, broader notion of social dialogue that embraces civil society organisations, state inspectorate agencies and other bodies. This approach is very much in keeping with Heery’s (2011: 90) call for greater appreciation of the ‘fusion’ of regulatory forms that characterise the UK’s ‘post-voluntarist system of interest representation’.

Figure 6-1 - narrow and wide forms of social dialogue in the UK



Civil society organisations (CSOs) provide a range of services to people in employment, sponsor high-profile legal cases and lobby for improved legal rights. In the UK, therefore, they increasingly offer an alternative, non-union channel that can support workers' interests. Examples include Citizens Advice, Stonewall, Citizens UK, Age Concern, Carers UK and the Living Wage Foundation, among others. Research by Heery and colleagues (Heery et al. 2012a, 2012b) provides three reasons for their increasing activity in improving employment conditions. First, CSOs are responding to employment problems and demands for workplace equality by their constituents (e.g. Citizens Advice response to in-work poverty or Stonewall's workplace equality index). Second, they are filling a gap caused by the decline of unions and collective bargaining. Third CSOs have emerged 'in the shadow of the law', acting to interpret, mediate and enforce compliance with many new pieces of legislation in relation to both employment and welfare systems. Now that benefit payments are not confined to those fully out of work but are common for those in employment but low paid, the incomes of the precariously employed depend not only on wages but also on their interactions with the tax and benefits systems, thereby providing a major role for CSOs with this type of expertise.

Government appointed *inspectors* are another important institutional actor in the social dialogue sphere, each charged with enforcing a particular facet of employment law. Examples include HM Revenue and Customs (to enforce minimum wage rules), the Gangmasters' Licensing Authority and the Health and Safety Executive. Their proactive inspections reduce the burden on individual workers having to take their complaint to an employment tribunal (and pay for the service). As we described in chapter 4.3, the position and role of these agencies has been a topic of ongoing discussion with increasing calls for stronger inspection powers and raised penalties against non-compliant employers, as well as proposals to merge inspectorates. Other government appointed bodies also shape the wider social dialogue sphere, including the highly regarded Low Pay Commission, which commissions research on minimum wages and recommends the annual minimum wage upratings to government, and the Advisory, Conciliation and Arbitration Service whose role has shifted more to advising on individual employment rights than resolving collective disputes.

These organisations may act in concert or in conflict with processes of narrow social dialogue between unions and employers. The increasing presence of CSOs for example in pressing for improvements at work may 'crowd out', or displace, efforts by trade unions to mobilise workers. One reason may be that a narrowly focused campaign by a CSO may be more able to capture an employer's attention –as seen in many of the successful living wage campaigns, for example –and therefore deliver a clear headline result (both for low-wage workers and the employer's reputation). On the other hand, CSOs, inspectorates and other bodies may benefit from working in tandem with unions, forging constructive relationships, in order to share resources and information, or (in the case of CSOs) to press for policy reforms jointly. It is also possible that the relationship is more blurred and indirect, contingent upon the particular issue at stake and surrounding social and economic conditions.

In many respects, these considerations mirror those concerning the inter-relationship between legal rules (a key feature shaping our wider conceptualisation of social dialogue in figure 8) and employer-union social dialogue (Colling 2010; Dickens and Hall 2010). The collapse of voluntarist industrial relations in the UK in the 1980s and rising juridification of the employment relationship has generated considerable debate and recurrent questions for research (see Heery 2011 for a valuable review). For the purposes of our second stage of case-study research, these questions can be

expanded to encompass the interactions between statutory regulations affecting both employment and welfare rights on the one hand and, the actions and effectiveness of a wider range of union and non-union organisations on the other. This generates several questions and issues for enquiry:

- Where unions have made effective progress in addressing protective gaps (at a workplace or organisational level) to what extent have they benefited from constructive engagement with CSOs, inspectorates and/or other bodies?
- Where workers in precarious jobs lack access to union support and/or union representation, what (if any) alternative support is used and why? What are the relative advantages and limitations of this alternative form of support?
- What are the respective roles of unions and non-union bodies in mediating the implementation of employment law (e.g. in shaping employer responses to the minimum wage or rules on the use of agency workers)? Is mediation characterised as 'positive' or 'negative' –that is, does it achieve the full objectives of the law or only secure minimal compliance (after Dickens 1989, cited in Heery 2011)?
- To what extent do inspectorates rely on direct support from and engagement with unions and CSOs to ensure employers comply with statutory rules?

This first part of the report has charted many of the most significant challenges facing the goal of an inclusive labour market. The aim of Part two is to investigate how progress can be achieved through both narrow and wide forms of social dialogue.

Part 2

The case studies

7. Introducing the four case studies
8. Social dialogue and public procurement: Local authority contracting of care services
9. Restructuring employment relations in the temporary agency workforce
10. Fighting casual work in the food production sector
11. Resisting the casualization of higher education

7. Introducing the four cases

Understanding how social dialogue can reduce the extent and severity of protective gaps is a key focus of the second stage qualitative research. However, the mechanisms by which social dialogue can achieve these aims vary significantly across countries and sectors. As we argued in Part 1 of this report, low collective bargaining coverage and union density in the UK, combined with the decentralisation of employment relations to firm or plant level, gives management significant scope to unilaterally vary pay, terms and conditions, and working practices which workers may struggle to counteract without effective mechanisms of ‘voice’. This places employers in the driving seat, both in mediating the interpretation of social and employment rights and in moulding expectations of employment standards among new and incumbent members of the workforce (Colling 2010: 338-342). Where employers are reliant on external labour either engaged through temporary work agencies or through subcontracting relationships, the responsibility for improving employment conditions and regulating the employment relationship becomes increasingly problematic, with unions having to work across organisational boundaries to prevent the dilution of standards, and exploiting mechanisms such as public procurement to embed progressive HR standards.

Furthermore, the UK employment system provides a relatively low floor of statutory employment rights, which means that where collective bargaining is weak or absent, workers of all types are strongly reliant on either the conscientiousness of an employer or their own individual bargaining power to establish top-ups to their rate of pay, and occupational benefits such as sick pay and pensions. For example, although the statutory national minimum wage in the UK has been effective at tackling extreme examples of exploitation in the labour market, the weakness of coordinated wage bargaining at either sector or firm level has led to a strong wage compression effect at the bottom of the wage distribution, effectively become the ‘going rate’ in those sectors where precarious and contingent workers are concentrated.

This gives rise to three important dimensions of social dialogue which will be explored through the four case studies in this second part of the report:

i) The changing role of trade unions both nationally and locally: Many workplaces in the UK face problems in sustaining or improving employment standards due to the limited presence and resources of unions that might otherwise enforce legal rules and compel employers to adopt progressive HR policies. Where local level union representation is limited, or management is keen to develop alternative channels of dialogue direct communications may play an increasingly important role in shaping management-labour relations. Furthermore, the relative fragmentation of social dialogue, and the ‘isolation’ of individual union branches from one another means that positive progress achieved at one firm or plant may not easily be replicated elsewhere or ‘scaled up’ to national level. Unions may therefore be able to reduce the *severity* of precarious work (e.g. within a workplace) but not necessarily the *extent* of precarious work (e.g. across an entire firm or sector).

ii) The ability of social dialogue to combat dualism: As distinct from static models of dualism where unions protect full-time permanent ‘insiders’ at the expense of vulnerable ‘outsiders’ (e.g. Rueda 2006), strong systems of collective representation and worker representation have a role to play in

protecting and improving employment standards for those in precarious work situations also. Recruiting among the 'extended' workforce -including those engaged through labour market intermediaries such as temporary work agencies- is clearly an important organisational goal for the unions in order to build bargaining strength. At the same time, however, the unions also have to place pressure on the employer as a 'buyer' of labour to properly regulate employment relationships regardless of contract type. Public procurement may be one way in which unions can embed good HR principles into contracting arrangements which transmits the benefits of collectively agreed pay and conditions into non-unionised and historically precarious parts of the private sector. Where gaps between directly employed and contracted workers remain (either as a source of organisational flexibility or cost savings), a major concern is the way in which the standards associated with precarious work (e.g. low and variable wages, on-demand work patterns) may in fact be used to level down conditions for those in a standard employment relationship.

iii) *The ability of systems of social dialogue to effectively regulate labour relations within the workplace:* Where mechanisms of social dialogue are weak or fragmented, unions may struggle to resist downward pressure on standards regardless of employment contract type. Even where systems of social dialogue appear outwardly quite strong, there may be many more subtle forms of control and coercion being played out on the shop floor than are discussed formally at the negotiating table. For example employers may formally justify use of flexible contract types as a means to reduce their exposure to the costs of hiring and firing, but it also places them in a powerful position over precarious and contingent workers (who may not know their rights) to extract additional effort and compliance.

Outline of the cases

The four case studies are organised around different sectors, each with different constellations of 'social dialogue' mechanisms ranging from weak or minimal (e.g. in the case of outsourced care work) through to sector level collective bargaining over pay and conditions (e.g. in higher education). Similarly, the role of national and local systems of social dialogue is important to understand the ways in which precarious work is created and embedded, and in turn challenged and reduced by workers (table 7.1). Before turning to a presentation of each case study in chapters 8-11, we summarise the key characteristics and findings of each case. We conclude this chapter with a thematic analytical discussion of the main findings. We argue for a multi-dimensional analysis of the different ways in which social dialogue can reduce precarious work through a focus on the changing role of unions, the ability of social dialogue to prevent dualism, and the scope for systems of social dialogue to regulate labour relations in the workplace.

Case 1. Local authority contracting of care services

Local government is the lowest paid part of the UK public sector, and significant budget cuts since 2010 have placed additional pressure on pay, terms and conditions. The local government sector also makes extensive use of outsourced labour, typically to provide low paid services such as cleaning, catering and care services; work which is largely performed by women in part-time roles. Strict value for money considerations in the procurement of such services typically means low wages with few enhancements, leading to long hours and a risk that workers do not achieve the legal minimum wage. There is however evidence that despite a drastic slowdown in sector level social dialogue in recent years, individual local authorities are increasingly willing to use their positions as

‘buyers’ to improve employment standards among ‘first tier’ suppliers in care services, through the use of specific procurement clauses such as living wages, while also redesigning contracts to allow for travel time.

Table 7-1 Summary of four case studies

Case study	1. Local authority outsourcing	2. Agency work/recruitment	3. Union resistance to casual work in food/baking	4. Casual work in further/higher education
Sector/industry	Care work	Warehousing/logistics	Food preparation	Education – college/post-16 and university
Type of precarious work	Sub-contracted; zero hours contracts	Temporary agency work	Zero hours contracts; TAW	Casual work (hourly paid), fixed-term
Workforce characteristics	Predominantly female, some migrant workers but drawn from local labour market	50:50 men and women, extensive use of migrant labour (local labour market and overseas)	Male dominated (particularly in dispatch), limited local use of migrant labour	50:50 (although male dominated in senior positions), mixture of UK and overseas workers
Protective gaps	Rights; representation	Rights, regulation; representation	Rights; regulation; representation	Rights; regulation; representation; social and integration
Social dialogue	Narrow: trade union organising and negotiation, political lobbying, impact on public procurement Wide: trade union campaigning around ZHC and LW	Narrow: trade union organising, negotiation over specific standards, direct communications Wide: role of employers representatives (e.g. REC)	Narrow: trade union bargaining, industrial action, legal challenge Wide: campaigning and public pressure	Narrow: trade union negotiation with employers Wide: trade union anti-casualization campaign
Interviewees	3x union representatives; 2x care commissioners, 1x provider manager	3 x agency manager; 4 x warehouse worker; 2 x union rep; 1 x client manager	3 x trade union representatives	2 x trade union representatives; 1 x HR manager

Against this context, in 2012 a UK public sector trade union launched a voluntary ‘charter’ for care commissioning which set out a number of key principles of compassionate care, and a range of underpinning business and employment standards to be embedded locally through dialogue between commissioners, union branches and providers. Interviews with union officers, along with local authority commissioning managers and a care provider show that while only 13 out of 375 councils have formally adopted the charter nationally, where there is the political will local authorities can achieve ‘social ends’ such as reducing precarious and low paid work through better procurement. This was achieved at one large local authority in the north of England by: increasingly the hourly fees paid to external contractors (costing an additional £2.7m per year); stipulating specific conditions of employment for contracted workers (including a ‘local’ living wage of £8.01 per

hour); and consolidating contracts in order to reduce the number of providers and increase the volume of work (thus stabilising incomes and working patterns for providers).

The findings also suggest that behind the political rhetoric, the commissioners of social care services are very clearly pragmatists: they want the best standards available within the available budget but recognise that the lower pay and conditions across much of the private and independent sector (compared with directly employed staff) is one of the main drivers for outsourcing in the first place. Commissioners engaged tactically with providers to agree 'sustainable' fees, and as might be expected, providers in turn appeared to respond positively to this 'high-road' form of contracting. At the same time, the provider interviewed still accepted work from 'low road' authorities, and simply allowed differential pay and conditions to emerge between internal workforce 'groups' organised along geographical lines.

The local union branch was largely focused on the uprating of pay among contractors (which they saw as an important lever to reduce the incentive for further outsourcing), but the local living wage of £8.01 per hour was seen as a 'stepping stone' to achieving a full living wage of £8.25 per hour. The union locally planned to use the offer of training as a means to engage with providers and to recruit care workers. However, the union nationally recognised that such a resource intensive approach could not be replicated across 3,500 private sector providers. The monitoring of individual contracts is potentially an issue over the long term. For example, while the quality of care may be a high political priority within the local authority, the limited resources available for planned and 'spot' checks means that large numbers of contact hours could be commissioned before breaches were spotted. Similarly the greater reliance on a smaller number of providers potentially blunts the 'competitive mechanisms' of the market in driving up standards and exposes the council to greater risk should any of the external contractors fail.

Case 2. Temporary agency work

The continued growth of temporary agency work in the UK arguably points to a continued degradation of the standard open-ended employment relationship as more workers find themselves engaged on short-term assignments through labour market intermediaries. Moreover, as temporary agency workers (TAWs) in the UK do not share the same legal status as 'employees' they are not entitled to certain minimum employment rights such as maternity leave, notice periods and protection from unfair dismissal. Long-term 'strategic sourcing' partnerships between agencies and clients offer some scope for an upwards restructuring of employment relations, however the limited reach and bargaining power of trade unions in sectors such as food preparation and warehousing means there are few opportunities for the coordinated upgrading of pay and terms and conditions.

The current research seeks to explore the nature and substantive features of 'strategic partnerships' and whether it leads to positive outcomes for workers, or whether clients largely dictate pay and conditions. The case study data are drawn from ten interviews, involving two senior managers at two employment agencies (GlobalAgency and EuroAgency) and a 'nested case' within EuroAgency involving interviews with management at a large client retail company (PharmaCo) plus three agency workers, two directly employed staff and a union representative.

The findings suggest that in the UK temporary agency work has become increasingly 'normalised' as both a route into employment, and as a legitimate form of ongoing employment relationship. The

legal floor of rights relating to issues such as health safety and statutory minimum wages is seen as important to prevent undercutting by 'rogue' agencies, but the pay and working conditions offered to agency workers in many cases mirror those on offer to directly employed staff (with the benefit of additional flexibility for the client to adjust staffing levels and working hours in response to changing demand). Social dialogue within the sector is generally limited and rather patchy in coverage, but even where trade unions are recognised locally, agency workers are not necessarily well incorporated into the union membership base (Heery 2004). Something of a vicious cycle in that TAWs are perceived to be difficult to recruit owing to temporary status and ties abroad, and are therefore not necessarily a high priority, even though some TAWs may work at same client for four years. In turn TAWs only make up a small fraction of the membership base, and it is difficult for the union to create a persuasive 'offer' for prospective TAW members.

In terms of managing employment relations and the labour process, agencies have certainly assumed a greater share of the responsibility for sourcing, deploying and managing staffing issues: described by Peck and Theodore (1998) as the 'day-to-day hassles' of the employment relations. But the evidence from this case study suggests that temporary agency work, and agencies themselves fulfil three additional roles. **First**, the increasing share of agency workers in some sectors provides the opportunity for client firms to level down pay and conditions across the wider workforce. **Second**, the use of temporary agency workers on an ongoing basis serves as an effective 'screening device' which replaces the traditional (and expensive) external recruitment process followed by a probationary period for permanent staff. **Third**, by taking over all recruitment activities (both temporary and permanent) agencies are increasingly acting as both 'gatekeepers' and managers of the internal labour market. It appears that rather than being 'freedom work', some workers clearly have limited alternative choices and the 'prize' of permanent work serves as an important management device to foster commitment and compliance.

Case 3. Food production

Despite the internationalisation of production systems in many parts of manufacturing, the restructuring of supply chains has paradoxically strengthened the position of 'the plant' as the locus of employment relations. On the one hand this gives management potentially greater control over work organisation as relatively isolated individual plants are pressured to compete with each other for investment, and agree concessions on productivity and staffing flexibility in return for guarantees over jobs (Martinez Lucio and Weston 1994; Mueller and Purcell 1992). On the other hand, the long tradition of active shop stewards in manufacturing means there is scope for local resistance, and there are signs of growing 'inter-plant solidarity' in the UK food production sector in order to build bargaining strength and protect against the spread of precarious work.

The case study is focused on one large food manufacturer 'BreadCo', and explores the ways in which management imitated the 'divide and conquer' strategy of multi-national companies to decentralise bargaining over pay, staffing levels and productivity and attempted to dilute employment standards through the use of temporary agency work and zero hours contracts at two sites in the north west of England. The two local branches of the national baker's union used different strategies to challenging management around pay, contracts and working practices at a turbulent time for both the sector and the firm. Whereas the union branch at the 'North West' plant took on management over the use of agency work and built solidarity by calling a strike of permanent workers which

brought in pickets from other plants, the union branch at the 'Yorkshire' plant (despite higher membership density) struggled to mobilise workers locally for collective action and was largely focused on representing individual workers in grievance procedures and employment tribunals, and attempting to secure favourable severance payments.

In-line with the earlier work of Mueller and Purcell (1992) and Martinez Lucio and Weston (1994), the results of the case study suggest that management at BreadCo had a clear strategy of decentralising pay bargaining to the plant level, while also attempting to leverage competition between plants for resources in order to achieve changes to work organisation and staffing levels. However, instead of plants competing to improve productivity and efficiency in order to secure future investment, plants were competing with each other to survive as management looked for cost savings across the UK. This took place gradually over a period of nearly 20 years, and by isolating individual plants and different segments of the workforce, management attempted to use local deals to set a precedent to make other plants 'fall in-line'. On the one hand this was designed to link pay with plant level (rather than national level) productivity and profitability, but at the same time it was also mechanism through which local level tensions and hostilities between management and the unions were played out. The resulted in individual plants, union branches and unionists being 'punished' for deviant behaviour either with redundancies, victimisation, or ultimately plant closure.

Case 4. Higher education

Trade union density within the UK higher education remains high, but despite this there are growing concerns about the spread of casual and 'atypical' work such as fixed-term, hourly paid and zero hours contracts. The University and College Union (UCU) has campaigned nationally against the casualization of the sector by drawing attention to the numbers of staff in both academic and non-academic roles engaged on atypical contracts, and attempting to negotiate with management at individual establishments to transfer workers into standard open-ended contracts.

The case study data are drawn a comparison of two higher education establishments in the north of England and a total of six in-depth interviews with: a UCU representative from each establishment; three HR managers; and a senior academic engaged on an atypical contract. The focus of the case study is to understand both the drivers and consequences of casual work within the UK higher education sector, and the ways in which trade union activity at local level can both reduce the share of casual work, and mitigate the adverse consequences on workers.

The findings show that the UCU have attempted to bargain with employers over creating more permanent posts and supporting staff to build a business case to convert fixed-term posts to permanent ones, but a lack of good data on the use of atypical contracts within and between establishments is a significant impediment to the systematic reduction of precarious work. A proportion of lecturing staff with skills and experience which are in demand may be happy to remain on an hourly paid casual contract, but it appears that a considerable share of post-doctoral teaching staff are channelled into hourly paid work in the hope that a permanent job may eventually open up. In the meantime these highly skilled workers find themselves in a weak bargaining position and are at real risk of low and variable earnings.

The multiple roles of social dialogue in reducing precarious work

The evidence from our four case studies presented in the following four chapters suggest that even in the UK context social dialogue can play an important role in reducing the extent and severity of precarious work. Here, we argue for a multi-dimensional analysis with attention to three main dimensions: the changing role of the unions; the ability of social dialogue to prevent dualism; and the scope for systems of social dialogue to regulate labour relations in the workplace.

