



Changing the world
of work for good

Ending the Undercutters' Charter

Why agency workers deserve better jobs

Ending the Undercutters' Charter

Executive summary

Two people working alongside each other doing the same job should get the same pay rate.

But too often agency workers get paid much less than directly employed staff for doing the exact same work.

This is due to a legal loophole - known as the 'Swedish derogation' - which allows agencies and employers to avoid paying agency workers the going rate for the job.

This Undercutters' Charter means bosses can use agency workers to reduce their wages' bill and undercut the pay and conditions of their staff on a long-term basis.

- More than 420,000 agency workers have been in their jobs for more than a year, and shockingly, over 120,000 have worked for an agency for over five years.
- Agency workers employed under the Swedish derogation suffer a significant pay penalty. The TUC has evidence of workers earning up to £4 less per hour than directly employed staff even though they do the same work.
- Evidence from trade unions also shows that agency workers often receive fewer rights and fewer paid holidays than workers on a regular contract doing the same job.

Agency work no longer appears to be a stepping stone into secure employment in many sectors and workplaces. Instead, agency workers can remain trapped in low paid, insecure work, with few rights in the workplace. Younger agency workers are particularly missing out on career progression. And while some have claimed that the workers have a choice about the form of agency contract they accept, at best this is a 'Hobson's Choice', with workers told they can either sign the contract, or miss out on the chance to work.

This report sets out why ending the Undercutter's Charter is a key part of the TUC's Great Jobs Agenda, and why government must end this unfair practice now.

1. Introduction

There are at least 740,000 people in the UK today working through an employment agency.¹ This figure comes from the Labour Force Survey, but many estimates put the figure higher than this: the Recruitment and Employment Confederation estimate that there were 1.2 million temporary work placements in the UK in 2014/15.²

For years, unions both in the UK and across Europe campaigned for equal treatment rights for agency workers. Having secured hard-won equal treatment rights for part-time workers and fixed-term employees, unions were keen that agency workers should also be guaranteed the same pay rates as directly employed staff.

But, negotiations on a proposed EU Temporary Agency Worker Directive became gridlocked, as a result of lobbying by UK employers and agencies intent on spoiling plans for day one rights for agency workers.

In 2008, the TUC and unions decided to enter negotiations with the CBI over a qualifying period for agency workers in the UK. The aim was to 'unblock' the directive and finally secure some - albeit limited - protections for agency workers. Shortly after the UK deal was sealed, the Temporary Agency Worker Directive was adopted.

As a result, agency workers across the EU have a day one right to use collective facilities provided by the employer - such as canteens, wash facilities, staff rooms and on-site gyms. Before 2011, agency workers in the UK were often expected to wear different uniforms, marking them out from other staff and to use porta-loos, rather than indoor toilets. Such discriminatory practices had to come to an end once EU laws came on stream.

Agency workers now have the right to be informed of job vacancies with the hirer and get the same chance to apply as directly employed staff, including for internally advertised posts.

Importantly, agency workers also secured rights to equal treatment on pay, holidays and working time rules when compared with directly employed staff.

But the EU directive allowed national governments to limit equality for agency workers, and the UK government took the decision to do so. This report sets out the impact of that decision on agency workers, and why the government now needs to act to protect agency workers' rights.

¹ Labour Force Survey July September 2017

² Cited in BEIS (2018) *Good work: the Taylor review of modern working practices; consultation on agency workers recommendations*

2. Why don't agency workers get the going rate for the job?

The Temporary Agency Directive, adopted in the EU in 2008, meant that agency workers secured rights to equal treatment on pay, holidays and working time rules when compared with directly employed staff.

In many EU countries, agency workers are guaranteed these rights from day one.³ But, the Directive also allows national governments to limit equality for agency workers through three possible derogations. These are:

- collective agreements negotiated by unions and employers which guarantee overall protection for agency workers;
- the use of a qualifying period, agreed with employers and unions at a national level and
- national legislation limiting rights to equal pay for agency workers employed on a permanent contract with the agency and guaranteed paid between assignments. This is known as the "Swedish derogation".

When the directive was implemented in the UK in 2011 the government decided to take advantage of two of these derogations.

1) The 12-week qualifying period

Agency workers in the UK only qualify from equal treatment on pay, holidays and working time rules, after working 12 weeks in the same job for the same hirer.