With regard to the role of the unions, evidence from the four case studies demonstrates that mechanisms of social dialogue in the UK are generally decentralised and fragmented (in both the public and private sectors), and trade union bargaining where it occurs tends to be somewhat isolated or ‘cellular’ in that unions cannot easily replicate local successes, and have difficulty in coordinating bargaining strategies across disparate plants or firms within a sector.

For example, in **case study 4** there was evidence of ‘rear-guard’ action by local branches of the UCU trying to impose costs on management for attempting to normalise flexible or contingent labour, but this tended to proceed on a case-by-case basis with relatively few opportunities to systematically address: the use of casual and hourly paid staff to deliver core teaching hours; and the disposability of skilled research staff engaged on fixed-term contracts. Furthermore, despite a national campaign around the casualization of employment in higher education, variability in the use and monitoring of casual labour both within and between establishments made it difficult for the union to develop a coordinated approach to negotiating with management.

Similarly in **case study 1**, social dialogue was critical to reduce the severity of precarious work among the local government subcontracted care workforce, but the specific local political context and a lack of union resources meant that this local success could not easily be replicated across other local authorities. Integrating HR dimensions to the public procurement process led to a significant uprating of pay and conditions for care workers who had historically been engaged on highly precarious contracts in the form of zero hours contracts, but the local union branch itself were not able to extend protections from adult social care into other low paying outsourced services such as waste, cleaning and catering. More broadly, although the national union initiative to embed higher welfare and employment standards through the care commissioning process, the limited resources for coordination and monitoring meant that the union were not in a position to learn from these disparate successes.

In **case study 3**, management at BreadCo were much more aggressive in their approach to fragmenting systems of social dialogue by decentralising pay bargaining to plant level, and actively fostering competition between plants for continued financial support to achieve changes to terms and conditions and working practices. In **case study 2**, employment relations and social dialogue was rather more complex, involving national collective bargaining over pay and conditions, local bargaining over shift and working patterns, along with systems of direct communications between management and staff. A significant on-site agency presence segmented the workforce to an extent and the union struggled to recruit from the largely migrant temporary workforce leading to a somewhat difficult three way relationship between management, the agency provider and the trade union.

Turning next to the issue of dualism, the results of the case studies reveal a very mixed picture with a range of non-dualist trade union actions and outcomes (table 7.2). For example the trade unions in **case study 1** were able to strengthen protections for non-unionised workers outside of local authority control, but the narrowing of the gap between directly employed and subcontracted staff did not create any further impetus to ‘insource’ services back under local authority control. In fact, a trade-off for the improvement of pay and conditions across the care workforce was a clear commitment of the local authority to a market-model of provision, and the privatisation and shrinkage of the remaining in-house care services. In **case study 2** pay and conditions for permanent and agency workers were harmonised after 12 weeks despite agency workers being directly employed by the agency which would create the option to use the ‘Swedish derogation’. Instead, pay and conditions were relatively low for all workers (whether on a permanent or agency contract), and despite the survival of national collective bargaining the union had been unable to prevent the lowering of pay and conditions for permanent ‘insiders’.

Table 7-2 Multiple non-dualist strategies in four case studies

		Union actions for core/SER workers		
		Losses	Neutral	Gains
Union actions for workers on NSFE	Losses	3. Bakers union (<i>when plant closed</i>)		
	Neutral	2. Convergence on low wages for warehouse agency and permanent workers		
	Gains			1. Gains for all in-house low paid workers (<i>following adoption of local living wage policy</i>)
	Progress to SER			
			1. Subcontracted care workers (<i>initial focus of care charter</i>)	
			3. Bakers union action against zero hours contracts (<i>agency workers into perm contracts</i>)	
			4. Transition of fixed-term workers into permanent posts	
		<i>Levelling down – all workers lose out</i>	<i>Dualism – trade off position of non-core workers to protect insiders</i>	<i>Mixed outcomes – increase coverage of SER but no upgrading of SER conditions</i>
				<i>Levelling up – all workers benefit</i>

In **case study 3**, through sustained industrial action the baker’s union at North West plant were able to prevent agency work being used by management to level down pay and conditions, and also succeeded in transitioning agency workers into permanent posts. The ultimate trade-off here was that management mothballed the plant less than two years later. In contrast, the baker’s union at Yorkshire plant were not able to prevent introduction of agency workers, and saw a lowering of pay and conditions for permanent workers, but the plant remains open. In **case study 4**, rather than attempting to harmonise standards between groups the unions attempted to reduce the share of the workforce engaged on non-standard contracts by supporting them to move into permanent work where possible.

Looking across the four cases it appears that in the UK context, segmentation between workers in terms of pay and conditions tends to be less driven by the contract status of the employee (e.g. open ended contract, fixed-term contract, agency worker), but rather by the sector and occupational area within which workers find themselves. EU legislation has been relatively successful at narrowing gaps in employment standards (i.e. pay and conditions) between contract types but there are significant gaps in earnings according to the profitability of different sectors, prevailing labour market conditions and the willingness of employers to compete on quality rather than cost. Although there is certainly internal differentiation between standard and non-standard workers in respect of their access to career ladders, training and development, and social protections such as pensions, employers tend not to use fixed-term or agency work as a direct means to cut costs (i.e. via the Swedish derogation). Instead, employers may use the introduction of contingent labour as a mechanism to gradually level down pay for all workers (unionised or not) by 'picking-off' individual plants to renegotiate staffing arrangements and working practices. In turn, trade unions may be prevented or at least slow this process of 'levelling down' at plant level but only where the local workforce is very well organised and willing to hold out against management demands.

An important issue in terms of dualism is the sub-contracted workforce who often find themselves in a relatively weak position relative to both their direct employer, and the buyer at the top of the supply chain who may attempt to avoid their obligations to invest in good HR standards and properly regulate the employment relationship. Sub-contracted workers are not by definition precarious (i.e. they may be engaged on permanent full or part-time contracts, but owing to the complexity of the supply chain and the fluctuating demands of 'buyers', are only secure from contract to contract. Nevertheless, where there is organisational commitment to driving up standards (and where market conditions allow), the trade unions can use procurement mechanisms to embed progressive HR principles, which have a positive effect far beyond the directly employed workforce.

Turning finally to the ability of mechanisms of social dialogue to regulate the workplace, it is clear that systems of worker voice and representation (where they formally exist) struggle to counteract both overt and subtle forms of control and coercion 'on the shop floor'. Even where substantive matters of pay and conditions are relatively closely regulated through national or local level collective agreements (along with individual contracts of employment), the control of work schedules, and worker discipline are relatively under-regulated, and offer management significant scope to extract high levels of effort. This effect is magnified among workers on contingent or precarious contracts who are heavily (but often implicitly) incentivised to work hard and not to challenge management practices in order to secure access to a permanent job, or to continue to receive enough hours from those in control of work schedules.

8. Social dialogue and public procurement: Local authority contracting of care services

Local government is the lowest paid part of the UK public sector, and significant budget cuts since 2010 have placed additional pressure on pay, terms and conditions. The local government sector also makes extensive use of outsourced labour, typically to provide low paid services such as cleaning, catering and care services; work which is largely performed by women in part-time roles. Strict value for money considerations in the procurement of such services typically means low wages with few enhancements, leading to long hours and a risk that workers do not achieve the legal minimum wage. There is however evidence that despite a drastic slowdown in sector level social dialogue in recent years, individual local authorities are increasingly willing to use their positions as 'buyers' to improve employment standards among 'first tier' suppliers in care services, through the use of specific procurement clauses such as living wages, while also redesigning contracts to allow for travel time.

A key issue for this case study is the willingness and ability of local actors (politicians, procurement officers, unions and providers) to work collaboratively to tackle these pervasive problems of poor quality care and poor employment standards at a time of declining budgets. The case study data are drawn from five interviews: two national officers at a large UK public sector trade union which launched a national campaign and a charter for improving social care commissioning; two senior commissioning managers at a local authority in the north of England where the charter was implemented locally in 2015; a local representative of the same public sector union who lobbied local politicians to adopt the charter; and the director of a care provider engaged under contract to the local authority who was expected to adhere to the care and employment standards set out in the charter.

Procurement in local government

Local government in the UK has a long tradition of contracting out both core and non-core services. Compulsory competitive tendering adopted during the 1980s forced councils to open up large parts of their service delivery to private sector providers to eliminate 'producer capture' and achieve cost savings (Rhodes, 1994; Colling, 1999). Services such as residential and nursing homes (short-term, long-term and palliative care) and domiciliary care services in the clients own home are core functions of local authorities making up around £19 billion of spending annually. Many services and premises were transferred out of direct local authority control during the 1990s and 2000s as comparatively high pay and conditions made in-house services increasingly uncompetitive. As of 2010, the proportion of residential and nursing home placements in the independent sector stood at 90%, the vast majority of which is supplied by private for-profit providers (Forder and Allan, 2011). There is evidence to suggest that any reductions in running costs as a result of outsourcing were not derived from the inherently greater efficiency or management practices of the private sector, but rather from lower service standards and firms undercutting competitors through lower labour costs,

particularly as trade union penetration in newly privatised services was low (Escott and Whitfield 1995; Halford 1982). The subsequent movement of staff between organisations as contracts are re-let over time gradually dilutes the share of workers protected by TUPE regulations (which preserve the original local authority pay and conditions), and the removal of the two-tier code in 2010 allows new workers to be hired on inferior pay and conditions.

The issue is that the more local authorities rely on the external market, the more difficult it can be to regulate the quality of services, and along with it employment standards. Recent reports suggest that the private market for care services is failing large numbers of older people who face limited choice, high costs and low quality (Age UK, 2014). The role of the state in ‘market making’ through free competition between private providers may yield cost savings, but comes up against the requirement to engage in socially responsible procurement which incorporates the principles of non-discrimination, gender equality and decent work (referred to as ‘market embedding’) (Jaehrling 2015). Recent research has underlined the importance of public procurement in shaping pay and working conditions in the care sector where the state is effectively a monopsony buyer (Ravenswood and Kaine 2015), and there is evidence that local authorities are increasingly willing to leverage their position as ‘buyers’ to improve job quality under the auspices of ‘social value’, such as the inclusion of living wage criteria in contracts (Druker and White 2013; Koukiadaki 2014; Wright and Brown 2013). Successfully tackling poor employment conditions along the supply chain requires those in charge of public procurement to consider how they impact on ‘job quality’ through both direct means (e.g. specific pay clauses) and indirect means (e.g. broadening the scope of quality criteria and preventing firms undercutting on labour costs) (Jaehrling 2015).

Using procurement to improve employment standards

The way in which older person’s care services contracts are designed and structured plays a critical important role in shaping pay and working conditions (table 8.1).

Table 8-1 – forms of contract in local authority older persons’ care services

	Commissioner’s objective	Provider impact	Worker impact
Block contract	<i>To guarantee a service level for clients To ensure viability of providers Minimum standards agreed in advance</i>	<i>Stable income with less sharp competition between providers Guaranteed volumes of work means stable workforce</i>	<i>Guaranteed hours contracts May be some scope for payment for training and travel time (where fees are high enough)</i>
Framework with call-offs	<i>Broadly stable contract volumes but with flexibility to adjust to client demands Ability to allocate work to ‘cheaper’ or ‘better’ providers</i>	<i>Fewer guarantees over volumes and workforce Greater competition between providers on framework, typically favours bigger firms who can cross-subsidise</i>	<i>Reduced scope for guaranteed hours contracts, particularly among smaller firms who do not achieve sufficient volumes Cost competition means downward pressure on labour costs</i>
Spot contracting	<i>Close matching of cost and output Competition between providers used to drive down cost</i>	<i>No guarantees over contract volumes Sharp cost competition with little scope to emphasise quality Administratively burdensome</i>	<i>Likely to be zero hours contracts Limited overheads for training and travel allowances Difficult to establish career with one firm</i>

Source: adapted from Eurofound (2015 table 2); and Rubery et al. (2015)

For example, *block contracts* guarantee a certain volume of work to external providers with terms and conditions agreed in advance, which allows providers to plan their workforce and creates the most favourable conditions for permanent and regular hours employment contracts (although rates of pay may still be low if contract values are low). *Framework agreements* set the overall parameters of cost and quality for approved providers along with a broad outline of the volume and frequency of work, within which local authorities then use a 'call-off' contract to engage individual providers to deliver a number of hours over a period of weeks or months. Providers operating under a framework may be able to offer guaranteed hours contracts, although this may depend on the size of the individual provider. At the other extreme allowing providers to bid for individual packages of client care through *spot contracting* means the local authority has no binding relationship with external providers or obligation to offer them regular work. The spread of micro-commissioning through this form of 'reverse auction' has been severely criticised for explicitly encouraging aggressive cost competition between providers for relatively small packages of care, which local authorities use explicitly to save money (The Guardian online 27th August 2014⁵²). Where there are no guarantees of work, and councils do not pay 'retainer fees' to smooth over gaps in income when clients go into hospital, there is little scope for providers to pay anything more than the minimum wage and employees are invariably engaged on zero hours contracts (Eurofound 2015).

In order to prevent providers 'undercutting' on labour costs in order to secure a contract, some local authorities have moved to fixed-fee contracts where tenders are compared on criteria other than price such as quality, sustainability, staff training and the use of a local workforce. However, the reduction of grant funding to local authorities since 2010 has seen hourly fees stagnate in many cases, and in some cases councils have even cut fees (although not without challenge from providers who have argued that fees do not reflect the cost of providing care⁵³). Fixing a low hourly rate virtually guarantees that staff will be paid close to the national minimum wage with little room for enhancements, training and travel time.

The employers' representative body the UK Home Care Association (UKHCA) has long been lobbying central and local government for increased funding, and argues that contracts are becoming increasingly unviable for their members owing to the low rates paid by local authorities leading to difficulties in recruiting and retaining staff. The UKHCA has developed a formula for home care fees which allows for staff costs and overheads, and estimates that the minimum hourly rate needed to provide good quality domiciliary care with allowances for staff training and travel time is £15.74. However, less than 15% of local authorities are thought to pay this amount with an average rate of £13.66 per hour (BBC, 2015) a situation which is unlikely to improve in view of deep cuts to local government funding. Even where a contracting authority does attempt to leverage its position as a 'buyer' to drive up standards there are no guarantees that contracted employees will receive the full benefit. Although cost focused commissioning is connected with low quality employment (e.g. low hourly rates and casualised work) the reverse is not necessarily true – quality focused commissioning at a higher cost does not necessarily lead to higher pay or better HR practices (Rubery et al. 2015).

⁵² <https://www.theguardian.com/society/2014/aug/27/councils-care-contracts-online-auctions>

⁵³ <http://www.qsbdlaw.com/social-care-bulletins/april-2014>

The growing 'financialisation' of the social care sector is also a major concern. The collapse of the Southern Cross chain of nursing homes in 2011 revealed the potential of extensive problems associated with labyrinthine financial structures. Southern Cross used the 'sale and leaseback' of care home properties in order to expand during the 2000s but this left the company highly exposed to financial risk resulting from a combination of rising rents and decreasing incomes when local authorities cut back on social care spending after 2009. The majority of the 750 homes operated by Southern Cross were transferred to new ownership during 2011 and 2012, but there was a significant period of uncertainty for the 30,000 residents and around the same time evidence surfaced of serious mistreatment of residents at one of the company's care homes which was attributed to systemic mismanagement (The Guardian online, 9th June 2014).

Sector level social dialogue

Union membership density in the directly employed local government workforce has fallen in recent years but remains relatively high at 45%, and 61% of workers are covered by centralised collective bargaining (BIS 2016). Union representation among 'care, leisure and other service workers' is 27.4% but as this includes both public and private sector workers, the proportion of outsourced care workers who are union members is likely to be much lower. This presents significant challenges for the effective representation of worker interests, and the ability of local unions to engage with multiple private sector providers with a dispersed and precarious workforce.

In 2012 the local government trade union launched a nationwide public campaign to highlight the problem of poor care standards, and low paid and precarious work in the private sector, which the union argued was a result of the ideological commitment of successive governments to increased private sector provision and declining budgets for older persons' care (which contracted sharply under the Conservative-Liberal Democrat Coalition government's austerity policies of 2010-15). The union also recognised that organising care workers in the private sector had proved to be highly challenging, and the campaign could be used as both a surrogate for union representation in parts of the sector with low union membership as well as acting as a springboard to engage with providers and to recruit within the care workforce.

At the heart of this campaign was a voluntary 'charter' for care commissioning which sets out a number of key principles of compassionate care and a range of underpinning business and employment standards which commissioners and providers should aspire to embed locally through engagement with locally recognised unions and the social care workforce. The charter is organised into three stages which are designed to align with the 'commissioning cycle' where local authorities set out the overall approach to external provision, before moving into the specific terms and conditions of a contract (which are also likely to be the most costly from a contract perspective). The first stage refers to the basic principle of meeting client needs rather than 'time and task' contracting, and sets out a commitment to avoiding 15 minute visits and 'call cramming'. The second stage emphasises continuity of care by recommending that clients have the same care worker (where possible) and clear procedures for handling complaints. The final stage makes an explicit recommendation that councils commit resources to providing a living wage and an occupational sick pay scheme for contracted staff. Although the union remained fundamentally opposed to the fragmentation of public services through outsourcing, the charter was designed to both raise the profile of historically underpaid and undervalued care workers while also putting

pressure on local authorities to take responsibility for securing decent working conditions throughout their externally contracted workforce.

The key points of the charter from an employment perspective were:

- workers should be paid for travel time between visits
- zero hours contracts are not be used in place of full or part-time permanent contracts
- all homecare workers should receive a full living wage (£8.80 in London and £7.65 outside of London at the time)

Campaigning and coordination

In terms of the developing and launching the charter there were two key threads. The first was lobbying other organisations with a national presence such as the UK Home Care Association (UKHCA) and the Local Government Association (LGA) who had a clear interest in securing increased funding for social care. For example the announcement in June 2015 of an increase in the statutory national minimum wage to £7.20 (branded as the National Living Wage) to be introduced in April 2016, with an ambition to reach at least £9.00 per hour by 2020, led to joint briefings issued by the LGA and the UKHCA about underfunding. They argued that the higher minimum wage will cost an estimated £1bn by 2020 (LGA 2015), which without significant investment risked a potentially ‘catastrophic failure’ of the care system (The Guardian online 27th July 2015. However, this approach yielded only limited success. Following lobbying from the LGA, central government has provided some ‘transitional funding’ to offset the impact of further cuts in revenue budgets, , but Lord Porter (chairman of the LGA) acknowledged that “any extra cost pressures, such as those arising from rising demand or policies such as the National Living Wage, will have to be funded by councils finding savings from elsewhere” (Local Government Chronicle 2016⁵⁴).

The second thread was to engage directly with local union branches around issues facing the social care workforce, and to enable branches to develop local campaigns directed at political leaders and senior managers over the poor pay and working conditions within the private sector. The union gathered survey data from care workers which underlined the poor pay and working conditions across the sector (with some earning less than the minimum wage as a result of not being paid for travel time between visits), as well as the commitment and dedication of care workers themselves who often worked unrecorded overtime in order to deliver quality care to their clients. Engaging with branches entailed one of the national officers attending regional and local meetings to raise awareness of the national campaign, and to offer advice and guidance on how to launch local campaigns. Local branches were encouraged to use standardised campaign materials, and draw on shared information about the declining quality of care services and the link with poor working conditions, low levels of training and staff turnover. The focus here was more on identifying the scope within procurement processes to introduce specific workforce clauses, and more importantly challenging politicians to make a commitment to social care spending by asking ‘difficult’ questions at public meetings (which would then appear in the official minutes). It was also seen by national union officers as important for local branches to remain engaged in the implementation process to prevent it being diluted over time. Part of the issue is that while political leaders might be keen to

⁵⁴ <http://www.localgov.co.uk/Historic-settlement-promises-300m-of-transitional-funding-for-councils/40279>

make a commitment to the charter, officers within the council could find any number of obstacles such as the additional cost of longer visits and payment for travel time, while some hid behind the ruling of the European Court in the 'Ruffert' case which found that mandatory wage clauses were not compatible with EU procurement law on posted workers (see Koukiadaki 2014).

The union recognised that engaging with individual councils and nearly 3,500 individual care providers was a slow process and at the time of the research 13 local authorities in the UK (out of 375) had officially signed the charter. It was also difficult to learn from the disparate experiences of union branches across different regions, who had relationships of varying depth and quality with local authority politicians and officers, as well as different strategies for organising the local care workforce. The interview data drawn from one local authority which adopted the charter illustrates the importance of these local level dynamics of social dialogue in explaining patterns of success.