When the Agency Worker Regulations were being prepared, the TUC lobbied hard for anti-avoidance rules to prevent bosses from avoiding equal treatment by hiring agency workers on a succession of assignments. Whilst such measures were included, too often bosses avoid equal treatment rights by firing agency workers after 11 weeks - only to rehire them shortly after.

2) The Swedish derogation in the UK

The UK government also decided to use the so-called Swedish derogation - a move opposed by the TUC and unions. But unlike in other countries, agency workers employed under the derogation benefit from very limited safeguards- meaning agency workers were vulnerable to abuse.

Swedish derogation - the minimum requirements

Under the Agency Worker Regulations, agency workers employed on permanent contracts with an agency miss out the right to equal pay, in return for a promise of pay when the agency can't find them work. These are known as 'pay between assignment contracts' (PBA contracts)

To rely on the derogation, agencies must meet minimal standards:

³ ETUI / EU Commission

- Agency workers must be employed on a permanent contract of employment with the agency. Fixed term contracts are not permitted.
- The contract must include terms about:
 - the minimum pay rates the agency worker will receive;
 - the expected and maximum hours of work during any assignment
 - the minimum hours the agency will guarantee on an assignment (which must be at least one hour); and
 - the type of work the agency worker will be expected to do, the relevant qualifications needed and the location(s) where they will be expected to work.
- The contract must also state that as a result of entering into the contract agency workers will not be entitled to rights under regulation 5 of the AWR relating to pay. Given that most employers are not familiar with the intricacies of the AWR, it's hardly surprising most agency workers have no idea that they have signed away their rights to equal pay.⁴
- The agency is expected to try to find the individual suitable work when their assignment comes to an end but there are very few limits on the type of work which can be offered to agency workers or on the distance workers can be expected to travel.
- Where the agency fails to find them work, agency workers have the right to be paid at least 50 per cent of the pay they received on their last assignment or the national minimum wage rate for the hours they worked on the last assignment, whichever is the greater.
- But, as long as the agency workers has been paid for at least 4 weeks when not working on an assignment at any point since signing the contract, the agency can dismiss the agency worker. There's also a concern that if an agency worker turns down an assignment - for example, because it involves travelling long distances from home, agencies can dismiss them even where they've not received four weeks' pay between assignments.

The Swedish derogation only applies to pay. Agency workers should be entitled to all other equal treatment rights, including the same holiday entitlements as directly employed staff.

Is the Swedish derogation used anywhere else?

The UK is one of just five EU countries which have opted to use the Swedish derogation. Maybe unsurprisingly the derogation is used in Sweden although in many sectors better pay and conditions have been negotiated by unions for agency workers through collective agreements. Other countries using the derogation include Hungary, Malta, and Ireland. Whilst Ireland followed the UK model, in some countries, agency workers on PBA contracts benefit from better protections than in the UK. For example, in Hungary, agency workers on a PBA qualify for equal pay after 6 months. This means that agencies are prevented

⁴ Berry-Lound, Greatbatch and Tate (2015) "Qualitative Analysis of the use of Pay Between Assignment contracts for Agency Workers" - Final report to BIS by HOST Policy Research

from using agency workers to displace and undercut the pay of permanent staff. In Malta, agency workers are basically salaried as they have a right to be paid the same rate of pay if they are on an assignment or not.

3. The undercutters charter in the UK

There are no national surveys - including the Labour Force Survey - which ask agency workers whether they're employed under the Swedish derogation. Many agency workers may not be aware they are employed on a pay between assignments contract.

However, we think that the long-term use of agency workers gives some indication that employers are using agency workers as a cost-cutting measure. Under the derogation, employers and agencies can use a high volume of agency workers on a long-term basis and avoid equal pay. And the industries where long-term agency work is common, in particular distribution and manufacturing, are those where unions often report abuse of the undercutters' charter. Government research suggests that the primary reason these employers are using the Swedish derogation is to cut costs.