Local level social dialogue

The local authority is a large urban council in the North of England with a local population of around 750,000 and an annual budget of nearly £1bn. The council is currently led by the Labour party, who set budgets and provide the overall strategic direction for the council although council officers have significant delegated powers to draw up service plans, HR policies and external contracts. The council provides the majority of intermediate care (support for those with short-term care requirements and leaving hospital) along with specialist services for adults with learning disabilities. The decision to outsource care homes and domiciliary care was rather later than many other authorities: occurring mostly in the mid-2000s; with re-tendering exercises typically occurring every four to five years. In early 2015 the council formally signed up to the trade union's voluntary charter (two years after the national launch), although both the local trade union representative and the commissioning managers within the council interviewed argued that there had long been a broad ambition to improve the quality of private sector care provision, but funding pressures and a lack of clear political commitment had prevented the council taking decisive action.

The interview data revealed an interesting trifurcated system of 'social dialogue' at local level which relied on both formal and informal channels of communication. The first element was the lobbying of politicians to establish the charter as a blueprint for care commissioning (where union took the lead). The second element was the pragmatic engagement with external providers over contract redesign (where commissioners took the lead). The final (and most under-developed) element was the monitoring of the charter, and the emerging role of the unions and commissioners collaborating with providers to sustain good practice.

While the localised success of the trade union charter should not be understated, the ongoing tension between the market making and market embedding role of the state (local government in this case) produced a number of interesting tensions and trade-offs between different economic and social goals. On the one hand this reflects broader ambiguities around what 'socially responsible procurement' entails, and the responsibility of the state to engineer particular outcomes over and above the basic delivery of the contract specification, but on the other hand the findings illustrate the often messy and incomplete process of local reform and the important role of powerful individual actors in driving through change.

Establishing a commitment to ‘high-road’ contracting through political lobbying

For the local trade union branch, upgrading pay and working conditions in the private sector was a moral imperative, which at the same time could be used as a means to slow down the privatisation of the remaining in-house care services (as the differential in pay of directly employed staff over contracted staff would narrow). For the local authority commissioners, working with fewer providers and stabilising contract volumes over the medium- and long-term were important mechanisms to develop quality and capacity in the local market, while also reducing the bureaucracy associated with frequent ‘spot’ contracting (for as little as 20 hours care for a single client). Improving staff pay and conditions was also seen as a means to improve the reputation of the care profession and the local authority, while also contributing to the continuity of care by reducing staff turnover. There was also the recognition from commissioners that the rapid outsourcing of services over the last decade placed a responsibility on the council to properly regulate the external market.

Although the charter created an opportunity for commissioners, the trade union and providers to engage in dialogue about the future direction of care services and workforce development, concrete actions to improve care commissioning resulted from persistent union lobbying of Labour politicians who adopted the charter as a local motif of organisational ethics, and secured the additional funding by drawing on the council’s reserves.

For the trade union locally, getting the council to formally sign the charter was the result of nearly three years of persistent lobbying of politicians to look at care commissioning and the charter:

“...we kept banging on about ethical care, banging on about travelling time, banging on about zero hour contracts, banging on about 15 minutes. So all the elements we continued to bang on about, in the end...I think they just got fed up with us...”

This lobbying through both formal and informal channels reflects a loose and largely pragmatic approach to local level ‘social dialogue’:

“...the reality is you take every opportunity, don’t you? So if I bumped into an elected member who was sat having a cup of coffee then I might use the position and have a cup of coffee and do it that way, but there is formal processes as well. We had...and still do have regular meetings with the executive board member for adult social care...”

This strategy proved to be relatively effective, and through these channels the union asked questions about the commitment of the council to high quality care as well as playing on the personal values and emotions of individual politicians:

“...no politician from either party would stand on a platform saying, we don’t believe in quality care, so you basically remind them that, you know, that could be your mum, yeah, as emotional as that really...”

For the union the main stumbling block (and ultimately the main prize) of the charter was the living wage which was only implemented in part owing to the significant additional cost. While the union were unsurprisingly disappointed that the local living wage fell short of the figure recommended by the Living Wage Foundation, it was seen as an important first step to increasing wages at the bottom. Furthermore, the commitment to raising wages above the statutory minimum wage (£7.20 at the time for workers aged 25 and over) for outsourced care workers was a major achievement for the union at a time of tight spending constraints. In late 2015 the council outlined plans to

implement a 'living wage' in April 2016 based on the 2014/15 UK living wage of £7.85 uprated in-line with inflation (which equated to £8.01). This would cover nearly 2,000 directly employed non-schools staff (mostly cleaners, drivers and environmental 'street scene' officers) at a total cost of around £2.5m or 0.5% of the wage bill. However, in November 2015 the Living Wage Foundation announced a sharp increase in the UK living wage to £8.25 per hour, which left the local authority £0.24 short of the new rate. The new base rate of £8.01 was approved by decision makers as 'a stage' in moving towards a full UK living wage of £8.25 and was agreed as a condition of the new social care contracts at a cost of around £1.2m.

Incorporating higher workforce standards through contract redesign

Once the political commitment had been secured to fund improved care standards, the specific features of the care charter were translated into improved workforce standards through the redesign of contracts. The redesign process, and the specific contract terms underline the interesting dual role of the local state in securing the most advantageous economic outcomes (e.g. the 'best value' for the taxpayer) set against the achievement of 'social ends' through public procurement by specifying pay and terms and conditions for contracted out workers.

The key features of the new contract were higher fixed hourly fees to cover increased wages and payment for training and travel time and the redesign of contracts to allow for greater stability in contract volumes which would reduce the need for zero hours contracts. The redesign process involved an extensive consultation process which took around 18 months in total between 2013 and 2015, and involved a 'working group' made up of politicians, council managers, the local trade union representative, service user groups and providers. This working group largely confirmed many of the workforce issues raised by the charter namely: low hourly rates of pay; zero hours contracts; and the non-payment for travel time. Under the old framework, the union argued that although no specific provisions were made for the payment of travel time, it was generally assumed that providers did pay workers for travel time. However, as fees were low and the council did not check very few actually did:

"...one of [the providers] actually said, look, there's people in this room who don't pay traveling time, we do, but I know for a fact some people sat in this room don't..."

This reinforced the need to pay for travel time as part of the new contract which in the end was the most expensive element. The restructuring of contracts into six geographical zones delivered by four primary providers (backed up by a further eight providers on the framework who would in-fill) also meant a significant reduction in the number of providers, and a corresponding increase in the volumes of work each would be given. Stability in contract volumes allows for better workforce planning, and also means that providers do not have to use zero hours contracts in order to adjust staffing capacity with fluctuations in contracted client hours. This also meant the a number of smaller locally-based firms would not be re-contracted and would potentially move out of the area or close altogether. It also meant that four larger providers (based outside of the local area) would move in to take over the existing client base. TUPE protections in the area of home care are complex. TUPE law applies where staff move from a local authority to a private sector firm following a competitive tendering exercise to outsource a particular services (of any size/value), and TUPE law freezes workers' pay and conditions at the point of transfer in order to prevent an immediate lowering of rewards (although new staff can be brought in on lower pay and conditions which dilutes

the share of TUPE protected conditions over time). Where a 'service provision change' occurs such as when private provider loses a contract to a rival, for TUPE to apply staff must have worked solely on the contract to provide services to the client, and must be brought together by the employer in such a way as to clearly service the client's contract (e.g. by designing specific team structures and shift patterns). Where this does not occur the firm losing the contract may be liable for any redundancy costs. However, the marginal differences in pay and conditions between private sector providers means that TUPE law would have a relatively low 'bite' even if it did apply and many workers will simply leave one firm (with or without redundancy payments) and move to new firms who have won contracts. As staff working for existing providers worked with a mix of local authority and private clients and may have worked across local authority boundaries, no staff were transferred into the organisations who won the contracts under TUPE regulations. The higher pay and conditions agreed as part of the new framework also meant that there was no reason to protect existing pay and conditions.

One of the new providers was a staff owned cooperative based in the north east of England, which held contracts across a number of geographical regions and seven local authorities. The new contract was by far the biggest that the organisation held, although according to the director of the firm interviewed the ambition of the organisation for the future and the ability to 'scale-up' operations by taking on extra staff was one of the reasons they were successful.

"...in the last couple of years we've doubled in size every two or three years. So we're motoring..."

In addition, by fixing the hourly fees, providers were competing on the quality and sustainability of care rather than undercutting on labour costs which was seen by the director of the provider as one of their strengths. Staff owned 51% of shares in the organisation which meant that the balance of power (notionally at least) would always reside with workers, and also meant that they were able to offer a tax-exempt bonus system meaning that all staff had a stake in the success of the business. This 'egalitarian' approach was reflected in low levels of staff turnover and continuity of care:

"...our main theory is that engaged employees deliver high quality care...our offer is, come and join our family, you can have a share in the ownership, whatever we make you'll get a share of that, you'll have an input into the governance...so it's a different kind of offer... what we find is if we can keep somebody for six months they'll stick with us a long, long, long time..."

Bringing in new providers with a quality focused approach was also seen by commissioners as important to secure improved outcomes for clients rather than focusing solely on 'time and task' which had been the case in the past. Although spot contracting with providers offering their best price was cost effective (as only actual contact hours are paid for), it meant that care workers hours also fluctuated in-line with demand, and was actually very inflexible as any changes to care packages (due to hospital visits or changes in personal circumstances which meant less care visits were required) had to be signed off by a social worker following a re-assessment of the client's needs. By moving to a guaranteed volume of hours across the year, providers would work directly with clients and social workers to adjust care packages from week to week and would reallocate workers elsewhere if demand decreased. The trade-off here is that the council does not necessarily know whether all of the paid for hours would actually be delivered:

"...we're having to really trust the providers..." [Care commissioner]

The main protection against missed visits was the introduction of an electronic monitoring system which logs care workers in and out of visits in the client's home. This is typically used where local authorities control time and task very closely, and pay only for the exact number of minutes a worker spends on a visit (Bessa et al. 2013; Rubery et al. 2015). However, the commissioners in this case were keen to stress that electronic monitoring would be used to track whether clients were consistently receiving the number of visits and contact hours agreed and costed for. By agreeing fewer, larger contracts across zones the main improvement in terms of employment standards was the scope to offer guaranteed hours contracts to staff, instead of using zero hours contracts which was the standard approach of providers on the old framework agreement.

"...we've not made it carte blanche...but [the new contract] gives [providers] a lot more stable guaranteed hours which therefore should mean they can then guarantee work and move away from zero hours. That's the plan..."

The director of the care firm interviewed confirmed that staff contracts would be offered on a standard 16 or 37 hours per week basis for the new framework, although zero hours contracts would be available for those workers who 'chose them' (with rotas issued four weeks in advance and flexibility for workers to increase and decrease hours). Furthermore, zero hours contracts were not viewed as inherently exploitative within the organisation, and were seen as largely a product of local authority commissioning practices through spot contracts as they did not guarantee sufficient volumes of work or pay retainers when clients did not require visits.

"...I don't see any conflict with share ownership and zero hour contracts because, you see, you're blaming the media's spin that zero contracts are bad... [some workers] actually quite like to be able to pick and choose... I don't want to use zero hour contracts, in some cases, I really haven't got a choice, and that's not me being a nasty capitalist to rip loads of profit out of the business, that's...you know, that's the nature of it..."

Hourly fees were agreed through negotiation with providers, drawing on the formula used by the UKHCA to develop a minimum sustainable level of funding for care. For example, the UKHCA minimum pricing model starts from the statutory national minimum wage, and suggests 11.4 minutes of payment (19%) should be added to each hour of contact time to allow for travel between visits, and an allowance of 12.07% on top of a workers gross pay should be added for holiday pay, and 1.73% added for training time. Although the UKHCA suggest that local authorities should not treat a flat rate of pay at the statutory national minimum wage without enhancements for weekends and unsocial hours as an "acceptable price capable of achieving a stable workforce, or a sustainable organisation" no specific estimations are included in the model for enhancements to basic pay. The UKHCA model also suggests that around 30% of the hourly rate should be gross operating margin for providers, including a 3% profit margin. The council argued that the allowance of a 30% gross operating margin was too high considering the typical running costs of providers in the local market (where spend on office premises, ICT, and marketing was typically low), although the new contract did allow for a 3% profit margin.

The division of the local authority area into six lots produced three urban zones, two rural zones and one super rural zone and the differential pricing reflected the additional travel time and costs for workers in outlying areas, and also the difficulty which providers in rural areas had experienced in recruiting and retaining staff without paying for longer travel time. The care provider noted that a

further 100 staff were needed in order to reach the full volume of hours, but this had been a slow process as the local labour market was relatively 'buoyant' compared with other local authority areas, and there was competition for staff from other big employers in the area such as supermarkets. Downwards adjustments to the urban prices were made on the basis that providers would achieve efficiencies in travel time and costs through better rota and 'route planning' for workers which would reduce the time spent travelling between visits, along with an assumption that more journeys would be made on foot. For example: 45% was added to the basic hourly staffing costs in the super rural zones to allow for travel time and travel costs; 42% in the rural zones; and 24% in the urban zones (although actual payments for travel time and costs would obviously vary according to the number of clients which a worker saw in a shift).

The three rates agreed between the council and providers were:

- £14.41 per hour for urban zones
- £15.98 for rural zones (suburbs and outlying commuter villages)
- £16.26 for 'super rural' zones (the outer parts of the local area containing open countryside, small villages and remote houses)

These rates were a marked increase on the previous rates of around £12 per hour, and in the rural and super-rural zones were higher than the UKHCA's estimation of a reasonable hourly rate of £15.74 to allow for hourly rates of pay above the adult minimum wage (£7.20 per hour as of April 2016) and allowances for travel time and training. However, the unequal distribution of contact hours across zones meant that the majority of providers would only receive the lowest rate of £14.41 which is £1.33 below the UKHCA rate: 80% of all contact hours were allocated in the urban zones; 17.5% in rural zones; and just 2.5% in the super rural zone making the average rate £14.73 per hour. Nevertheless, all rates included the higher basic pay of £8.01 per hour. The legality of 'mandating' a higher wage rate in the contract specification was debated within the council but ultimately it was seen as worth the risk:

"...you hear debates coming out from councils, from procurement, that you're not allowed to do that. We were advised that there may be a risk and we went fine, we will take that. And we wrote into the document we are at risk of challenge and well, no one's challenged us..."

The increase in rates was estimated to add around £2.5m to the total annual contract values for home care of £27m (nearly a 10% increase) which was met from council reserves. From a financial perspective this was problematic as contract renewals were usually expected to yield savings (to contribute to departmental cutbacks):

"...every time something comes up for commissioning it's can we take out ten per cent? Can we take out 15 per cent? Can we stop it?"

Commissioners noted that the increase spend on homecare, alongside an expansion of the in-house 'reablement' service (which supports client to live independently at home) would ultimately prove more cost-effective as it required fewer residential, nursing or hospital care stays (which were far more expensive). The contradiction between the role of the state in 'market making' and 'market embedding' (Jaehrling 2015) was highlighted clearly by the inclusion of an agreed profit margin for providers. Allowing for a 3% profit margin to private providers (and by extension guaranteeing that at least 3% of the cost of buying in the service would never translate into actual care provision),

could be construed as interfering in the free-operation of the market, but commissioners reasoned that the cost of buying the service from the private sector was still cheaper than could be provided in-house, and the council had a duty to sustain the local market as far as possible:

"...under the Care Act we have a requirement to stimulate and support the market. We couldn't afford for tons of them to go under..."

Commissioners viewed the guaranteeing of profit margins as part of an overall increase in fees as a proportionate means to improve quality and working conditions (the 'market embedding' role), although it was recognised that the impact on the business model of providers would vary according to the type and amount of care they provided:

"...there are some areas where clearly it was our responsibility to pay [more] because the margins were too small...there are other organisations in the third sector and the independent sector where you're paying huge amounts for that person's care....if [providers are] getting £2,000 a week [they] should be paying [their] staff a living wage..."

As has been observed by others (Rubery et al. 2015), the impact of the uplift in fees on pay and conditions within the provider we interviewed was not straightforward. Although higher basic rates of pay and pay for travel time were an explicit condition of the new contract, enhancements for unsocial hours and weekend working were not specified, and the disappearance of differentials between care workers and supervisors/managers was seen as an issue for providers to address. The council recognised that the sharp uplift at the bottom could impact on the internal wage structure of providers, but some providers had attempted to invoke differentials to leverage wage increases all the way up to management grades which led to the council dismissing all claims for the restoration of differentials:

"...I understand the differential in a care home where your cleaner now ends up being paid the same as the care staff. Maybe, yeah, there's something there. But you know what, if you're paying your area manager £70,000 a year, that's nothing to do with me..."

Rather than higher bases rates being used as a springboard for bargaining over the restoration of vertical differentials, the provider simply allowed differentials to open up between wage rates and bonuses across geographical territories. This was justified on the basis that market forces produced 'natural' differentials between areas, and more importantly that staff working in different areas would not find out what others were being paid:

"...the approach is very much we'll pay the going rate benchmarked locally, and that goes from support worker to managing director....support workers on the whole don't intermix between territories..."

2015 ASHE data from across the UK suggests that median wages for women in part-time 'care and personal service' roles are highly compressed at the bottom, and vary little from area to area: ranging from a low of £8.00 in Yorkshire and Humberside to a high of £8.98 in London (a difference of just 10.9% compared with an inter-regional variance of 33.4% for all workers). It is perhaps management opportunism which is therefore more significant than 'market forces' in shaping internal wage segmentation (Rubery 1997), along with the specific contract terms offered by the local authority. Moreover, although the most profitable territories could theoretically be used to

cross-subsidise those areas operating at break-even, the managing director argued that this was unfair to those working under contract to more progressive local authorities:

"...why should support workers in [Council X] be penalised because [Council Y] pay crap rates?"

The geographical differentials in basic rates of pay were partly offset by a company-wide bonus system, and at the same time were further widened by a quarterly profit share system. A bonus system for all employees was based on the length of service and the number of shares which individual employees owned (up to a maximum of 5%), and in order to qualify for tax-exempt status, the bonus system had to be administered on a whole-company basis (reflecting overall profitability and the number of shares which staff members owned). The quarterly profit share system however which was not tax-exempt was based on the geographical group which staff members worked in. As was the case with differences in basic pay, any differences in the profit share system were seen as a direct product of localised commissioning practices. Perhaps reflecting the relatively powerful position of individual local authorities in their respective local markets, even large providers operating nationally had little scope to try and leverage the higher rates paid in one area to negotiation increases in another area and simply had to absorb low fees. The provider noted that the local authority in this case was certainly one of the more 'progressive' commissioners of care services, other less lucrative contracts in areas paying lower rates were sustainable as long as that territory was not 'haemorrhaging money'.

Creating a platform for deeper collaboration through implementation and monitoring

The final element of local level social dialogue was the mechanisms by which quality standards and working conditions would be monitored and enforced. Although all providers have to meet the quality standards of the Care Quality Commission these relate primarily to safeguarding and basic training requirements along with health and safety checks. The local authority was committed to engaging with only 'gold standard' providers, and felt that fixing fees as part of the contract process enable the final contract award decision to be based on 100% quality criteria.

In terms of the charter itself, the trade union expressed concern that once the publicity from the initial launch faded, there would less commitment to maintaining the same high standards:

"...my fear has always been that after a period of time, you know, you describe it as people drift away, over a period of time we won't be monitoring it properly, so we won't be increasing it up to the full living wage because of cost...or unscrupulous employers will find a loop hole..."

The provider undertook their own internal audit procedures on wage rates:

"...we take a sample of workers, look at what they're being paid, look at the rotas, look at their hours, look at their travel time and over a period make sure that they're above the living wage..."

But in terms of external scrutiny from the council, the process was still in development:

"...we meet with the council fortnightly and they are essentially keen to know about our capacity, our recruitment and whether we're scaling up... then there's been themed meetings around PR and trying to promote the care worker career... there're a lot of good ideas and there's a lot of appetite but I don't quite think some of the business systems and communication flow issues from the council's side have been fully embedded yet..."

Reducing from nearly fifty providers to just four primary providers across six areas had led to challenges from some of the larger national chains who in effect tried to bully the council into changing the decision:

"...they were threatening us with legal action and they challenged every single score, made us go through every part...they clearly have a system designed to do that to put people off..."

Furthermore, the commissioners recognised that reducing the number of providers and giving them larger volumes of work potentially exposed clients to a greater risk of substandard care (should any of the providers 'turn rogue'), and that the council would arguably be in a weaker position to enforce compliance with the charter. However, at the same time the smaller number of providers made it more feasible to meet regularly and identify issues quickly without the need for 'enforcement':

"...so we suspend home care providers on a regular basis....that's our stick....I'm hoping though that because...we're down to four providers, we're going to see them every week, every two weeks. So anything at all that starts to bubble under will be saying to them what's going on and getting it resolved really, really quickly. So my hope is that the requirement to suspend will be less often..."