Long term agency workers

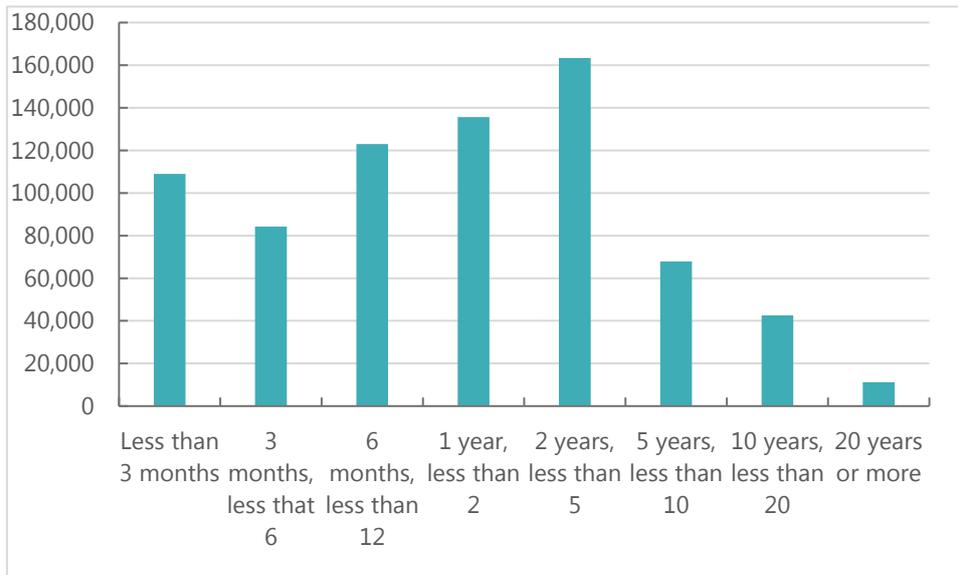
We think that the large number of agency workers employed by the same employer on a long-term basis shows that many employers are using agency workers not as a temporary stop gap when someone is on leave, or where there's short term pressure to respond to a peak in demand, but as a long-term strategy to keep costs down.

Official data shows that:

- 420,000 agency workers have been with their current employer for over a year.
- 285,000 agency workers have been there for over two years.
- 120,000 agency workers have been there for over five years.
- 50,000 agency workers have been with their current employer for over ten years; and
- 11,000 have been there for over twenty years.

We think it's likely that many of these workers are being used to undercut the wages of permanent staff.

Agency workers by length of time with current employer



Source: TUC analysis of Labour Force Survey, July-September 2017

We also get a clue that for many, agency work is far from temporary, from the way these workers describe themselves when answering national surveys. Overall, the Labour Force Survey suggests there are just over 740,000 people who say they are working through an agency in the UK.⁵ Of these, just over 440,000 (60 per cent) say that they are employed on a permanent basis (a similar figure to the 420,000 agency workers (who say they've been with their current employer for more than a year).

While we can't say whether all of these workers are employed through the Swedish derogation, it suggests that many employers are using agency workers not as a stop gap when permanent workers aren't available, but as a cost-cutting form of employment.

We are not alone in thinking this. Research commissioned by ACAS in 2014 found that the Swedish derogation was particularly attractive to companies which wanted to hire large numbers of agency workers on a long-term basis and where the costs of providing equal pay might be significant. Using agency workers on a permanent basis means that the risk of having to pay agency workers between assignments was relatively low - helping to keep costs down.⁶

⁵ This figure is almost certainly under-estimates the number of agency workers in the UK. The government recently suggested there are 1.2 million agency workers in the UK, which is based on data provided by the Recruitment Employment Confederation (REC). See <https://www.gov.uk/government/news/millions-to-benefit-from-enhanced-rights-as-government-responds-to-taylor-review-of-modern-working-practices>

⁶ Forde, C. and Slater, G. (2014). The effects of Agency Workers Regulations on agency and employer practice. London: Acas Research Paper.

These findings also suggest that in many sectors and industries, agency worker is no longer a stepping stone into secure employment with good career prospects. Instead it's becoming a more permanent form of work.

Young workers are most likely to have been stuck in long term agency work. Over forty per cent of all those who have been in agency work for over a year are aged 16-34,.

These findings are backed up by other independent studies which found there is little if any evidence of agency working providing a stepping-stone into regular employment, at least for the less skilled.⁷ Instead, temporary jobs can serve as career traps rather than stepping stones.⁸ Recent research for the TUC found that those in 'casual' work were five times as likely to drop out of the labour market as those with a permanent contract.⁹

Which industries are using agency workers on a long-term basis?