The provider had its own internal compliance and quality unit, although the organisation contracted out specialist HR advice such as TUPE transfers. Although the organisation did not formally recognise a trade union for the purposes of collective negotiation the director indicated they were not anti-union and were happy to engage. Only a small number of staff were union members which was seen as partly a product of a trade union view of staff-owned enterprises as a stepping stone to privatisation:

"...I've come across issues with some unions who see the cooperative movement as a challenge....I think the relationship of a union in an employee owned business is different from a commercial one...we're happy to have flyers and I'm happy to have a conversation..."

For the local union, organising the private sector care workforce was recognised as a long-standing problem which stemmed from employer hostility (particularly among the large providers):

"...we would like to get in to represent these people in these organisations, but it's a difficult area to recruit in...we don't even know half of the new providers and we've got to try to persuade some of them who may not be naturally minded to let us in..."

However, the closer working links between the union, council commissioners and providers opened up the possibility of working directly with providers on training which was seen as a way to 'gain a foothold' in order to advertise the union and potentially recruit new members:

"...we're potentially trying to look at whether we can provide care certificate training... as long as we get access to the employees..."

From the provider's perspective the trade union offer was not necessarily unique nor designed with the practicalities of care work routines in mind:

"...putting on a bit of free training in dementia, you know, it may be the wrong length and the wrong location..."

The commissioners were broadly supportive of the union efforts to organise in the private sector, but were not necessarily optimistic about the chances of making significant inroads:

“...it's more about unions using their political clout to make something happen, which is fine. But I really think they're going to have to really work hard and start recruiting...”

Mirroring the difficulties which the union had faced in leveraging the success of individual local level campaigns to build pressure more broadly on employers across the sector, the union locally also struggled to leverage the success of the charter and the additional funding for wages within the adult social care department to raise standards in other departments where external contractors were used such as children's services, environmental services, or school cleaning and catering. Although the charter was 'a means to an end' in that it achieved the union's goal of raising basic pay for care workers (albeit not to the full living wage they had hoped for) it was not seen as a template for similar strategies to review other contracts where low wages and precarious work were also identified as problems. It appears that the trade-off for developing a successful but highly specific campaign around the quality of care for older people, and the related issues of sub-standard pay and working conditions, was that it remained somewhat isolated from the wider efforts of the union to increase funding for local government and to secure a full living wage for all local government workers.

Raising the bar in care commissioning: market making *and* market embedding?

The findings of this case study underline that in a UK context where the joint regulation of pay and conditions is weak, and the outsourcing of public services is used to lower labour costs, the public procurement process is an important mechanism through which working conditions among the private sector care workforce are regulated (Jaehrling 2015). This is in terms of both the resources committed to achieving a social end such as higher pay and conditions, but also the move away from 'micro-commissioning' of time and task which allows providers to offer guaranteed hours contracts to staff, and greater incentives to develop a career with the organisation (table 8.1).

In response to entrenched problems of low pay, insecure working hours, inadequate terms and conditions, and limited scope for training and career development, a major UK trade union launched a campaign to draw attention to a critical but chronically underfunded service area, largely staffed by women in part-time roles. At the heart of this campaign was a voluntary 'charter' for care commissioning which set out a number of key principles of compassionate care and a range of underpinning business and employment standards which commissioners and providers should aspire to embed locally through engagement with locally recognised unions and the social care workforce.

This case study of one local authority which adopted the charter in 2015 revealed an interesting three-stage process of 'social dialogue' at local level which was critical to the adoption and implementation of the charter. The first element was the trade union lobbying of politicians to establish the charter as a blueprint for care commissioning. The second element was the pragmatic engagement of commissioners with external providers over contract redesign. The final element was the monitoring of the charter, and the emerging role of the unions and commissioners collaborating with providers to sustain good practice (which cannot be fully assessed yet).

The process of political lobbying relied on an element of opportunism within the local union branch in taking any opportunity to raise the issue of poor pay and conditions in the care sector with sympathetic politicians, and a degree of persistence in pushing both politicians and officers to develop a viable strategy which would address some of these employment concerns. Commissioners were also receptive to the idea of increasing resources for care services, while also simplifying the structure of the local contract. It was clear that previous framework contracts had delivered variable outcomes: on the one hand unit costs were relatively low and only contact time with clients was paid for; but the market had become highly fragmented with lots of providers of different sizes and quality standards bidding for small volumes of work on the basis of cost, leading to high staff turnover and dissatisfaction among providers. The findings suggest that behind the political rhetoric of achieving more compassionate and higher quality care, there are still clearly tensions between the market making and market embedding role of public procurement. This in part can be explained by the fact that the commissioners of social care services are very clearly pragmatists: they want best the standards available within the available budget; but recognise that the lower pay and conditions across much of the private and independent sector (compared with directly employed staff) is one of the main drivers for outsourcing in the first place. Once the political commitment to more resources for care had been made, the commissioners engaged tactically with providers to agree higher 'sustainable' fees, which allowed for an agreed profit margin of 3%, and an increase in basic pay for staff to £8.01 per hour (which was branded as a local living wage), and allowances for paid travel time between clients (which had not explicitly been included previously). Furthermore, a reduction in the number of providers and the expansion of geographical zones offered some guarantees over contract volumes which allowed providers to offer guaranteed hours contracts instead of zero hours contracts.

The local union branch was largely focused on the uprating of pay among contractors (which they saw as an important lever to reduce the incentive for further outsourcing), but the local living wage of £8.01 per hour was seen as a 'stepping stone' to achieving a full living wage of £8.25 per hour. The difficulty here will be getting the local authority to agree to release more funds to match the full UK living wage when it is uprated again in November. As might be expected, providers in turn appeared to respond positively to this 'high-road' form of contracting but at the same time, the provider we interviewed still accepted work from 'low road' authorities, and simply allowed differential levels of pay and conditions to emerge between internal workforce 'groups' organised along geographical lines. Thus the pay and conditions on offer within the sector clearly vary according to the commissioning practices of individual local authorities, and neither the providers nor the trade unions appear to have been able to use the localised success of the care charter at one 'progressive' local authority as a platform to level up commissioning standards across areas.

The union locally planned to use the offer of training as a means to engage with providers and to recruit care workers which was seen as an important mechanism of building bottom-up pressure on both local authorities and providers, however the union nationally recognised that such a resource intensive approach could not be replicated across 3,500 private sector providers and 375 local authorities. If the trade unions can recruit workers from the private sector, this gives them an opportunity to input to discussions about staffing but it remains to be seen whether the involvement of the union in pushing through the principles of the care charter will translate into formal recognition by private providers.

The monitoring of individual contracts is potentially an issue over the long term, but offers some scope for local authority commissioners, providers and the trade unions to work more closely to ensure standards are upheld. For example bi-weekly meetings between commissioners and providers are intended to create a space to discuss capacity and quality issues, and to identify workforce issues such as training and career development. The monitoring of compliance with the new increased wage should be relatively straightforward as providers and workers will both have documentation to produce, but payment for travel time between clients is potentially more of a problem particularly for those in outlying areas, and where providers see route planning and journey times as a source of efficiency savings. Furthermore, while the quality of care may be a high political priority within the local authority, the limited resources available for planned and 'spot' checks means that large numbers of contact hours could be commissioned before breaches were spotted. Similarly the greater reliance on a smaller number of providers potentially blunts the 'competitive mechanisms' of the market in driving up standards and exposes the council to greater risk should any of the external contractors fail.

While the localised success of the trade union charter should not be understated, the ongoing tension between the market making and market embedding role of the state (local government in this case) produced a number of interesting tensions and trade-offs between different economic and social goals (Jaehrling 2015). On the one hand this reflects broader ambiguities around what 'socially responsible procurement' entails, and the responsibility of the state to engineer particular outcomes over and above the basic delivery of the contract specification, but on the other hand the findings illustrate the often messy and incomplete process of local reform and the important role of powerful individual actors in driving through change.

9. Restructuring employment relations in the temporary agency workforce

The continued growth of temporary agency work in the UK arguably points to a continued degradation of the standard open-ended employment relationship as more workers find themselves engaged on short-term assignments through labour market intermediaries. Moreover, as temporary agency workers (TAWs) in the UK do not share the same legal status as ‘employees’ they are not entitled to certain minimum employment rights such as maternity leave, notice periods and protection from unfair dismissal. Long-term ‘strategic sourcing’ partnerships between agencies and clients offer some scope for an upwards restructuring of employment relations, however the limited reach and bargaining power of trade unions in sectors such as food preparation and warehousing means there are few opportunities for the coordinated upgrading of pay and terms and conditions.

The current research seeks to explore the nature and substantive features of ‘strategic partnerships’ and whether it leads to positive outcomes for workers, or whether clients largely dictate pay and conditions. The case study data are drawn from ten interviews, involving two senior managers at two employment agencies (GlobalAgency and EuroAgency) and a ‘nested case’ within EuroAgency involving interviews with management at a large client retail company (PharmaCo) plus three agency workers, two directly employed staff and a union representative.

The temporary agency sector in the UK

Temporary agency work in the UK is big business: over 1 million workers are engaged on a temporary assignment at any one time; and the industry turns over close to £30bn each year⁵⁵. It has been argued that the spread of contingent work reflects the preferences for employers to move away from ‘costly’ and rigid internal labour market structures to meet changing business conditions, something which agencies have been quick to capitalise on (Bonet et al. 2013; Burgess et al. 2013). At the same time, it is argued that many workers choose to move between temporary assignments in order to maximise their hourly earnings, and to enhance both work satisfaction and human capital through a ‘portfolio career’ instead of gambling on steady progression through the ranks at a single organisation (REC 2015).

Temporary agency work is often promoted as an entry route to the labour market for the unemployed and employment agencies themselves are significant ‘gatekeepers’ to permanent employment opportunities within individual firms. There is however a trade-off between the availability of job opportunities for less skilled and experienced workers and the intense cost competition in those sectors where agency work is prevalent such as construction and warehouse work which keeps wages low (Gray 2002). The ability of agency workers as a distinct group to access existing channels of worker voice is in large part mediated by the presence of trade unions in low paying sectors, but also by the strategy of trade unions towards organising agency workers (Heery 2004). Perhaps recognising the significant share of the UK workforce engaged through temporary

⁵⁵ <http://www.telegraph.co.uk/finance/jobs/11191471/Recruitment-industry-now-bigger-than-its-pre-crisis-peak.html>

agencies, trade unions have moved away from more protectionist approaches (excluding and replacing agency workers) and have adopted more inclusive approaches by pressing for greater labour market regulations for all workers (thus reducing the scope to undercut on labour costs by using agency workers) and organising agency workers directly in larger agencies (op. cit.).

Regulating working conditions

The role of agencies in actively shaping working conditions in the labour market is the subject of considerable debate. Peck and Theodore (1998) note a steady polarisation between the top and bottom of the labour market in the US, with employment agencies themselves contributing to a sharp dualism in employment relations through their own business strategies of 'restructuring up' and 'restructuring down'. Downward restructuring reflects the hyper-commodification of labour at the bottom, whereby workers are engaged on a highly casual 'day-labour' basis with minimal screening or background checks (referred to within the industry as 'body slamming'), typically through equally precarious agencies or 'hiring halls' operating at the margins of the formal economy (op. cit.). Upward restructuring on the other hand reflects the preferences of large corporate employers to outsource not only the 'mechanics' of hiring (e.g. advertising, interviewing) but also to manage employment relationships over the long term (op cit). This is achieved by forging deeper 'corporate partnerships' built on more rigorous 'screening' of workers and the flexible deployment of a large pool of workers to match demand, with agencies themselves taking on a greater share of the risk for dealing with underemployment (e.g. by placing workers elsewhere). Peck and Theodore observed that some agencies increasingly offered a significant on-site presence not only to help balance issues of labour supply and demand, but also to deal with the 'day-to-day hassles' associated with managing staff attendance, timekeeping, and productivity. Thus agencies themselves are highly embedded in the system of employment relations within particular sectors and organisations, and have assumed a greater share of the responsibility for managing the labour process.

The issue remains that despite the strengthening of business relationships between agencies and clients, and some limited progress towards union organising among agency workers, in a 'triangular' temporary employment relationship employee voice remains very weak and workers may struggle to establish a career with either the agency or the client. Employment intermediaries have been argued to transfer risk onto workers and compound poor working conditions in secondary labour markets through cut-throat cost competition (Burgess et al. 2013), and it has been argued that agencies themselves favour cost-based rather than 'value-adding' HRM in order to keep unit prices as low as possible, resulting in low wages and under-investment in training and development (Hoque et al. 2011). Recent evidence from the 'luxury' segment of the Australian hospitality sector presented by Knox (2014) suggests there are both business and worker benefits which can be derived from a valued-added approach to HRM within employment agencies, which at the same time makes low road cost-cutting HRM less viable. A move away from cost-based HRM within one of the case study firms helped to strengthen relationships between agencies and clients which in turn resulted in higher pay, more control for workers over tasks and work routines, and improved career ladders underpinned by training and development. This was linked with a stable and well trained workforce, but also as a result of the reduced transactional costs associated with low turnover and higher productivity. In contrast the low road case-study firm saw much higher staff turnover and lower client satisfaction. Value-added HRM was in part possible because of the higher client fees at

the top end of the hospitality industry; it seems less likely that this could be replicated in a more cost-sensitive segment of the market such as cleaning, warehousing and industrial work where large numbers of temp agency workers in the UK are found.

In the UK, Forde and Slater (2011) observe a shift towards longer-term 'managed service' arrangements as a 'sole' or 'preferred supplier' to large clients. This included agencies taking over routine administrative tasks such as undertaking criminal records disclosure checks and basic literacy tests, along with offering HR, payroll and training services in order to preserve margins. The average hourly margin which agencies collect is estimated to be around 20% on top of all wage costs, but the range can be anywhere between 5% to 50% depending on the nature of the skill set, the administrative burden of engaging workers, and the nature of the contract between agency and client. This research also noted that margins declined during the recession as clients looked to achieve greater savings from external contracts, and in response agencies either accepted reduced margins in order to sustain larger contracts, or attempted to take on a greater 'value-added role' in order to protect margins.

There have been attempts to reduce wage differentials between contingent and regular employment through the upgrading of employment conditions of temporary agency workers across Europe. A key piece of regulation is the 2011 Agency Worker's Directive which established the principle of pay harmonisation after the completion of a 12-week continuous assignment with the same client. However, it is arguable that this led to clients attempting to evade the rule by switching to assignments of less than 12 weeks, or requesting that workers be engaged on a pay-between-assignments contract (referred to variously as the Swedish or German derogation) which means that equal pay claims cannot be invoked (as the worker is an employee of the agency and not the client). Pay-between-assignments (PBA) contracts are a complex issue. On the one hand, PBA workers can be engaged on an assignment for long periods of time with the same client without ever achieving parity with directly employed staff. On the other hand, once an assignment finishes, as a direct employee of the agency, workers are entitled to four weeks' pay equivalent to at least 50% of the hourly rate on their last assignment or the national minimum wage (whichever is the greater). After four weeks the agency can terminate the PBA contract which may also incur a redundancy payment, and PBA workers are also protected by internal grievance procedures, and are notionally protected from unfair dismissal (where they have been engaged continuously for at least two years).

There is a clear trade-off for workers between higher rates of pay and some (albeit limited) employment protections and a degree of stability with the agency (if not the client.). The advantage for agencies themselves appears to be that a PBA model is simpler to administer (i.e. the charges for clients remain the same) and reduces the exposure of the agency to equal pay claims should rates not be harmonised promptly or accurately after 12 weeks. Forde and Slater (2014) note that the recruitment industry was generally opposed to the AWR on the basis that further regulation was not necessary, and were instrumental in setting the 12-week qualifying period for the harmonisation of pay, along with the Swedish derogation or PBA contract. The unions argued that the Swedish derogation was a 'loophole' for both clients and agencies to dodge their obligations to equal pay, whereas the agency industry representative body the Recruitment and Employers Confederation (REC) argued that it offered workers some protection from fluctuations in client demand and greater stability of earnings. Forde and Slater (2014) also observed an increase in the number of directly employed agency workers in the immediate period following the introduction of the AWR. This

perhaps reflects the preferences of clients who wished to achieve cost savings by maintaining a differential between temporary agency and directly employed workers, while also transferring the costs of redundancy onto the agencies. This suggests that despite their considerable presence in the labour market, the organisation and remuneration of temporary agency work is still largely shaped by clients. The current research seeks to explore the nature and substantive features of ‘strategic partnerships’ and whether it leads to positive outcomes for workers, or whether clients largely dictate pay and conditions.

Social dialogue

The case study data are drawn from ten interviews, involving two senior managers at two employment agencies (GlobalAgency and EuroAgency) and a ‘nested case’ within EuroAgency involving interviews with management at a large client retail company (PharmaCo) plus three agency workers, two directly employed staff and a union representative (table 9.1).

Table 9-1 - Summary of interviewees

Organisation	Temp/perm	Role	Department	Union member?	Interview
GlobalAgency	Perm	Legal director	National	No	81 minutes
	Perm	CSR manager	National	No	60 minutes
	Perm	On-site manager	Agency office	No	74 minutes
EuroAgency	Temp	Order picker	Goods outward	No	5 minutes
	Temp	Dispatch worker	Goods outward	No (was in past)	10 minutes
	Temp	Dispatch worker	Goods outward	No	4 minutes
PharmaCo	Perm	Order picker	Goods outward	Yes	7 minutes
	Perm	Health and safety rep	Goods outward	Yes	10 minutes
	Perm	Inbound manager	Goods inbound	No	13 minutes
	Perm	Union branch official	Goods outward	Yes	46 minutes

GlobalAgency and EuroAgency have a significant presence in the UK and are also ‘international players’: both are foreign owned and part of a larger group of HR and recruitment companies. In 2015-16, GlobalAgency had an annual global turnover of nearly 20bn euro across nearly 40 countries, whereas EuroAgency was smaller with a turnover of just over 1bn euro concentrated largely in Italy, Germany and the UK. Interviews with senior managers helped to establish the national context of the temporary agency work sector as well as the corporate approach of each respective agency to issues of client management and employment relations. These data were developed further by a ‘nested’ case study at EuroAgency which had a very large on-site presence with a warehouse/distribution centre managed by a large retail company client (PharmaCo) in the midlands of the UK.

Restructuring labour market regulation and employment choices through corporate partnerships

Both of the agencies interviewed here were keen to stress the ‘value added’ dimension to their corporate strategy which was based on a good reputation and a commitment to working in partnership with clients, but it is clear that the ‘bread and butter’ of the temporary agency sector is the ability to fill vacant posts quickly. Both GlobalAgency and EuroAgency had more around 15,000 workers on assignment in any given week, spanning a wide range of sectors and roles at both the

top and bottom of the labour market from high-skilled roles in health, education, and IT, to more routine roles in food preparation, construction, and warehousing. For some clients this was a sole-provider contract where the agency provided all the labour along with payroll services and pre-employment screening such as criminal records checks, and for others it was a master-vendor contract where the agency sub-contracted to smaller 'niche' agencies for the supply of specialist skills. The preference of both clients and candidates for flexible low commitment work was seen as the driving force behind the growth of temporary agency work and 'healthy competition' between agencies for both clients and candidates meant that the market was seen as largely self-regulating. The light-touch system of economic regulation in the UK was seen as an asset in terms of labour market flexibility (Burgess et al. 2013), and while some regulations such as the national minimum wage were seen as a beneficial constraint in that they helped protect employers and agencies from unfair wage competition, the low level of employment protections and the almost complete absence of trade unions in the private sector meant that there were incentives for employers to 'restructure up' in order to establish a good reputation and market share. In fact it was argued that increasing or tightening employment regulations would do little to bring rogue employers 'back in' and could create a larger grey or black market.

The impact of the AWR was viewed by managers at both GlobalAgency and EuroAgency as generally minimal, and that only a very small number of their workers were engaged on a pay-between-assignments basis. No data were made available on the number or share of pay-between-assignments workers, although as the nested case-study reveals, even where workers are engaged on this basis it is not necessarily a means to undercut the cost of directly employed labour. Neither agency actively promoted the use of the 'Swedish derogation' to clients, and where it occurred it was argued to result from a mixture of client preferences and the choice of individual workers (although how much of an 'informed choice' workers at the bottom-end of the labour market can make is difficult to gauge). The manager at GlobalAgency suggested that agencies had a duty to make workers aware of the implications of different forms of temporary work contract but ultimately it was their choice:

"...we have a big debate internally whether we should tell somebody how they should be employed, and came to the conclusion it's not our job. We say to people [agency workers] these are the options and you can talk to these people but you pick what works for you..."