Large numbers of those in the public sector are working on long-term agency contracts, with over 100,000 agency workers who have been employed in their job for over a year working in public administration, health, and education.

But there are major sectors dominated by the private sector where long term agency work is also common:

- There are over 80,000 agency workers who have been there for over a year in banking and finance
- In distribution, hotels and retail, there are over 70,000 agency workers who have been there for more than a year.
- And in manufacturing, there are over 65,000 agency workers who have been in their jobs for a year or more.

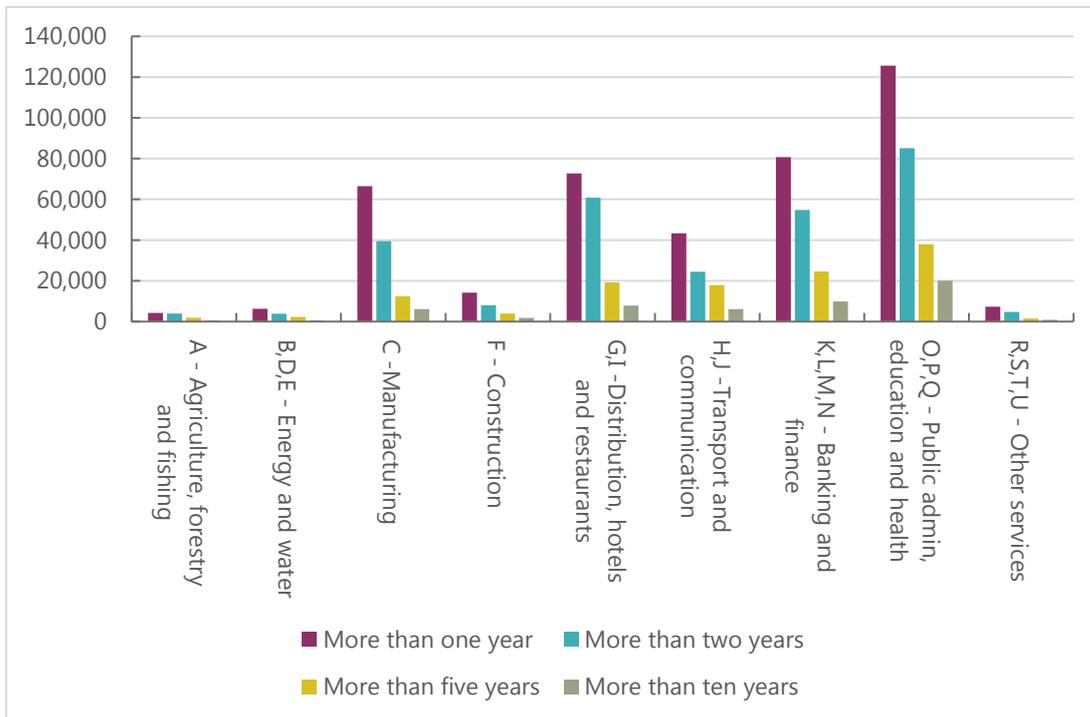
⁷ Countouris, N, Deakin, S, Freedland, M, Koukiadaki A, and Prassl, J. (2016) Report on temporary employment agencies and temporary agency work: A comparative analysis of the law on temporary work agencies and the social and economic implications of temporary work in 13 European countries: ILO

⁸ Korpi T and Levin H (2001) Precarious footing: temporary employment as a stepping stone out of unemployment in Sweden. *Work, Employment & Society*, 15, 1: 127-148; and Scherer S (2004) Stepping stones or traps: The consequences of labour market entry positions on future careers in West Germany, Great Britain and Italy. *Work, Employment & Society*, 18, 2: 369-394.

⁹ Kirsty Newsome Jason Heyes Sian Moore Dave Smith and Mark Tomlinson (2018) *Living on the edge: Experiencing workplace insecurity in the UK*

<https://www.tuc.org.uk/sites/default/files/insecure%20work%20report%20final%20final.pdf>

Length of time in agency work by industry



Source: TUC analysis of Labour Force Survey, July-September 2017

These findings are supported by newly published research for the government into the use of the Swedish derogation and how it affects agency workers. This report found that PBA contracts are being used in a while range of sectors, including:

- Transport, logistics and warehouses
- Retail and hospitality
- Manufacturing
- Food production and processing
- Telecommunications and call centres
- Financial services and
- Public services, including health care, social work and education

It also highlighted that:

- The use of PBA contracts is particularly widespread in food manufacturing. In one company, agency workers on PBA contracts made up 25 per cent of a 400-500 strong

workforce. Another company employed approximately 1,000 agency workers on different site - all on PBA contracts.

- The use of PBA contracts was also high in the print and publishing sector where agency workers were not just used to respond to seasonal peaks in work. Instead "agency workers had become a core part of the business".
- In telecommunications and call-centres, agency workers make up at least 10 per cent of the workforce - and many were on PBAs.
- PBA contracts are widely used in sectors such as retail and distribution, where high volume of agency workers are used over the long term.

Recent surveys also suggest that the Swedish derogation is a popular tool for many hirers, agencies and umbrella companies as a means of reducing costs and avoiding equal pay.¹⁰ For example, surveys have found:

- A third of agencies use the Swedish derogation for at least some of their agency workers (BIS and the Recruitment Employment Confederation (REC) joint survey)
- A third (36 per cent) of umbrella companies use the derogation (Host policy research for BIS in 2015).
- 60 per cent of agencies supplying blue collar workers and 45 per cent of professional staffing associations use the Swedish derogation (Osborne Clarke survey in 2012).
- More than 31 per cent of companies hiring agency workers use the Swedish derogation (CBI / Accenture survey from 2014).

Why are employers using the 'Swedish derogation'?

Evidence from unions - discussed further below - shows that a wide range of employers are using the Swedish derogation to keep agency workers employed on a long-term basis, while undercutting pay. These findings are also backed up by the research commissioned by government which asked why companies and employers choose to use the Swedish derogation.

The findings from this survey paint a very clear but stark picture of hirers, agencies and umbrella companies all using the Swedish derogation to reduce costs and undercut pay and conditions.

The types of reasons given for using the derogation include:

- It cuts costs and means hirers and agencies can avoid enhanced pay rates for agency workers
- It is the best way to maximise revenue and to minimise risk
- The avoidance of pay parity

¹⁰ For an overview of available surveys see Berry-Lound, Greatbatch and Tate (2015) "Qualitative Analysis of the use of Pay Between Assignment contracts for Agency Workers" - Final report to BIS by HOST Policy Research

- It was the surest way of hirers and agencies to ensure compliance with the AWR
- It reduces administration
- It avoids the need to identify possible comparators in the hirers' firm
- The hirer does not need to disclose their pay rates.

The research includes telling evidence from an umbrella company which chose not to use agency contracts. The research states that this agency *"does not offer PBA [Pay Between Assignment - or Swedish derogation] contracts because they view them as a way of avoiding the equal pay aspects of AWR which is unfair to workers as well as increasing the risk to themselves in terms of compliance and tax liability.... They suggest that pay between assignments is not a benefit for workers as organisations will simply calculate a deduction from this from the hourly rate in the same way as holiday pay is calculated. However, in their experience any workers will never receive any pay between assignments..."*¹¹

In some sectors, the decision to use the derogation sits with the hiring firms. For example, some supermarkets and large distribution centres require agencies to use the derogation, as a condition of supplying workers. So, 100 per cent of agency workers are on PBA contracts. In other sectors, the final decision may rest with the agency or the umbrella company. But they face pressure from end users to reduce costs and protect hirers from responsibility for agency workers' rights. One agency in the government commissioned research that did use the Swedish derogation argued that *"Employers say they don't want to pay parity and pass the problem back to the agency to find a commercial solution or they will take their business elsewhere. PBA contracts are used predominantly by clients who are commercially pressured to have a cost-effective model."*¹²

What is striking about the government report's findings is that none of the hirers or agencies or umbrella companies were using the derogation to improve working conditions for agency workers.

Indeed, some of the agencies and umbrella companies which actively choose not to use the derogation give the reason that it would be unfair to agency workers to do so and would deny them equal pay.

The findings suggest that the government may not be meeting its legal duties under the Directive (Article 5(5)) to ensure that derogations are not used in a way which undermines equal treatment rights and allows for the abuse of agency workers.

¹¹ Berry-Lound, Greatbatch and Tate (2015) "Qualitative Analysis of the use of Pay Between Assignment contracts for Agency Workers" - Final report to BIS by HOST Policy Research page 12

¹² Ibid

4. The impact of the undercutters' charter on working people

The case studies set out below as well as evidence gathered by the government reveals that the Swedish derogation is being used by employers and agencies as an undercutters' charter aimed at driving down costs and avoiding equal treatment rights.