The average length of assignments at GlobalAgency was around 14 weeks and at EuroAgency was around 30 weeks (although as revealed by the nested case study within EuroAgency some workers could be on a rolling temporary assignment for up to 200 weeks technically on a pay between assignments basis). Both noted that although they could not prevent clients from attempting to 'reset' the qualifying period, they advised against it as it had the potential to generate significant ill-feeling among re-hired workers. The reason that the AWR had not had a significant impact was that the relatively low basic pay in those sectors reliant on agency workers (only slightly above the national minimum wage) meant there was very little margin to undercut on hourly wage rates. For example, average pay across all assignments and sectors in both agencies was between £8.00 and £9.00 per hour compared with a statutory minimum wage of £6.70, although in sectors such as food preparation and warehousing, standard rates would be close to £7.00 per hour.

The role of employment agencies as gatekeepers to the labour market was seen by the agencies themselves as an important mechanism which allowed for an efficient matching of client and

candidate needs (Gray 2000). The primary advantage of using a temporary workforce was the ability to adjust staffing levels to match demand, and agencies were in competition to fill vacancies quickly with 'good calibre' candidates. Both managers argued that agency work fulfilled a key role particularly where labour markets were 'tight' as on the one hand it allowed clients to 'take a risk' on workers they may have been hesitant to employ directly on a permanent basis, and on the other it allowed workers to gain work experience they might otherwise struggle to get, and also try different roles or sectors without committing to one employer. Where workers were unhappy with a client or with an agency it was argued that they 'voted with their feet', and although job security was recognised as an important issue for workers, the flexibility of work assignments and the freedom to move was also presented as an attractive element of temporary agency work:

"....there's a way of looking at the world which actually says being tied to the world of work is soul-destroying and you could say that temporary work is freedom work..."

Anecdotal evidence from both agency managers suggested that while there were significant opportunities for agency workers to move into permanent roles with client companies, a 'proportion' would often decline, preferring the flexibility of remaining on assignment. The advantage for the client and for the worker of being engaged through an agency was that the client did not have to handle the termination of contracts, and the agency would attempt to find the candidate alternative work in order to maintain income levels:

"...the client rings and says I don't want this guy, he's an idiot, and the consultant says all right, I'll put him over here next week..." [Manager GlobalAgency]

The agency managers were keen to stress the collaborative or partnership nature of the business relationship with clients (often built up over a number of years and involving relatively large/stable contract values). However as illustrated by the quote above the responsibility for screening workers for roles, and dealing with those not deemed to be up to standard increasingly falls to the agencies themselves. In turn the risk is passed onto workers who are moved onto new assignments rather than the agency challenging the judgment of clients or offering training and support to workers in order that they can adapt to the demands of the job. This dual role as both the provider of labour and the manager of the labour process was evident from the nested case study conducted within EuroAgency at their PharmaCo site.

Restructuring employment relations and the labour process through local partnership

PharmaCo is a multi-national firm producing and distributing medicines and cosmetics. It is a large employer in the local labour market where the case study was conducted, with 6,500 staff working across 20 buildings on a 300 acre site. EuroAgency actually replaced GlobalAgency as the on-site agency provider in 2014, and quickly increased their on-site presence at PharmaCo by bringing in more dedicated staff and attempting to strengthen relationships with managers by developing the 'valued added' offer in terms of responding to business demand and providing good quality candidates. All recruitment (temporary and permanent) is now handled exclusively by EuroAgency: the number of agency staff on the payroll was 1,100 and around 100 employees were made temp to perm each year following an interview process (although the precise numbers would depend on turnover within the permanent workforce). The number and share of agency workers varied in different warehouse locations across the site, and across seasons. For example the total number of

agency staff in the goods inbound building was 273 compared with a directly employed staff of 424 (39.2%), whereas in the order picking building agency staff outnumbered directly employed staff by 686 to 606 (53%). The number of agency staff in order picking could reach over 1,000 during the lead up to Christmas. It was estimated that around 80% of the agency workforce were Eastern European (largely Polish), were typically in their late 20s or early 30s, and most were men (although observation of the day shift in the warehouse suggested a more even split of men and women).

An obvious (but often implicit) factor behind the growth of agency work in the UK is the availability of migrant workers, who may have limited alternative opportunities to low paid short-term assignments and may lack the awareness or power resources to challenge exploitation (Mackenzie and Forde 2009). Employers can leverage this to keep wages low in the short-term (Preibisch 2010), but over time, the substitution of local labour may be consciously or unconsciously 'rationalised' as a business decision on the basis that migrant workers from EU 28 countries are assumed to have a greater 'work ethic' (Scott 2013). The high use of migrant and non-UK labour was not identified as a specific recruitment strategy for either PharmaCo or EuroAgency: most workers were recruited locally (both UK and non-UK born workers) as opposed to advertising and recruiting directly overseas. At the time of the research, labour market conditions were relatively slack: despite the high level of job density in the local area (the number of jobs divided by the resident population); unemployment rates (particularly for males aged 25-54) were far higher than regional and national averages. It is difficult to conclude whether the high share of migrant workers is merely coincidence, whether it reflects the preferences of UK workers not to work in warehousing through an agency, or the preference of the agency and client for non-UK workers on the basis of assumptions about their work ethic or willingness to tolerate difficult working conditions (Scott 2013). Attendance, timekeeping and hard work were all prized 'worker characteristics', and in terms of screening suitable workers the process largely appeared to focus on the physical demands of the job:

"...we try and drum into them that they can walk up to four miles on a shift, there's lots of lifting, bending, stretching...some people get into the job and the sheer physicality of it is far too much for them and they just can't cope with it..."

Pay, hours and working patterns

The lower pay on offer to contingent workers compared with permanent staff, and the drag on wages exerted by employment agencies themselves as a result of cost-competition is a major criticism levelled at temporary agencies (Gray 2002). At the same time, valued-added HRM is increasingly seen as an important service provided by agencies (Forde and Slater 2011; Knox 2014). An interesting feature of the current case study was the harmonisation of pay rates between contingent and non-contingent workers, even though the temporary workers were employed directly by EuroAgency notionally on a pay-between-assignments basis (who would therefore have no claim to equal pay with directly employed workers after 12 weeks). As all recruitment is handled by EuroAgency, workers started in temporary positions on £7.20 per hour and after 12 weeks moved up to £7.70 per hour regardless of whether they remained temporary or moved into a permanent role (the statutory national minimum wage as of April 2016 was £7.20 for workers aged 25 and older). Supervisors were paid £8.83 per hour and night shifts attracted a premium rate of 15% or £1.17 per hour after 12-weeks, although weekend working was 'normalised' within all shift patterns and was paid at plain time. For example, there was a weekend night shift (Friday and Sunday nights, 22:00-06:00); a part-time night shift (Sunday to Thursday 22:00-03:00); and a full-time rotating

early/late shift (Monday to Saturday 06:00-14:00/14:00-22:00). Workers on the rotating late shift could be expected to stay until 1am when workload demands were high, and worked five days out of six from Monday to Saturday (with all workers guaranteed one Saturday off in every three). Overtime was available up to a maximum of 48 hours per week paid at a flat rate (table 9.2).

Table 9-2 - Main working-time schedules for all workers at PharmaCo

Work schedule	Pattern	Paid hours	Shift premium	Weekend premium	Overtime premium
Rotating early-late shifts	Five days out of six, Monday to Saturday 06.00-14.00, 14.00-20.00 (with occasional 1am finish)	37.5 hours	No	No	No
Night shift	Sunday-Thursday 22:00-03:00	30 hours	Yes £1.17	No	No
Weekend night shift	Friday and Sunday 22:00-06:00	15 hours	Yes £1.17	No	No

The main form of segmentation between temporary agency workers and directly employed staff was that whereas working hours and shift patterns were guaranteed for directly employed staff, agency workers received rotas a week in advance with no guarantees of working hours from week to week or even day to day. Although demand was fairly stable across the year: for example agency workers typically worked around 33-34 hours per week (which is just short of a full-time working week of 37.5 hours); workers could be brought in and sent home as demand dictated. A PharmaCo line manager made clear that a key benefit of having a ‘significant’ pool of agency workers was that all workers on the rotating shift pattern could take one Saturday off in three, but more importantly the company was less exposed to the risk of paying staff for unproductive time:

“...there is a cost advantage but there is also the flexibility that if the work does dry up....we’re in a very automated environment here and we would try and keep people but if something breaks down we can’t keep people....it’s a last resort but you need that flexibility....”

The fact that permanent staff and managers were not sent home when demand was low suggests that the risk was borne exclusively by the agency workforce, something which perhaps helped to protect permanent workers from short-hours or job losses. Nevertheless, the EuroAgency manager suggested that this was viewed by some workers as an opportunity for extra rest:

“....it always surprises me if there’s machine issues or there’s a system issue, [the client] will say we’ve got too many people, can we send some people home? So they’ll [the agency workers] all come clambering forward, they’re desperate to have a day off...”

However, for one of the EuroAgency workers we interviewed turning down hours was not an option, and the rotating shift pattern of early starts and then late finishes was in some ways incompatible with family life:

“...I’m on a rotating shift...which isn’t good for me cos I’ve got kids so every second week I don’t see them because when I get back they are in bed...the hours are OK although recently on 2 days I have had half days...the rota comes out a week in advance and this Friday I have only got four hours...so it’s a bit of a knock in the pay packet which isn’t great when you’ve got kids....but it goes like that sometimes...”

Local unions and the temporary workforce –strategic engagement or tactical indifference?

Social dialogue within the temporary agency workforce is recognised as being limited and somewhat patchy at best: this partly reflects high levels of occupational heterogeneity (with membership contingent on sector and professional group); as well as the limited union penetration in many low paying private sector firms where agency workers are concentrated (Heery 2004; Kalleberg et al. 2000). In this context, the strengthening of employment relations is highly contingent on the approach of client firms to managing their directly employed staff, as well as the scope and willingness of agencies to pursue a valued-added rather than cost-cutting approach to HRM (Knox 2014).

Direct communications between PharmaCo and all workers were an important feature of employment relations on-site. Large information boards were positioned at the secure entrance to the order picking area which contained: information about corporate campaigns (and how all staff members contributed to the successful operation of the business); and a ‘rogues gallery’ containing photos of items found on staff members during exit searches (presumably to remind workers that attempts to steal would almost certainly be detected by security staff). Shift briefings were held en masse twice daily which were used to relay key information to staff such as the volume and nature of orders on the books, and any specific information about machinery or stock which could affect the pace or accuracy of order picking. At the same time, the firm was rare in that a large retail and service work union was recognised nationally for collective bargaining over pay and conditions, and locally for the purposes of ‘consultation’ over staffing levels, hours and working practices. Across the main warehouse units, the union had around 850 members out of a workforce of nearly 2,000 which is equivalent to a membership density of around 43% (although it was estimated that less than 40 members were agency workers). This is much higher than the average membership density across the UK private sector which is 14.2% (BIS 2016). However, even where unions are recognised by large private sector firms, membership density does not necessarily translate into significant bargaining power with management over issues of pay and working conditions (Heery 2011). The union rep was a permanent employee of the client firm and had built up strong working relationships with managers across the site and argued that most issues and grievances were dealt with successfully through informal discussion without the need to escalate up to a higher level. Although the acceptance of partnership ‘deals’ has been argued to reflect the limited alternatives for trade unions in a context of declining membership and legitimacy (Kelly 1998), a partnership approach was seen as important by the union at PharmaCo to maintain largely harmonious industrial relations:

“...I don’t compromise people to work in partnership....I don’t think employers have anything to fear from trade unions....there’s a lot of positives from working in partnership...”

Despite the high share of agency workers at the PharmaCo site, the historically negative view of the union locally towards ‘exploitative’ employment agencies meant that formal interactions between the union and the on-site agency team was limited. However, rather than a deliberate strategy of exclusion or replacement, this could perhaps be characterised a general indifference towards the agency and agency workers themselves as the union attempted to prioritise the needs of existing members (Heery 2004). The union had attempted to recruit agency workers during their induction period, and often used the on-site canteen to advertise the union and engage with workers, but the

temporary nature of agency work and the transient nature of some parts of the workforce were both identified as barriers to organising. It was suggested by the union branch official and the union health and safety rep that for those workers who did not know whether they would stay with the client or agency or even in the local area, the motivation to join a union based at one site was negligible which resulted in very low membership among the agency workforce: agency workers made up less than 5% of union members in the two warehouse buildings despite making up nearly 50% of workers. This limited engagement with agency workers was reflected among the workers we interviewed: the two workers who were union members were both permanent whereas two of the three agency workers were aware of it but never ‘had any issues’ or reasons to join. Furthermore, one agency worker we interviewed had been in the union but had recently left after finding out that he was ineligible for a subsidised travel to work scheme (offered by PharmaCo to directly employed staff), something which he felt the union had not done enough to make clear:

“...I didn’t feel I was getting good representation or accurate information...you just hear things on the grapevine....I thought what am I getting for my union money? So I pulled out...”

The informal division within the union strategy between *organising* agency workers and *servicing* permanent workers is a difficult issue to resolve as there are undoubtedly differences in the needs and priorities of groups of workers engaged under such fundamentally different employment conditions. However, the failure to engage with temporary workers who have been in post for nearly four years is an indicator that union efforts to ‘bring the agency in’ have not been fully realised. Similarly, that the agency now controls access to all jobs (both temp and perm) within PharmaCo suggests that the union has to do more to attract members from within the EuroAgency workforce if it is to preserve its remarkably high levels of membership density. A bigger issue identified by the union rep was the imposition by PharmaCo of a new employment contract for directly employed staff in 2011 which reduced basic pay and premium rates of pay for weekend working, and replaced paid breaks with unpaid ones. This meant that while working hours remained 40 hours per week, paid hours were only 37.5, and bank holidays and weekend working were ‘normalised’ in shift patterns (table 9.2). This was identified as a source of friction within the workforce, but the union were not able to overturn the decision:

“...You could have two people working next to each other on three or four pounds difference in pay. That’s caused a lot of bad feeling over the years...” [PharmaCo Union rep]

The union challenged the change in pay and conditions through negotiation and explored the legality of the new contract terms in terms of both equal pay and the contractual entitlement to weekend shift premiums but in the end PharmaCo imposed it, albeit with a small cash settlement to workers (£600) to reflect the shift to more flexible working patterns (and the loss of bank holiday premiums). The company argued this was necessary to reflect the fact that weekend working was normalised within both the logistics and retail sectors, and also to incentivise higher productivity between Monday to Friday (and thus reducing the need for premium rate weekend working).

One indirect impact of the 2011 AWR was arguably that employers (anticipating the new requirement to harmonise pay between temporary and permanent staff) pre-emptively moved to level down the reward package of directly employed workers. Interestingly, the use of pay between assignments in this case did not lead to lower pay and conditions for temporary workers (Forte and Slater 2014), instead as EuroAgency took control of all temp to perm recruitment, this allowed for

the standardisation of pay rates on entry and after 12-weeks. The uplift in the statutory minimum wage in April 2016 increased rates of pay by £0.50 per hour for both temporary workers (on entry and after 12-weeks) and for permanent members of staff on the post-2011 contract, but not workers on the pre-2011 contract which the union rep noted was a positive development to restore some parity in pay.

Performance management was clearly a dominant theme in management-labour relations, and the warehouse was designed in such a way as to support both the movement and monitoring of workers: items for picking were organised in long straight lines with good visibility down aisles. Individual attendance and performance data was shown on large noticeboards in different parts of the warehouse with green-amber-red colour coding to clearly highlight those workers who were falling behind in attendance, punctuality, order picking pace and accuracy. Although the pace of work was not necessarily 'frenetic' the use of technology to both issue and monitor individual order picking combined with management observation allowed for close monitoring of staff, something which could be used to both correct poor performance and to offer praise at the same time:

"....it's not just about performance but attitudes, behaviours, timekeeping....absence counts against you straight away....we do support people who have got potential...we've done it the last two weeks there is a girl down there and the way she works is so smart, and we spoke to her and said you know we've been watching you and it's a credit to how well you work....really thorough..."

The nature of order picking work (which is highly individualised), and the nature of the working environment itself (which is noisy and mechanised), did not lend itself to interaction with colleagues where the seeds of 'collectivism' could be formed, or where mobilisation against common grievances might be initiated (Kelly 1998). One permanent worker observed that working routines and management-labour relationships were structured in such a way as to actively discourage interaction between workers regardless of status:

"...there are no formal barriers between us [permanent and agency staff] but you kind of come in get on your station and get on with it....there are people floating around keeping an eye on you and you're not encouraged to speak so it's not very social....you don't get much chance to talk about issues or what is going on..."

Agencies as gatekeepers and managers of the internal labour market

A consequence of the shift towards increasingly long-term 'strategic partnerships' is the blurring of responsibility for managing the labour process, as well as controlling ports of entry to internal labour markets (Gray 2002; Peck and Theodore 1998). As discussed earlier, EuroAgency now assumed all responsibility for all recruitment at PharmaCo, with workers hired on a temporary basis, with the possibility of moving into permanent work (around 100 each year). However, it was argued by the on-site EuroAgency manager that a proportion of workers preferred to remain on a temporary assignment as the pay was the same, and some workers were living 'week-to-week' and would struggle to adjust to a monthly salary. Temporary status also meant that some non-UK workers could work additional hours over the Christmas period and then (by agreement with local management) take a mixture of paid and unpaid leave to return home to visit family, before returning to the UK and commencing work in the same role again. The conflation of migrant and temporary status appeared to legitimise the ongoing use of temporary contracts, however, the

directly employed PharmaCo manager recognised that most agency workers would take permanence if it was offered:

"...a lot of people get offered a permanent job and will take it...they want the security....you know you can't get a mortgage or anything without that...."

Two of the agency staff interviewed indicated that they wanted to move onto a permanent contract. For one worker this was a means to secure guaranteed hours, but he recognised that it was not a formality, a lot depended on good individual performance and the working relationships built up with colleagues and managers:

"...next month they are taking on permanent staff...the reason I didn't go onto permanent staff already was cos I was part-time and they don't take on part-time staff on permanent...there is support [within the agency] to help you move into a permanent role, it depends a bit on your relationship with the staff...it matters how you're performing, your attitude, your attendance....."

For the other agency worker interviewed, working at the current firm (even on a temp basis) was an improvement on her previous employer, and the prospect of being taken on permanently was a significant incentive to stay even though she had been on an agency contract for nearly four years:

"....it's a good atmosphere, there are nice people and I like working here....I would like permanent work but the job is OK...I want to stay here...I hope I can..."

This hints at the deeper benefits of maintaining a large temporary workforce on a long-term basis, keeping workers in this position clearly suited both the agency and client: the agency earns a fee for each hour worked and the client potentially secures higher output from a compliant temporary workforce who are hoping to be taken on permanently:

"...a lot of people on permanent staff started in the agency and if people want a permanent job they are going to try and show you what they can do..."

This arms-length relationship was seen as a sensible precaution even by the locally recognised union official:

"....I think [the company] have been burned in the past where they've got a worker that's really good, never late, very productive, does all the things that he or she should be doing as a kind of model employee, and then as soon as they get a permanent job they start to not have the same work ethic sort of thing..."

The directly employed union health and safety rep noted permanence was 'the prize' for hard work and compliance while on a temporary contract:

"....I always say if you can take permanency do it: it gives you choice....that assurance is important...there is [colleague] she started on the agency just like me and now she is a team leader, you know you've got to work hard...I say [to agency workers] do your attendance, keep your head down, do what you're asked and there is work there..."

The implication is that agency workers have greater incentives to work hard than directly employed staff, and that by maintaining temporary assignments over a long period the client can extract higher levels of effort than might otherwise be achieved by hiring workers directly. It therefore suits both the client and the agency to maintain a large pool of temporary agency workers over a long period.

Summary and conclusion

The development of long-term partnerships between agencies and clients reflects the increasing size and reach of employment agencies, and the increasing divestment of firm responsibility for managing internal labour markets and HRM policies (Gray 2002; Peck and Theodore 1998). These partnerships may offer scope for value-added HRM, and the long-term nature of placements (up to four years in some cases) means there are incentives to foster relationships with workers to reduce turnover and achieve high levels of productivity (Forde and Slater 2011; Knox 2014). As is the case across large parts of the UK private sector, decent pay and working conditions often rely on employers voluntarily adopting a 'high road' approach to HRM. Social dialogue appears to have limited influence over pay and working conditions in low wage industries, whether workers are engaged through agencies or employed directly by clients who largely dictate terms and conditions. Even where unions are recognised, the relatively limited scope to either resist the spread of temporary agency work, or to effectively incorporate agency workers into the membership base poses additional challenges within low paying sectors (Heery 2004). In this case, despite a national agreement with the client firm for annual pay negotiations, and high membership density at local level, this did not translate into significant bargaining power with management over changes to pay, terms and conditions and working practices affecting the entire workforce.