As a result, for many agency workers working life is grim. Agency workers lose out on pay, on holidays and basic rights at work.

The pay penalty

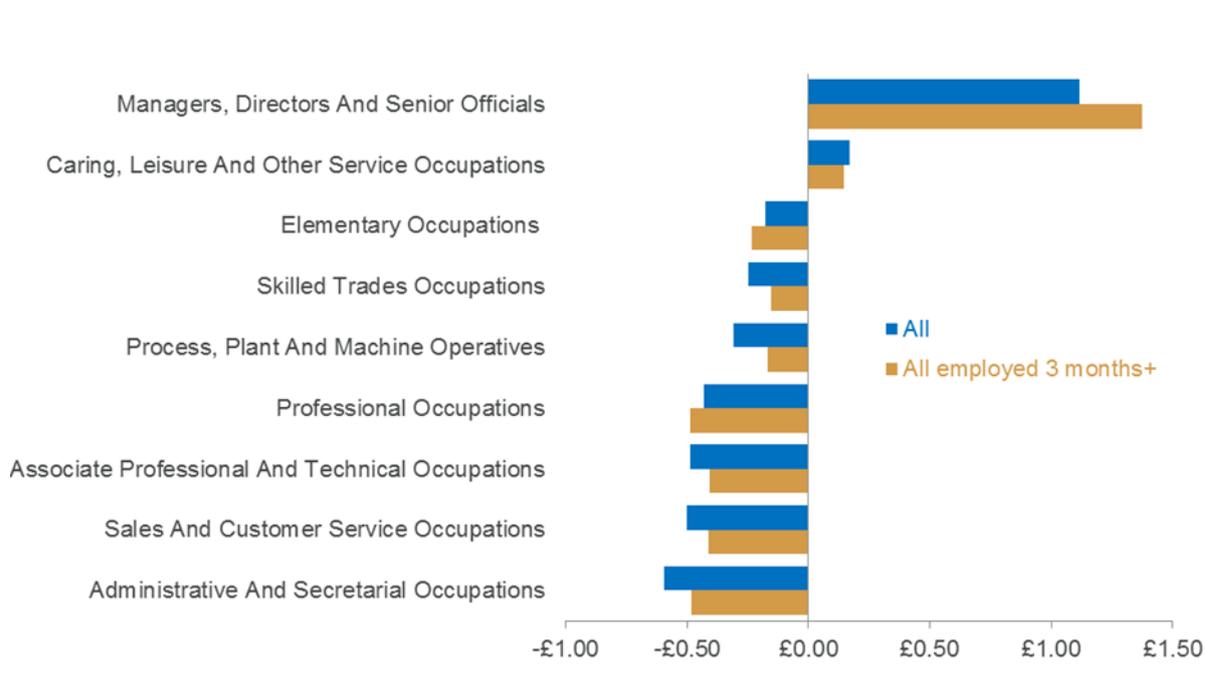
We know that agency workers on average earn less than regular employees. Official statistics suggest that on average agency workers are paid £1.50 less an hour than permanent staff.¹³

Agency workers who've worked for their employer for 12 weeks or more should be getting the same rate of pay as regular workers. But research by the Resolution Foundation research¹⁴ shows there's still a significant pay penalty for those agency workers who have been in their jobs for that three-month period – suggesting that use of the undercutter's charter is driving down pay for this group.

¹³ TUC analysis of Labour Force Survey data.

¹⁴ Lindsay Judge (2017) Unwrapping the agency worker pay penalty Resolution Foundation, at <http://www.resolutionfoundation.org/media/blog/unwrapping-the-agency-worker-pay-penalty/>

Difference in hourly pay between agency workers and employees controlling for personal and job characteristics, by occupation and length of employment: UK



Source: Lindsay Judge (2017) Unwrapping the agency worker pay penalty Resolution Foundation, at <http://www.resolutionfoundation.org/media/blog/unwrapping-the-agency-worker-pay-penalty/>

Case studies gathered by the TUC also reveal that in many workplaces agency workers suffer a significant pay penalty with agency workers earning £4 less an hour than directly employed staff.