The advantage of maintaining a large temporary agency workforce appears to be a reduction in total staffing costs associated with permanent guaranteed hours contracts (where workers are paid a salary regardless of the demand for work) rather than reducing the unit cost of labour per hour worked: agency workers typically cost more than directly employed staff once agency margins of around 20% have been factored in. The size of the temporary workforce and the time period for which they are engaged can be adjusted upwards and downwards relatively easily, and the 'social costs' of maintaining labour are transferred onto the agency which assumes a greater responsibility for hiring, firing and redeploying individual workers, along with the cost of a subsistence wage for at least four weeks should an assignment end through no fault of the worker. Interestingly, the use of PBA contracts in this case did not lead to less favourable wages among the agency workforce, rather it appears that the client pre-empted the 2010 Agency Workers Regulation by levelling down pay and terms and conditions for directly employed workers, which made parity between temporary and permanent staff achievable. Although 'harmonisation' was achieved (through levelling down rather than up), the blurring of responsibility for managing employment relations between the client and the agency means that neither has to take sole responsibility for the career prospects of individual workers, or the creation of stable and high quality work (Hoque et al. 2011). Both the agency and the client defer to notions of individual choice which is often (albeit implicitly) bound up with perceptions about the largely non-UK born workforce who 'choose' temporary work in order to take extended (unpaid) holidays to visit family at home, and by extension, the assumptions about the choices of UK born workers to look for permanent work. While there are obviously a number of reasons why workers are engaged in paid work through an employment agency rather than being directly employed it appears that temporary work has become 'normalised' in sectors such as industrial, warehousing and logistics work, which in turn means that there are limited incentives for clients or agencies to create permanent roles.

In terms of managing employment relations and the labour process, agencies have certainly assumed a greater share of the responsibility for sourcing, deploying and managing staffing issues:

described by Peck and Theodore (1998) as the 'day-to-day hassles' of the employment relations. But the evidence from this case study suggests that temporary agency work, and agencies themselves fulfil three additional roles. **First**, the increasing share of agency workers in some sectors provides the opportunity for client firms to level down pay and conditions across the wider workforce. Although there is a legal distinction between 'employees' and 'workers' in the UK, and the Swedish derogation offers scope to undercut the wage rates of directly employed labour, minimum standards within sectors such as food preparation and warehousing are typically low and it appears that the high share of temporary agency workers can be leveraged by employers to restructure down employment relations for all workers. **Second**, the use of temporary agency workers on an ongoing basis serves as an effective 'screening device' which replaces the traditional (and expensive) external recruitment process followed by a probationary period for permanent staff: It allows clients to engage workers quickly and cheaply and then assess their timekeeping, performance and attitude over a longer period of time before committing to a permanent employment relationship (if at all). On the one hand this may give opportunities to those with limited skills or labour market experience (who would have little chance of securing permanent work by applying directly), but this modified form of extended entry tournament (Marsden 2010) sees temporary workers competing with others for access to a limited number of permanent positions by working harder, faster and longer. **Third**, by taking over all recruitment activities (both temporary and permanent) agencies are increasingly acting as both 'gatekeepers' and managers of the internal labour market. By controlling the supply of labour into permanent vacancies with the client firm, the agencies themselves help to strengthen the commitment and compliance of the workforce: a role once fulfilled by the fostering of a stable and permanent employment relationship between employer and employee, and regulated by internal labour market structures.

10. The fight against casual work in the food production sector

Despite the internationalisation of production systems in many parts of manufacturing, the restructuring of supply chains has paradoxically strengthened the position of 'the plant' as the locus of employment relations. On the one hand this gives management potentially greater control over work organisation as relatively isolated individual plants are pressured to compete with each other for investment, and agree concessions on productivity and staffing flexibility in return for guarantees over jobs (Martinez Lucio and Weston 1994; Mueller and Purcell 1992). On the other hand, the long tradition of active shop stewards in manufacturing means there is scope for local resistance, and there are signs of growing 'inter-plant solidarity' in the UK food production sector in order to build bargaining strength and protect against the spread of precarious work.

The case study is focused on one large food manufacturer 'BreadCo', and explores the ways in which management imitated the 'divide and conquer' strategy of multi-national companies to decentralise bargaining over pay, staffing levels and productivity and attempted to dilute employment standards through the use of temporary agency work and zero hours contracts at two sites in the north west of England. The two local branches of the national baker's union used different strategies to challenging management around pay, contracts and working practices at a turbulent time for both the sector and the firm. Whereas the union branch at the 'North West' plant took on management over the use of agency work and built solidarity by calling a strike of permanent workers which brought in pickets from other plants, the union branch at the 'Yorkshire' plant (despite higher membership density) struggled to mobilise workers locally for collective action and was largely focused on representing individual workers in grievance procedures and employment tribunals, and attempting to secure favourable severance payments.

The restructuring of production and employment relations in UK manufacturing

The reform of labour relations has historically been placed at the centre of managerial approaches to change in the UK manufacturing sector, in order to tackle the so-called 'British industrial relations sickness' of inflexible labour markets, low productivity growth and militant trade unions (Howell 2005). Unions were blamed for stifling innovation, and acting as drag on productivity by resisting all attempts to introduce flexibility to staffing arrangements and to redesign working practices around new machinery and production techniques (McIlroy 2009). For example, the Donovan commission of 1968 recommended the formalisation of local level bargaining in order to make a stronger link between pay, working time and productivity, although this was largely unsuccessful (Metcalf 1989). Efforts were made to lower wage costs and improve productivity in the motor industry during the 1970s, most notably by moving away from piece-rate systems and blurring job boundaries which had been formerly tightly controlled by shop stewards (Marsden et al. 1984).

Following the loss of production to competitors in Europe, Japan and China (marked by the rapid increase in imported products such as cars), the subsequent weakening of the trade unions and

collective bargaining paved the way for more foreign direct investment in remaining UK firms, along with the establishment of production and assembly plants in the UK wholly owned by multi-national corporations (Marsden et al. 1984). The bargaining power of MNCs to bring investment to ailing industries and firms gives them significant bargaining power over national level industrial relations actors, and creates opportunities to lower pay and working conditions for remaining workers. In contrast with the 1970s where high unionisation was associated with low productivity growth, in the 1980s the situation was reversed with unionised firms and sectors showing the greatest rate of improvement (Metcalf 1989). This is perhaps partly due to changing production techniques but also the relatively weak bargaining position in which the unions and workforce found themselves as a result of extensive legislative reform (op. cit.). The implications of this restructuring are clear: "Since the mid-1960s, UK manufacturing has shed more than 6 million jobs. One of the results is that most low-value low-productivity manufacturing has already disappeared. As Fothergill and Gore (2013: 5) note: "in the face of competition from low-wage economies such as China, for the vast majority of UK manufacturing there has simply been no alternative to going down the high-value route".

Describing the restructuring of the largely US-owned car manufacturing sector across Europe, Mueller and Purcell (1992) note an overt link between the manufacturing strategy and the management of labour relations, which saw a simultaneous standardisation of production and a decentralisation of bargaining: "while manufacturers increasingly seek to integrate their operations across Europe, this is leading to a fragmentation of the formal mechanisms of industrial relations and a diminution of the authority of national union leaders". This was manifested in the efforts to extract concessions from labour at local level over machine running time and work organisation by making 'coercive comparisons' of output and productivity data. Management then sought to 'reward and punish' high and low performing plants (and those which agreed to or resisted management changes) through investment decisions on new machinery which were critical for the survival of individual sites. For example the 1988 Ford Strike at Dagenham led to a divestment of engine production across Europe. The company had invested significantly in the plant which meant that European operations were significantly impacted by the strike, and management were keen not to be so dependent on UK production in future. At the same time there was also an element of revenge: "It seems clear...that Ford wanted to teach the British trade unions a lesson" (Mueller and Purcell 1992: 23).

Martinez Lucio and Weston (1994) describe a similar management strategy within General Motors, which sought to play off plants in four different European countries against each other by making investment contingent on productivity gains and labour acquiescence: referred to as 'the politics of investment'. This was achieved by increasing the competitive dynamics between plants aligned with national economic interests and reinforcing the narrative of 'the need for change', as well as the efforts to foster increased worker loyalty to 'the plant' through reshaped mechanisms of worker voice (which diluted the role of trade unions to an extent) alongside management strategies designed to undermine collective labour relations such as team working. Martinez Lucio and Weston (1994) also note that in response to management strategies such as bombarding individual plants with performance data, trade unions across different countries began sharing information systematically which meant they were better prepared for negotiations with management about performance benchmarking.

Across both these studies, making a stronger connection between local level industrial relations processes and production decisions was critical to weaken the influence of historically strong national union leaders and collective agreements. Within the overarching corporate structure, management were determined to make each plant ‘stand on its own feet, and be able to pay for terms and conditions agreed locally tied to devolved cost centres’ (Mueller and Purcell 1992). Furthermore, managers recognised that shop stewards or works council representatives would be more concerned with the plant’s survival than national union officials and would therefore be more willing to trade off flexibility in staffing deployment and shift patterns in return for guarantees over job security. Mueller and Purcell (1992) make a distinction between ‘internationalised’ industries such as car production where global competitive pressures inexorably lead to fragmented and decentralised bargaining over productivity regardless of national context, and industries operating in relatively ‘sheltered’ markets where national systems of industrial relations may retain a higher degree of influence. The UK food sector appears to combine elements of both models.

Jobs in UK food production: quantity or quality?

Food production has proven to be more resilient than other parts of UK manufacturing, with jobs contracting by 46% since 1979⁵⁶ (compared with an overall loss of 60% across UK manufacturing and more than 65% in motor production), and the industry is now the largest single component of the residual UK manufacturing sector employing around 365,000 workers (ONS 2015). Within food production, ‘bakery’ is one of the largest product types both in terms of gross value added (£3.7bn/£26.3bn or 14.1%) and the number of small and medium sized firms engaged in production (2,155/6,140 or 35.1%) (Defra 2016).

On the one hand the survival of the UK food manufacturing sector (and in particular baking) reflects the predominantly domestic focus of the market: most of the food consumed in the UK is produced in the UK (with the exception of fruit and vegetables which are mostly imported) (Defra 2016). On the other hand, certain processes which help explain the loss of jobs elsewhere such the shift to producing ‘high value added’ goods and ‘capital deepening’ (i.e. the investment in plant and machinery), have not increased as sharply within food production as in other parts of manufacturing meaning that it remains a labour-intensive industry (ONS 2014). The trade-off for comparatively low levels of offshoring and labour substitution is that food production is the lowest paid part of the manufacturing sector: median gross hourly wages were £9.36 in 2015 compared with £12.69 across all of manufacturing and £11.75 across the whole economy; and median wage growth was negative between 2014 and 2015 whereas wages grew by around 2% across all other areas (table 10.1).

Table 10-1 - Hourly pay (excluding overtime), all employees by sector, 2015

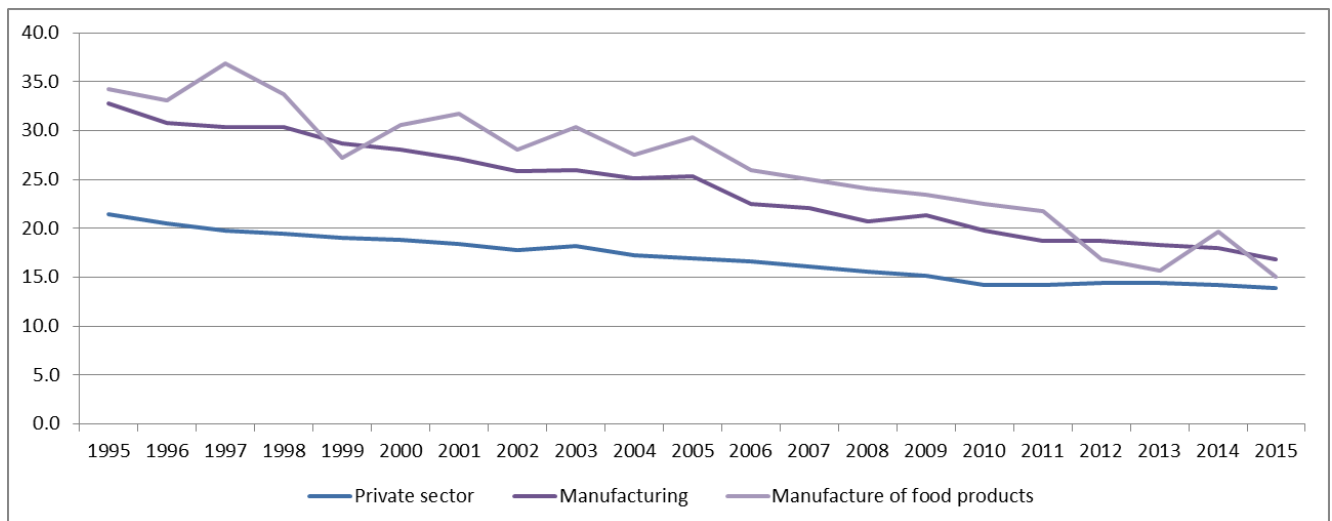
Sector	No. of jobs (000s)	Median pay	Annual % change	Average pay	Annual % change
All Industries and Services	25,449	£11.75	1.8	£15.31	0.9
All Index of Production Industries	2,824	£12.97	1.7	£15.50	2.0
All Service Industries	21,613	£11.50	1.8	£15.32	0.7
All Manufacturing	2,468	£12.69	2.1	£15.08	1.7
Manufacture of food	365	£9.36	-0.8	£12.26	2.6

⁵⁶ Bettered only by ‘wood and paper products, printing’ which lost 40%

Source: ASHE 2015, Table 5.6a

The skill requirements within food production are relatively low and the automation of certain parts of the production process have reduced 'reasonably skilled-manual labour to more monitoring of production processes and machinery' (Grunert et al. 2010: 368). Certain parts of the sector such as meat processing are also heavily reliant on migrant workers often engaged on short and variable hours contracts through labour market intermediaries such as temporary employment agencies which serves to keep wages low (op. cit.). Precarious work and low wages may also reflect declining unionisation rates within the sector. Figure 10.1 shows that at 15% union density within food production is marginally lower than manufacturing overall (16.8%) and marginally higher than across the private sector overall (13.9%). However, union density within food production has declined sharply since 1995: dropping from 34.2% to 15% (a proportional drop of 56.1% compared with a proportional drop of 35% across the private sector from 21.4% to 13.9%).

Figure 10-1 - Trade union membership density 1995-2015, private sector, manufacturing, food



Source: BIS 2016

In terms of the link between production strategies and industrial relations, there is some evidence that patterns of restructuring seen in other manufacturing sectors have been mirrored in UK food production. Despite the domestic focus of the market, foreign direct investment in food production in the UK is comparatively high when compared with other European countries: food production makes up 22% of all foreign direct investment stocks compared with just 4% in Germany (Driffield et al 2013). Management may use investment decisions and financial restructuring to keep plants open but in return for greater flexibility in labour utilisation, or may move work between plants which are more closely aligned with the 'corporate vision'. For example the hostile takeover of the UK confectionary firm Cadbury by the US-based food conglomerate Kraft in 2010 was by far the biggest corporate takeover within manufacturing in recent times (worth nearly £11.5bn), and quickly generated ill-feeling when the new owners reneged on a promise to keep open a large production

site near Bristol with the loss of 400 jobs (BBC 2014)⁵⁷. Management blamed a lack of information about the ‘unsustainable’ operations of the plant prior to the takeover, and all confectionary production under the Cadbury brand was moved to Poland shortly afterwards.

Relatively low levels of union density in the UK when combined with the already decentralised system of collective bargaining and worker representation also gives management considerable scope to vary working practices at local level. Collective agreements within the food sector (where they exist) are generally set at plant rather than company level, meaning that only small numbers of workers are covered by each agreement (typically less than 250), and few prescriptions are made beyond basic pay and terms and conditions (Labour Research Department 2015). At a time of ongoing restructuring, individual union branches may be chiefly concerned with protecting standards locally rather than regionally or nationally. The risk for management is that whereas MNCs may be able to exploit national competitiveness between plants which are comparatively isolated, attempting to play off plants within a domestic context may be risky: rather than seeing the survival of their plant as the ‘reward’ for greater flexibility or productivity local unions may see the closure of other plants as a provocation for action. The defence of local standards is therefore of symbolic importance in the efforts to preserve decent work across the firm and the sector as a whole, but relies on the ability of local actors to leverage sufficient bargaining power to resist downward pressure from management.

Social dialogue

The case study is focused on one large food manufacturer ‘BreadCo’, and compares two local branches of the national baker’s union who used different strategies to challenging management around pay, contracts and working practices at a turbulent time for both the sector and the firm. Whereas the union branch at the ‘North West’ plant took on management over the use of agency work and built solidarity by calling a strike of permanent workers which brought in pickets from other plants, the union branch at the ‘Yorkshire’ plant (despite higher membership density) struggled to mobilise workers locally for collective action and was largely focused on representing individual workers in grievance procedures and employment tribunals, and attempting to secure favourable severance payments. The cases are shown in table 10.2.

Table 10-2 - Summary of cases

Plant	Size (m2)	Functions	Staff	Local union density	Interviewees
North West	45,000	Bread and crumpet production	350	65%	2x former branch secretary
Yorkshire	35,000	Bread production, regional/local distribution	300	80%	Current branch secretary

BreadCo is currently part of a larger group of food brands (with a largely UK domestic market) which in turn is controlled by venture capital firm (who hold a controlling 51% stake). BreadCo was bought out in 1992 by an engineering firm who sold it on to a UK-based venture capital firm in 2000. BreadCo was then subsumed into a UK group of food brands in 2007 which led to a first wave of capital and operational restructuring before the food group set up a joint venture with a US-based

⁵⁷ <http://www.bbc.co.uk/news/business-27258143>

venture capital firm in 2014 (who took on a 51% shareholding) which led to further restructuring. Aside from changes in the corporate structure, throughout this period within BreadCo, there was ongoing reorganisation of production and distribution across plants in search of improvements in productivity. In the view of one of the union representatives interviewed, changing ownership had led to a change in approach to labour relations during the 1990s and 2000s as new hard-line managers were brought in from non-unionised firms (e.g. supermarket chains) to deal with specific workforce issues, but more recently financial restructuring and growing debts (when set against falling profits) meant that cost-cutting had become a dominant priority (irrespective of management personnel).

In recent years, significant downward pressure on food prices along increasing domestic competition has made market conditions highly challenging. For example food price deflation since 2012 means falling revenues for many producers, and many brands have been consolidated within larger corporate structures as a result of mergers and acquisitions. Some firms have responded to price led competition as a result of the growth of discount retailers by focusing on low margin high volume production, whereas other have responded to the shift in consumer tastes by moving away from mass-produced standard sliced bread and towards high-end or 'artisan' products which result in higher margins but lower volumes. BreadCo remained largely within the 'standard' products market and concentrated on lowering production costs and streamlining operations.

The company has around 4,000 UK staff in total split across different departments: manufacturing; distribution; and administration (around 2,000 of which are in manufacturing) with an annual payroll of £100m (including social security and pension contributions). In terms of production capacity BreadCo owns property worth around £30m and plant/machinery worth £10m. There was a reduction from 17 bakeries in 1990s to nine in 2015, and distribution was largely consolidated into two main sites (along with six flour mills). Production and distribution are co-located at a small number of sites (including one of the plants researched here) although the internal division between operations means that some smaller distribution centres remain even where production has ceased.

There were national strikes in the late 1970s which resulted in 'bread rationing' being imposed briefly following panic buying in 1978 (BBC News archive), but employment relations were considered to be relatively stable during the 1980s (before several changes of ownership in the 1990s and 2000s). New machinery had gradually whittled away some of the skilled and semi-skilled work, but changes in management had also created a more anti-union culture:

"....there was quicker machinery, modern technology and things like that but different types of management as well who they were bringing in to try and break us... they just didn't like unions..."
[Branch Secretary North West]

Local bargaining was introduced in the mid-1990s which was something of a watershed for employment relations. In one sense, the move to local bargaining undermined solidarity between plants (which all remained well-unionised) and lessened collective bargaining power, but it also served as a mechanism for management to play plants off against each other to lower labour costs and increase productivity:

“...we were always competing [with other plants] after we broke up into local bargaining....management did play with that because they actually moved production around....”
[Branch Secretary North West]

The HR function at national level generally sets staffing policy and the overall ‘envelope’ of affordability for pay claims, but the bakers union, along with engineering unions, were recognised at local level for the purposes of negotiation and consultation. The union is relatively small by national standards with around 20,000 members, but has high membership density at individual plants which means reasonably strong local bargaining power to push back against management pressure over pay, contracts and working time. For example union density at the North West plant was around 65%, and at the Yorkshire plant was nearly 80%. In the view of the former union branch secretary, the North West plant was disliked by management for being resistant to change and ‘awkward’ which meant that pay negotiations at the site would take place after all the other sites had reached a deal, and management could use this as a comparator which inevitably the North West branch would challenge, often with success:

“...we always resisted [management] and always seemed to come out with better deals” *[Former Branch Secretary North West]*

The degree of formal coordination across branches however is fairly limited with little in the way of resource or information sharing, and ballots over industrial action confined to individual plants (rather than regional or national ballots). The view of the three union representatives interviewed at the two plants was that management typically acted in the short-term, making and unmaking decisions in a somewhat opportunistic way, but also displayed occasionally hostility and vindictiveness towards individual unionists regarded as ‘troublemakers’. In recent years managers had changed frequently at local level, and it was noted that the last of the ‘old’ managers ‘who knew the business’ had generally left by 2014/15 which meant that some of the tacit knowledge of the industrial relations context, and custom and practice arrangements over handling minor grievances had been lost which resulted in a more ‘volatile’ atmosphere. In addition, the restructuring of production led to a growing segmentation of workers in terms of pay and working time by a range of factors such as the specific plant where staff were located; whether staff were in production or distribution (with a de facto gender segmentation between different parts of production); and by their contract status.

Divide and conquer strategies as a means to level down pay and conditions

A key management objective from around 2007 onwards (following the first corporate takeover by a larger group of companies) was the reform of pay and conditions. Local bargaining was an important mechanism through which to generate wage competition by pressing individual plants to accept pay deals which had been agreed elsewhere, and the restructuring of operations created scope for managers to try and level down pay and conditions in order to make plants ‘viable’ and agency workers were used to undercut the pay and conditions of permanent staff. Furthermore, the pay differential between production and distribution staff also meant that plant-level pay comparisons were an important bargaining lever for management to hold down wages.

This was manifested in the introduction of ‘second generation contracts’ at the Yorkshire plant in 2007 (and a failed attempt at the North West plant) which saw the hourly wage paid to production workers drop from just over £11 per hour to around £8 per hour, combined with the incorporation

of Saturday working into regular shift patterns which meant a loss of double-time enhancements for unsocial hours working. These second generation contracts were introduced in a somewhat circuitous (and expensive) fashion, with operations at the Yorkshire plant being mothballed on the grounds that it was surplus capacity (in tandem with a reshaping of the distribution function to cover regional and national retailers), and workers being paid redundancy packages before being re-hired just weeks later on the second generation rates of pay. Once the operational plant closure was announced in October 2007, the union negotiated an enhanced severance package including a lump sum for all workers (£5,000) and 1.5 week's pay for each year's service. This totalled more than £50,000 in some cases for those senior (and mostly male) workers with a long period of employment with the company (which was estimated to cost the company around £7 million in total). However, BreadCo was not able to increase production capacity and had to re-open before Christmas 2007 re-hiring some of the same staff who had given the enhanced severance packages. The trade-off, however, was that workers were rehired on a temporary basis at higher weekly rates before being offered permanent second generation contracts with lower pay and conditions than prior to the closure in October. According to the branch secretary at the Yorkshire plant, despite the high payouts, many workers were simply glad to have their jobs back and took the lower rates of pay. Whether the cost of the payouts was fully recouped by the reduced rates of pay and conditions introduced in late 2008 is difficult to estimate, but management certainly achieved the broad aim of reducing pay through local bargaining which was overtly linked with investment decisions and the restructuring of operations. Furthermore, separating out production workers from despatch workers exploited the lack of solidarity at local level and meant the union struggled to build any effective opposition (other than negotiating the details of the initial redundancy packages).

Despite high membership density, the branch membership were not viewed by the branch secretary as particularly willing to take part in collective action which made them a prime target for the introduction of the second generation contracts. At the same time the union strategy at local level appeared to reinforce this somewhat individualised and legalistic mode of representation by supporting workers to (legitimately) pursue grievances over management discrimination or unfair treatment, which had proved to be relatively successful:

"...at [Yorkshire] we tended to fight through the law side of things...since 2007 I had 20 tribunal cases which [BreadCo] settled a lot of them out of court....one or two went all the way [to a successful tribunal]....and the union [paid] for that....it was quite an expensive one there, I think £13,000 plus...but [the workers received] £109,000 and £139,000..." [Branch Secretary Yorkshire]

This in turn led to greater management hostility, and the persecution of individual workers which created fear and complicity, which the union tended to avoid responding to until workers' had at least two years continuous service (at which point under the law unfair dismissal claims can be brought through the tribunal system):

"...if one of them [workers] stepped up and took a case they [management] would just go 'your boots are laced up wrongly off you go'...and that's what we've been up against...so I say just keep your heads down let's get two years [service]..."

This victimisation was particularly true of union representatives including the branch secretary:

"...they were targeting me...I went off sick with stress and I raised a grievance....and I got ACAS (the conciliation service) and solicitors involved but I said I don't want to take the company to court, I want

to be able to come into work...if there is anything in [the HR file] by all means I'll put my hands up and you can chastise me but you're not picking on me because I'm a union rep....anyway they backed right off..."

More broadly, building solidarity between different groups of workers at local level was undermined by the internal segmentation of pay, terms and conditions along functional lines. Despatch workers (who make up less than a third of the local workforce) were unaffected by the restructuring which was a source of friction within the union. Manufacturing workers resented the higher hourly wages of the despatch workers (up to £14 per hour depending on the shift); and conversely despatch workers resented the high severance packages offered to the manufacturing workers:

"...manufacturing are never going to support your despatch....manufacturing will say, well, them lot down there are on loads of money...and then despatch [say] oh well they all got paid out to go..."

These internal differentials actually weakened overall bargaining power as despatch workers were increasingly unwilling to 'rock the boat' in case management attempted to level down all wages to the new lower rate contained in the second generation production contracts. In a relatively slack local labour market, the comparatively good pay and conditions on offer meant that despatch jobs were highly prized, and again workers were dissuaded from challenging management.

Building solidarity to fight back against casual work at North West plant

BreadCo at the North West plant historically employed workers directly on a permanent basis, which was seen as important for stability, skill development and tacit knowledge, but the introduction of temporary agency staff in 2013 created significant tensions within the full-time permanent workforce. This was in fact the culmination of a gradual breakdown in relations between management and workers over a number of years at the North West plant, with management identifying 'must-win battles' with the unions such as the reform of pay and conditions, reducing inefficiency, and changing the culture through the adoption of stronger HR systems (which the union locally thought would culminate in de-recognition). The production of 'morning goods' ceased in early 2010 with the loss of around 100 staff, but initially workers were offered a new contract on lower pay and conditions (which management argued was necessary for the division to remain sustainable) which workers rejected (and consequently lost their jobs):

"...they offered new terms and conditions and were told either they accepted them or they would be redundant....so typical fashion they went make us redundant then..." [Former Branch Secretary North West]

The introduction of agency staff was seen as a means to lower overall labour costs by gradually diluting the share of permanent workers, and eventually benchmarking pay to the new lower rate. In the run up to the strike in 2013, staff had already reduced working hours from a maximum of 52 to 40 (and therefore wages) in a bid to reduce the need for redundancies, but after long and protracted discussions with the union, the company decided to proceed with around 30 job losses, and agency staff were brought in to make up the shortfall on an 'as and when basis'. Management argued that the limited use of agency labour on an 'emergency basis' to cover seasonal peaks, holiday and sickness absence was 'an integral part of operational flexibility that is understood and accepted by all our other sites', but the union argued that agency workers were a direct replacement for permanent workers which had nothing to do with a state of 'emergency':

“...12 people who’d got selected for redundancy had just left the building on the Friday and they brought agency in to do their job on the Sunday...” [Branch Secretary North West]

The union were determined not to allow the company to set precedents by undermining current terms and conditions by engaging temporary agency workers on ‘second generation’ contracts at lower rates of pay and with no guarantees of hours from week to week (effectively a zero hours contract in all but name), which the union were effectively told would be brought in whether the union endorsed the decision or not. The experience of the Yorkshire plant was also seen as something of a warning sign:

“...[North West] was the only site not to have any agency staff by this time... [Yorkshire] had allowed them in as part of a wage negotiation but more and more of them came in...drip feeding. And this was just after they closed [Yorkshire] and reopened it and they offered people to come back and do contracts, that’s how they got round it. So everybody came back on less terms and conditions....” [Former Branch Secretary North West]

Despite all of the new agency workers joining the union, they were in a weak position to resist the lowering of pay and conditions, as BreadCo management terminated temporary contracts at 12 weeks and rehired the same workers immediately afterwards, thus preventing workers qualifying for parity with directly employed staff (which is perfectly legal under the 2011 agency workers directive). As with the Yorkshire plant the second generation contracts were paid at a lower hourly rate, and in addition agency workers were used to cover shifts at a flat rate which would otherwise incur premium rate payments for directly employed staff (e.g. weekends and bank holidays). Levelling down to the lower rates of pay with no enhancements was estimated to be the equivalent of a reduction of £9,000 per year for some workers.

Management began a series of regular meetings directly with the workforce to make the case for changes to pay and conditions which union representatives were not officially invited to, although other union members and even some sympathetic managers were feeding information back to the union branch. This was seen as a clear ‘divide and conquer’ strategy which emphasised the risk of the plant closing if changes were not accepted by workers. A last ditch meeting between senior management and the unions saw both sides become ever more entrenched with no substantive deal reached, and when the union balloted its members on the use of agency staff and whether to accept the lower pay and conditions (and potentially save jobs) or to take the fight to management:

“...we gave [the members] their choices which was basically go back and take it on the chin, let the company have what they want or resist them....and not allow them to use agency workers to knock our wages down....[by] £9,000 a year...” [Former Branch Secretary North West]

Agency workers had already been introduced at the Yorkshire plant and the North West plant had resisted the longest by this stage, and it was therefore of critical importance to leverage the bargaining power of permanent workers to prevent the creation of a two tier workforce:

“we had another branch meeting then and we decided that enough’s enough [sic] we went through all the grievance procedures... we did it all correctly and failed to agree on anything so that’s when we put in our case for strike action...” [Branch Secretary North West]

Privately the union thought that management would capitulate in response to the threat of strike action, but there was no revised offer and 99% of members voted for three weeks of action across a

six week period (one week out, one week back and so on in order to lessen the negative effect on workers' wages). The strike started on a Wednesday morning in order to cause maximum disruption to the supply for the busy weekend period, but management had already brought in 'scab' labour from other plants who put up in local hotels and were allegedly offered £1,800 per week to cross the picket line (average wages are close to £500 per week). It is difficult to ascertain exactly how many staff were brought in either through agencies or from other plants to try and maintain production, but the union estimated it was close to 100 in total (compared with a striking workforce of nearly 300), and they only managed to 'persuade' nine workers not to cross the picket line.

These kinds of tensions grew more evident as the strike wore on. The branch secretary reflected that the first week 'was a bit of a party' as workers from other plants and activists from other unions joined the picket line and community events (the plant is located in a built up area with many workers living very close by). At the end of the first week management 'conceded' on the 28 temporary workers and offered to make them all full-time employees, but the second week of strike action went ahead in order to press for a binding agreement from management that agency staff would only be used as a last resort to cover staff shortages, with typical fluctuations to be covered by staff overtime. During the week back at work, according to the union, management continued the divide and conquer strategies by offering individual workers 'quietly paid into their bank' if they agreed to cross the picket line on the second week of strike action. Only one worker agreed to this and was subsequently totally ostracised within the union and among workers at the plant.

The union was aware that despite management attempting to persuade workers to cross the picket line, the strike action had not significantly disrupted production. Discussions within the union and with other activists (some of whom were ex-miners and ex-dockers) led to a decision to escalate the industrial action to include more subversive tactic to try and disrupt the despatch and transport of goods. This was achieved by chaining up the gates to the plant to prevent lorries entering or exiting, and also attempting to persuade individual drivers (who were also union members) not to cross the picket line. These tactics combined were reasonably successful leading to lorries queuing down the street, and managers taking over lorries from drivers who refused to cross the picket line, but the level of confrontation escalated during the second week culminating in the arrival of riot police with dogs to try and control an increasingly volatile picket line (with three arrests).

Management averted a third week of strike action by agreeing a deal with the union, promising to pay any agency employee who works at least 39 hours a week for 12 consecutive weeks at the same level as full-time employees (and end to the Swedish derogation). BreadCo said it would review staffing levels after three months to see if it had sufficient full-time staff in place. The strike received extensive press coverage both locally and nationally, and the union were keen to present the outcome as both a victory over local management and a symbol of a wider resistance to increasingly casualised work and the loss of skills from the sector. BreadCo were also keen to give a positive spin to the outcome stating that the agreement reached simply reaffirmed the company's commitment to using full-time and permanent labour, and preserving pay and conditions. The concessions made by management to end of the strike meant that workers returned to work immediately and operational capacity was restored fairly quickly, the rebuilding of employment relations at a local level took much longer and the strike clearly left deep divisions between management and the unions. Moreover, at around £3 million the cost of the strike put additional pressure on the plant to find savings.

The politics of dis-investment?

Research evidence shows that investment decisions have been used by management to discipline labour in car manufacturing (Mueller and Purcell 1992; Martinez Lucio and Weston 1995), but in a context of 'managed decline' in the UK domestic bread making industry (driven by falling demand and sharp cost competition) management used affordability as the prime determining factor behind pay awards, and looked for cost savings at plant level to maintain 'viability'. In the specific case of BreadCo the internationalisation of ownership brought additional complexity with a succession of corporate backers moving in to 'rescue' the business before restructuring and selling it on. These successive corporate takeovers promised investment but miscalculations about the value of business and problems with ongoing cash flow meant that money never materialised:

"...they stopped spending money, stopped repairing equipment...hygiene at the site started deteriorating..." [Former Branch Secretary North West]

Ongoing financial issues within the group of companies which owned BreadCo triggered a search for investment and eventually the creation of joint venture in 2014 of which the UK parent company retained a 49% share but the majority controlling stake of 51% was assumed by US-based private equity firm. Subsequent restructuring focused on the rationalisation of production and distribution across sites and the optimisation of machinery, which led to the closure of one large bakery site in the midlands of England (with the loss of 200 jobs) which management argued would be offset by investment in the remaining nine sites in order to 'improve their capacity and efficiency'. The restructuring of operations cost around £6.6m and staff restructuring cost £1.3m, but the short-term financial results were disappointing with a loss of around £60m sales in the year following the creation of the joint venture (a drop of 18% by value).

In July 2015 it was announced that 40 jobs in production would be lost at the North West plant as orders fell sharply, although almost all workers left on a voluntary basis with severance packages agreed by the union. A further round of over 100 redundancies were announced 'out of the blue' in November 2015 (according to the union) which was blamed on a forecasted reduction in demand, and affected production workers, engineers, and office staff. The union argued that the North West site remained well positioned for the production and distribution of specific products such as crumpets (as the plant was close to the motorway network) and moreover, that the strong performance by BreadCo during 2015 would help to safeguard jobs. The union noted that the announcement of the redundancies coincided with the unions' launch of a pay campaign to raise entry wages across the food sector to £10 per hour (compared with the statutory minimum at that time of £6.94). Nevertheless management were adamant that further 'streamlining' was necessary and following the consultation period with the unions, 111 workers were made redundant in early 2016. An indication of how far the relationship between management and workers had deteriorated was clear even in the timing of when the workers were all formally made redundant to avoid incurring higher wage costs:

"...they [were made redundant] the day before, Thursday, because Good Friday is a premium rate..." [Branch Secretary North West]

Although falling demand affected the whole food production sector, the management at BreadCo were identified by the union as a key reason for the continued financial struggles within the

company, and not the productivity of individual plants or workers themselves. In a public statement the regional union organiser made this point clearly:

“...there can be no doubt that incompetence, greed and a culture of confrontation at the top levels of management have contributed greatly to company’s current position. [BreadCo] has been treated like a cash cow, with a revolving door policy in terms of owners, chief executives and managing directors, who have bled the business dry before walking away with golden handshakes as a reward for failure, leaving shop floor staff to bear the brunt of their lack of business nous...”

Whether agreeing to a reduction in pay and conditions and the introduction of agency labour would have saved the North West plant is something of a moot point, but certainly the preservation of pay and conditions was an important symbol of the fight against management. On the question of whether the ‘success’ of the strike led to the North West plant being single out for closure once the circumstances were right, the North West branch secretary was undecided:

“...We can’t say yes. We can’t say no....as a worker there, yes...but understanding what the business has been like there, then I’d say, no, because the actual bread industry is declining anyway...”

More broadly the closure of one plant does not mean that investment or job security will necessarily transfer over to other plants in the UK, where production and investment decisions (and ultimately work itself) remains highly precarious. Reflecting the local level variations in bargaining strength and union branch culture, the strike at the North West plant also did not appear to open the possibility for other plants to follow suit. The union branch secretary at the Yorkshire plant was broadly supportive of the action taken by the North West plant in standing up to management but did not see this as a symbol of a general strengthening of local level bargaining power as plants were still relatively isolated from each other:

“...I take my hat off to them for fighting, it were messy...it were hard work for them....although I’ve a strong membership, as in members, they’re not very proactive, not like [North West], they are a strong branch and that leads to your question have they paid the ultimate price for being strong? Maybe...”

Furthermore, despite cost efficient production at the Yorkshire plant the continued financial pressures on BreadCo overall meant that while jobs were secure in the short-term the prospects for the future were less certain:

“...closing [North West] scared the life out of them [at Yorkshire] and we’re thinking, well could it be us next, they’ve shut us once, it would cost them nowt to shut us a second time...”

Summary and conclusion

In-line with the earlier work of Mueller and Purcell (1992) and Martinez Lucio and Weston (1995), the results of the case study suggest that management at BreadCo had a clear strategy of decentralising pay bargaining to the plant level, while also attempting to leverage competition between plants for resources in order to achieve changes to work organisation and staffing levels. However, instead of plants competing to improve productivity and efficiency in order to secure future investment, plants were competing with each other to survive as management looked for cost savings across the UK.

This took place gradually over a period of nearly 20 years, and by isolating individual plants and different segments of the workforce, management attempted to use local deals to set a precedent

to make other plants 'fall in-line'. On the one hand this was designed to link pay with plant level (rather than national level) productivity and profitability, but at the same time it was also a mechanism through which local level tensions and hostilities between management and the unions were played out. The result was that senior managers punished individual plants, union branches and (especially) unionists for deviant behaviour either with redundancies, victimisation, or ultimately plant closure.

11. Resisting the casualisation of higher education

Trade union density within the UK higher education remains high, but despite this there are growing concerns about the spread of casual and 'atypical' work such as fixed-term, hourly paid and zero hours contracts. The University and College Union (UCU) has campaigned nationally against the casualization of the sector by drawing attention to the numbers of staff in both academic and non-academic roles engaged on atypical contracts, and attempting to negotiate with management at individual establishments to transfer workers into standard open-ended contracts.

The focus of the case study is to understand both the drivers and consequences of casual work within the UK higher education sector, and the ways in which trade union activity at local level can both reduce the share of casual work, and mitigate the adverse consequences on workers. Given the criticism by the UCU of employers' lack of consistency and standardisation around the use and management of atypical contracts, a key issue for exploration is how policy and practice vary across higher education establishments and also across departments and teams within a single establishment. The case study data are drawn from a comparison of two higher education establishments in the north of England and a total of six in-depth interviews with: a UCU representative from each establishment; three HR managers; and a senior academic engaged on an atypical contract.

The marketization of higher education in the UK

It has been argued that since the 1960s the UK higher education sector has been transformed from a predominantly 'public service model' to one where market considerations dominate (Brown and Carosso 2013; Deem 1998). Rather than offering a form of quasi-welfare for (albeit predominantly middle-class) young people to better themselves at relatively low cost, access to higher education has expanded ten-fold in the space of 40 years, and universities are increasingly seen as providers of a commercial product in an increasingly competitive marketplace to those customers who are willing and able to pay for it. The removal of subsidies for tuition fees in 2010 was perhaps the full realisation of this mass-market model of higher education with less than half of university income now coming from central government. The full cost of tuition fees is now borne by students themselves, and at around £9,000 per year many students can expect to graduate with a debt of close to £50,000⁵⁸.

A corollary of the creation of a marketised 'business model' of higher education is the creation of a marketised employment model. The efforts to reform university management under the New Public Management doctrine saw the creation of more managerial and administrative roles, along with the

⁵⁸ The fees are advanced by the government and interest is charged from the first day of study (averaging 3-5% in recent years). The student is obliged to repay the debt once earnings exceed £21k per annum at a marginal income tax rate of 9%. This limit was supposed to rise with average earnings but a government reform in 2015 has frozen the level for five years in order to ensure that payments are made as early as possible. Median annual gross earnings for full-time employees in the UK in 2015 were £27,456. The debt is cancelled after 30 years.

outsourcing of some non-core functions and the development of flexible staffing arrangements such as multi-skilled teamworking (Deem 1998). Greater financial accountability was encouraged through creation of decentralised cost-centres, and individual staff were increasingly expected to demonstrate 'value for money' and to achieve efficiency savings, which in fact diverted resources away from teaching and research (Bryson 2004). The growing burden of commercial enterprise combined with strict performance management regimes (including the demands of the Research Excellence Framework or 'REF') has arguably contributed to uniquely high levels of stress and low levels of job satisfaction among UK academics (Shing and Jung 2014). It appears that the prestige associated with academic roles has been eroded, and the blurring of academic and non-academic tasks has arguably been used to weaken bargaining power of staff and reduce professional autonomy (Bryson 2004). Furthermore, in the UK staff are expected to combine high quality teaching and research output which leads to high levels of stress, whereas in contrast stress levels were lower and job satisfaction higher in countries which tend to have a clear teaching or research focus which helps to reduce role ambiguity (Shin and Jung 2014). For example European countries such as Italy and Norway have a clear research focus, and some South American countries such as Mexico, Brazil and Argentina have a clear teaching focus (op. cit.).

A major way in which the privileged position of the permanent academic has been threatened is through the casualization of the workforce. Universities have always been comprised of a mixture of permanent academic and professional staff, researchers on fixed-term contracts, and various hourly paid staff (such as associate lecturers in vocational areas and PhD students building up teaching experience). However, the drive for organisational flexibility has seen the steady erosion of permanent, reasonably well paid roles with a clear career path, and a growing share of workers engaged on atypical or casual contracts with limited prospects. The system of 'tenure' under which academic staff were effectively employed until retirement and could only be dismissed for 'good cause' (such as capacity grounds or gross misconduct) was abolished as part of the Education Reform Act 1988, and opened the way for managers within institutions to make academics redundant on economic or performance grounds. This combined with the growing share of fixed-term and casual posts means that building a career in higher education is difficult.

Fixed-term workers are entitled to the same redundancy protections as permanent staff after two years' service (either on a single continuous contract or successive renewals) which means they have rights to file for unfair dismissal, at least a two week notice period (one week per years' service) and may also qualify for severance pay. The employer also has to provide in writing the reason for the non-renewal of a fixed-term contract after one years' service. After four years, under EU law fixed-term contracts are notionally converted to permanent contracts unless the employer can provide a substantive 'business' justification for not doing so. In practice however there is little to prevent employers offering fixed-term contracts which are shorter than the significant two and four year threshold, and simply re-designing redundant posts slightly once the incumbents have left in order to get around the obligation of converting temporary work into permanent work.

The Universities and Colleges Employers Association (UCEA) recognise that the lack of job security and career prospects is one of the main reasons why early career academics leave their institution or the sector altogether (UCEA 2015). The employers also note that the consistency of HR policies and procedures around the use of casual and atypical contracts remains a significant problem with some HR departments moving to centralise the management of casual staff in order to improve

consistency while others maintain that local flexibility is required to respond to immediate needs. Casual academic staff are typically managed locally by department/school or faculty, whereas casual non-academic staff are more likely to be managed centrally (UCEA 2015).

The use of different contract types across the HE sector

A major gap in the monitoring of casual and atypical staff is the lack of information about the use of hourly paid staff and an agreed definition of what constitutes a zero hours contracts. The Higher Education Statistics Authority (HESA) requires higher education institutions to report on the number of academic staff engaged on 'atypical' contracts, which collapses together fixed-term, hourly paid and other forms of casual contract. Table 11.1 shows the composition of the higher education workforce for 2012/13 to 2014/15 covering academic (e.g. academic management, teaching and research staff) and non-academic staff (e.g. management, other professional, administrative, and support services). Non-academic staff may include research support and technical staff such as laboratory assistants.

The data show that total staff numbers increased by just over 22,000 between 2012 and 2015 (4.9%), and there has been a slight increase in the proportion of all staff on an academic contract (from 56.8% to 57.1%). Within those academic and non-academic workers engaged on standard open-ended contracts there has been a slight shift towards more full-time contracts. The proportion of atypical academic contracts has decreased slightly from 28.5% to 27.6%. However, it is not clear whether these workers have moved into permanent open-ended contracts (full or part-time) or have exited the sector altogether (perhaps as a result of external funding coming to an end). Men make up just over half of all academic staff in higher education, and are disproportionately concentrated in full time roles, whereas they are slightly underrepresented in atypical academic contracts. The HESA does not require institutions to report on the number or proportion of non-academic staff engaged on an atypical contract which given the close involvement of some staff in research activities, is likely to underestimate the issue of atypical contracts in higher education.

Table 11-1 - Higher education staff by contract type and gender, 2012-15

			Standard contract								
			Full-time			Part-time			Atypical		
			Headcount	Female	Male	Total	Female	Male	Total	Female	Male
2012/13	Academic	259,780	18.5%	28.6%	47.1%	13.3%	11.0%	24.3%	13.3%	15.2%	28.5%
	Non-academic	197,375	36.4%	30.6%	67.0%	26.2%	6.8%	33.0%	-	-	-
2013/14	Academic	269,275	18.8%	28.8%	47.6%	13.4%	11.2%	24.5%	13.1%	14.8%	27.9%
	Non-academic	201,545	36.5%	30.4%	66.9%	26.2%	6.9%	33.1%	-	-	-
2014/15	Academic	273,895	19.4%	29.1%	48.5%	13.2%	10.7%	23.9%	13.0%	14.6%	27.6%
	Non-academic	205,500	37.0%	30.8%	67.8%	25.6%	6.5%	32.2%	-	-	-

Notes: 'Atypical' refers to fixed-term, hourly paid and other forms of casual contract.

Source: HESA 2016 <https://www.hesa.ac.uk/data-and-analysis/staff>

The spread of casual, hourly paid and other forms of atypical contract within the UK higher education sector has been identified as a key issue by the University and College Union (UCU). The UCU argue that the official figures produced by the HESA underestimate the scale of atypical work, and estimate that around 50% of all staff and nearly 70% of research staff are engaged on a non-permanent basis (compared with the 30% figure produced by the HESA). The casualization of the

sector represents a general threat to the bargaining power of workers: the normalisation of casual work means staff have to trade-off the 'intrinsic' rewards of an academic job (such as sharing knowledge and the ability to pursue one's own research interests with a degree of autonomy) against declining extrinsic rewards such as real wages, pensions and job security. At the same time, the creation of more professorial roles means that falling real wages for junior positions are traded-off against individual promotion opportunities, which further undermines solidarity between workers at different grades. This is also seen as a key driver of inequality within universities. For example, since 2010 the majority of staff have seen nominal wage increases of 5% while leadership roles such as Vice Chancellors have enjoyed increases of 14% (the average salary of a Vice Chancellor is nearly £275,000 per year, more than ten times the median full-time salary for the UK).

On a practical level, the way in which employers manage and report on the casual workforce also undermines bargaining union tactics. Universities are no longer required to report on the number and characteristics of atypical workers in non-academic roles, and employers are not obliged to separate out figures on different types of atypical contract such as hourly paid, casual, and zero-hours contracts. This means that the severity of the problem is generally under-reported, and makes it difficult for the union to initiate coordinated action around the specific issues faced by different groups of precarious workers. In addition, the lack of standard HR policies around the deployment of casual staff within institutions presents a significant challenge for the unions in representing the interests of precarious workers and raising challenges to local management practices.

Social dialogue

The UCU is the largest trade union in further and higher education in the UK, with around 110,000 members in academic and non-academic roles. Union membership density across the education sector (primary, secondary and tertiary) is the highest of any UK sector at 51.8% and is far higher than the private sector (15.2%) (BIS 2016). Against the backdrop of growing concerns about casualisation, the UCU launched a campaign to 'stamp out casual contracts' which seeks to leverage the high political profile of zero hours contracts, concerns about prestige and the sensitivity of colleges and universities to the charge of exploiting their staff to exert pressure on employers to address the spread of casual work (UCU 2015). This includes both coordinated national events as well as targeted local level action to secure concessions from management over the use of zero hours contracts and rolling fixed-term contracts, or at least placing greater costs on employers when contracts are not renewed. However the problem remains that without good data and joined up HR policies at local level, action to reduce precariousness tends to proceed on a departmental, team or individual basis where a convincing argument can be made for converting a casual role into a permanent role, or an hourly paid role into a fractional part-time role. It is hoped that reducing the options for employers to (easily and cheaply) create atypical roles will encourage better long-term workforce planning underpinned by training and development in order to deliver the world-class research and a high quality 'student experience' on which the survival of the sector depends.

New University started as a 'polytechnic' (focussing on technical and engineering courses) in 1970 before becoming a university in 1992. It is largely teaching focused covering a wide range of vocational and academic subjects (linked with the heritage of design and technology), with a focus on employability. In recent years 'research excellence' has been identified as a key organisational priority, with an emphasis on staff submitting REF eligible publications to peer reviewed journals. *Red Brick University* has a long history with an international reputation for teaching and research.

The university is known for innovations in science but also social sciences and humanities, with one of the largest campus-based business schools in the UK with over 200 teaching staff. A strong emphasis on university rankings means that publications in peer reviewed journals are a high priority, as is student satisfaction.

Table 11-2 - Summary characteristics of two case study universities

Case	Established	Total students	Academic staff	Non-academic staff	% academic staff fixed-term
<i>New University</i>	1992	35,000	Around 3,500	n.a.	30%
<i>Red Brick University</i>	1880	40,000	Around 6,500	Around 5,500	50%

Sources: New University and Red Brick University annual reports, UCU data on fixed-term staffing

The atomisation of employment relations at New University

At 30% the proportion of academic staff at New University engaged on a fixed-term contract is slightly higher than the figures produced by the HESA and does not include other forms of casual contract such as zero hours contracts and hourly paid staff. According to the union representative and also the HR manager interviewed, the use of casual staff was largely a decision for individual departmental managers and therefore varied markedly across the university. In vocational subject areas such as social work and education (e.g. teacher training) atypical and casual contracts were often hourly paid 'associate' lecturer positions where staff would be engaged for the semester or the academic year where teaching hours were needed, and would only generally be paid only for the time spent delivering lectures and seminars or preparing teaching materials (as opposed to a salaried full or part-time post). Many of these hourly paid staff were either retired or were working part-time in professional roles (in schools or local authorities) and lecturing was effectively a second job. For those staff with specialist knowledge/expertise and lots of work experience, their bargaining power in the labour market meant that the insecurity of the contract was partly compensated for by the high hourly rates:

"...if you want to employ a retired teacher or a retired head teacher you are going to have to offer them the payment....our courses wouldn't run without them..."

In the view of the local union branch secretary the university had attempted '*to impose the business model on education*' with the effect that employment relations had also become increasingly marketised with an emphasis on performance management and a closer link between the demand of students as paying 'customers' and the organisation of work. For example introducing a 'PhD bar' for academic staff was seen as an important means to improve the quality of both teaching and research, but this resulted in significant pressure on staff to publish in high ranking peer reviewed academic journals shortly after completing their doctorate, alongside their burgeoning teaching responsibilities. The problem for early career researchers was that teaching posts were generally offered on a fixed-term rather than permanent basis, paid on an hourly rate. This resulted in a rather fragmented system of payment for teaching staff who could see significant variations in earnings from semester to semester and in some cases from month to month as teaching commitments vary across the year (with a marked drop in the summer). This situation was compounded by late payments to hourly paid staff. The official explanation was that this was 'an administrative error', but the union felt it was symptomatic of the rather chaotic system of paying by the hour rather than paying a salary (even if only for a small number of hours across the year). The complexity of the

system, and its perceived 'unfairness' to fixed term hourly paid staff was further increased as a result of 'splitting' academic roles into broad groups of tasks and aligning them with other comparator roles within the organisation such as clerical roles:

"...so they say we'll pay you at this rate for this aspect of your job such as teaching and at this other rate for supervision, marking or tutorials...."

Not only did this drag individual earnings down but it meant that hourly paid staff were treated fundamentally differently to permanent staff who would be paid at a single (and typically higher) rate regardless of the task. The low total earnings on offer for teaching roles meant that rather than hourly paid lecturing being a second source of income (as in the case of part-time teachers and industry professionals), some staff actually had to supplement their earnings with second jobs outside of higher education. The expectations placed on early career researchers and the possibility of accessing one of the prized permanent posts was a means for managers to gradually extract more effort from hourly paid staff:

"...what happens is you do your PhD, do your research and [then managers say to you] can you just teach this class? Then that goes well, can you just teach this class? And then suddenly it's 10 years of can you just?"

Requiring staff to gain a PhD to strengthen the reputation of the institution is somewhat at odds with the prospects for early career researchers who may find that they have to take on second jobs in order to get by, and see little reason to invest in a PhD and building a research portfolio within the university when the prospects of achieving permanence are limited:

"...I don't think anybody gets a permanent contract [at first], they all start off fixed term...then that's likely to be followed by another two year fixed term and eventually it gets a conversion to permanent in the most uphill way possible..."

While this may reflect a lack of strategic planning from a HR perspective, in the view of the union official interviewed fixed-term contracts were in some cases used as leverage against individual workers who were afraid to challenge managers in fear that their contract would not be renewed:

"...what casualised staff says there's an awful lot of veiled threats which are made to them...if your face doesn't fit we are not employing you again...."

In response the union attempted to raise the issue of casual and fixed-term contracts across the university through surveys and focus groups with staff to establish the extent and severity of the issue, and the ways in which the use of atypical contracts varied across departments. The union also attempted to build solidarity among the permanent academic workforce who had greater bargaining power to resist casualisation by emphasising the scope for managers to gradually fragment all academic roles into their constituent parts. This had however proved difficult as staff were keen not to 'rock the boat', and tended to focus (not unreasonably) on their own careers:

"...the issues for casualised staff are important for permanent staff as well because you can clearly see that we are sort of side by side...but the difficulty is that when you've got a permanent contract you forget what it's like...and these people themselves...it's really difficult for them to take [these issues] up..."

The variation in the use of atypical and casual contracts across faculties and departments was an issue which was fully recognised by HR, but at the present time was not something which the corporate leadership team were willing or able to address systematically. Fixed-term contracts were generally considered an important component of ‘business flexibility’ and were largely negotiated by departmental managers with advice from central finance officers who would often require justification for the creation of a permanent rather than fixed-term post. In some cases the insecure nature of the funding for the post such as external grants for time-limited research projects meant that fixed-term posts were almost inevitable, but at the same time there was still a perception among some managers that it was ‘too risky’ to take staff on permanently (even into teaching roles where student numbers were generally stable). This was in part driven by the fact that in some cases it had been problematic to recruit external candidates of a high quality and therefore fixed-term contracts limited the risk to the university.

The problem of this approach is that by hiring workers on a fixed-term rather than a permanent basis, staff also do not receive the same structured probation period, which typically involves reduced workloads and close supervision and support to allow staff to develop their skills and experience, while having the opportunity to prepare research articles following completion of a PhD. Those staff hired on a fixed-term basis who were felt to be of a lesser quality, would therefore not only be expected to assume a higher workload than newly hired permanent staff but at the same time would have fewer opportunities than permanent staff to strengthen their skills.

Whether the use of atypical contracts will make the university a more attractive employer for stronger candidates over the long-term is difficult to say, but the somewhat inconsistent way in which employment contracts and terms and conditions are drawn up could create short-term problems with recruitment and retention. Negotiating a permanent contract is clearly an individualised process, driven by the demands of specific managers, the nature of the work being undertaken, and perhaps most importantly the supply of suitable candidates and their relative bargaining power in the external labour market. Converting an existing fixed-term contract into a permanent one was a similarly individualised process which relied on the awareness of individual staff members about their legal rights (e.g. the rights accrued at two and four years), and the ability to develop a compelling business case for permanence.

Imposing flexibility costs on the employer at Red Brick University

Red Brick University had a much higher proportion of academic staff engaged on fixed-term contracts than New University (nearly 50% compared with 30%), which was partly driven by the significant research capacity across the university and the importance of external grant funding (which tends to produce fixed-term rather than permanent posts), and the requirement for staff to undertake a fixed-term post-doctoral position before moving into a permanent teaching role. However, the university also prided itself on the quality of teaching which was somewhat at odds with the approach of certain faculties and managers to creating teaching-only posts which were also fixed-term (roles which would historically have been permanent or almost certainly would have led to permanence following the successful completion of a probation period of 12 months). Similar to New University, in some cases staff were appointed on a fixed-term basis primarily because they were not felt to be of the ‘right calibre’ for a permanent appointment, but this created the same issue that fixed-term staff would have fewer opportunities to close the gap in terms of skills and experience to permanent hires as they did not enter a probation period with a reduced workload

and training opportunities. Temporary workers with two years' service have the same rights to internal redeployment opportunities should the contract not be extended, and all vacancies (fixed-term and permanent) were open to fixed-term staff, but some posts had been created which were less than two years duration specifically to avoid the additional obligations to those employees in terms of alternative employment opportunities or severance pay.

The UCU branch at Red Brick University were opposed to the creation of fixed-term posts instead of permanent posts and wherever possible supported staff to build a business case to convert fixed-term posts into permanent ones. In some cases however (as at New University), it may be more lucrative to remain in an hourly paid post than convert to a permanent part-time role (depending on the 'market rate' for certain specialisms). Nevertheless, the union had attempted to leverage individual cases where staff had been converted to fixed-term to permanent to set a precedent for bargaining with management over making groups of workers permanent (where external funding or student numbers were stable for example), or at least imposing greater costs on the employer in situations where fixed-term contracts were not renewed:

"...[the union] have this policy to deter the University from getting rid of people on fixed term contracts....to impose a cost on them which involved at least an additional three months either pay or employment after the ending of any fixed term, or end of funding..."

Over and above the small extra period of guaranteed earnings for the worker themselves, it was important to try and create a principle that contracts of employment were not solely contingent on external grants or 'soft money':

"...you try and break the link between the ending and funding or the fixed term date and itself and the end of employment...it's not perfect; it's just trying to impose decision costs and considerations in managers' minds that they are more proactive in trying to continue with people..."

A more difficult issue was the use of zero hours contracts which the university and the UCU branch argued were not used at all. However PhD students engaged on an hourly basis as graduate teaching assistants to give seminars would only receive their contracted hours at the start of term once student numbers had been confirmed. Although this meant that working hours (and therefore any earnings over and above student bursaries or maintenance grants) would be fixed for the term, there were no guarantees over the course of the year. Although these students were highly unlikely to rely on paid teaching hours to support their standard of living, there is a risk that the use of this kind of flexible contract with few protections could eventually be used as a mechanism to restructure employment standards for other teaching staff. Without reliable data on the use of these 'marginal' contracts it is difficult to gauge the extent of precariousness among the workforce and correspondingly it is difficult for the union to formulate a strategy how to respond.

Summary and conclusions

The rapid expansion of higher education in the UK has undoubtedly introduced new dynamics to the 'business model' as well as the 'employment relations model'. Although universities have not been as drastically affected by outsourcing as other parts of the public sector such as local government or the health service, the pressure to demonstrate value for money and responsiveness to customer needs places new pressures on academics to deliver a 'commercial product'. In turn, the security, status and prestige associated with academic positions has arguably been eroded as a large share of

teaching and research is undertaken by workers engaged on fixed-term, casual or zero hours contracts.

The high use of fixed-term contracts is partly linked to grant funding for research, but the evidence from the case studies suggest that even teaching-only posts are being offered on a fixed-term basis where candidates are not thought to be of a high enough calibre to merit a standard open-ended contract. Fixed-term posts may also be created by employers which are under two years' duration specifically to avoid the additional rights to severance pay and unfair dismissal protection which are accrued after two year's continuous service. This however gives fixed-term staff little chance to develop skills as they do not enter a probation period with the same level of support and supervision as a permanent employee. Furthermore, the extensive use of fixed-term contracts may do little to improve the reputation of higher education establishments when recruiting externally, and may offer few incentives for promising early career researchers to remain loyal.

The University and College Union (UCU) have attempted to bargain with employers over creating more permanent posts and supporting staff to build a business case to convert fixed-term posts to permanent ones, but a lack of good data on the use of atypical contracts within and between establishments is a significant impediment to the systematic reduction of precarious work. A proportion of lecturing staff with skills and experience which are in demand may be happy to remain on an hourly paid casual contract, but it appears that a considerable share of post-doctoral teaching staff are channelled into hourly paid work in the hope that a permanent job may eventually open up. In the meantime these highly skilled workers find themselves in a weak bargaining position and are at real risk of low and variable earnings.

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