- In Argos distribution centres, agency workers earn £4.36 less per hour, with directly employed staff earning 63 per more than their agency counterparts
- In BT call centres, agency workers can earn up to £3.26 per hour than directly employed staff, which equates to £122 less per week and £529 less per week.

Agency workers need to work overtime and anti-social hours to make up for the shortfall in their wages packets, but often face a bigger pay penalty when doing so.

- For example, in one food manufacturing plant, agency workers earn nearly £3 less per hour than directly employed staff when working weekday night shifts. Agency workers on Sunday daytime shifts earn £7 per hour less per hour, whilst, Sunday night working brings a pay gap of £6.33 an hour.

- In the same factory, agency workers miss out on enhanced overtime rates. When working extra hours agency workers continue to be paid £7.53 an hour, when core staff receive a 50 per cent premium for over time, being paid up to £17.06 an hour.

Employers have a clear incentive to use agency workers on PBA contracts to cover longer shifts and anti-social hours agency workers to achieve significant savings and undercut the pay and conditions of their core workforce.

So serious were the TUC's concerns about the extent of the agency workers' pay gap, that in 2013 we formally complained to the EU Commission that UK's Agency Worker Regulations (AWR) fell well short of the required EU standards. For the first time, the government's consultation on the Taylor recommendations on agency workers acknowledges that the UK government *may* have failed in its duty take steps to prevent the abuse of agency workers' rights. We are calling on Ministers now to get serious about equal pay for agency workers and to ditch the undercutters' charter.

Missing out on workplace rights

Agency workers employed under the Swedish derogation don't just miss out on pay. They also receive fewer workplace rights. Many agency workers on PBA contracts are entitled to fewer paid holidays than permanent staff even though this may breach the Agency Worker Regulations.

- In Argos distribution centres agency workers on PBAs miss out on an extra 4 days paid holidays a year.
- In a food manufacturing factory, core staff are entitled from the start of their job to 26 days leave plus 8 days bank holidays. They receive an additional two days' leave after 10 years. In contrast, agency workers receive just 28 days leave.

Do agency workers receive pay between assignments?

Some employers claim that the Swedish derogation provides workers with a fair trade-off. They give up the right to equal pay on the promise of pay between assignments when the agency cannot find them work.

But newly published research commissioned by the government reveals that sometimes - maybe often any monies paid to agency workers between assignments does not amount to an extra benefit for agency workers, but instead is deducted from pay they would otherwise receive for doing the job.

The report revealed for example that:

- Seven of the 11 umbrella organisations interviewed revealed that they use some form of 'roll-up' deductions from the salaries of workers on PBA contracts. This means that a figure is calculated at each salary payment proportionate to the possible PBA payments and held in reserve.
- One umbrella offered workers the choice of being paid the money up front in return for waiving their right to pay between assignments: 'it is up to the worker to decide which they prefer'.

- At least two umbrellas reported deducting an amount for PBA from the worker but then paying them the same amount in the form of a loan; in the event of PBA being triggered, they would pay out but also require repayment of the loan: 'the net effect is always zero.'

As the report to government highlights, such practices raise questions about compliance. Clearly such practices are not consistent with the spirit and aims of the derogation.

The government's consultation document on the Taylor review recommendations on agency work suggests that agency workers can choose whether to opt-in to the Swedish derogation.

But as our case studies highlight at best this is an 'Hobson's choice' with agency workers being told either sign the PBA contract or don't get the work. Many agencies also opt to move agency workers onto Swedish derogation contracts between assignments. With agency workers being told they either sign the contract or face the sack.

5. The undercutters' charter in practice

Agency workers in BT call centres

BT, the telecoms giant, relies on a large number of agency workers to carry out its customer service functions. This is mainly call centre work and involves making and receiving calls, dealing with queries from customers and providing technical support. Agency workers are also tasked with selling BT services to new clients as well as retaining existing clients.

Around 2,000 agency workers work in BT call centres. 97 per cent of these agency workers are employed on pay between assignment contracts.

Agency workers carry out the same jobs and tasks as the directly employed staff that they work alongside in the call centre.

Many of these agency workers are on long term assignments.

Unfortunately, a loop hole in the Agency Worker Regulations means that BT have adopted the strategy of using agency workers who are employed on pay between assignment contracts. This is so they can avoid paying agency workers the same pay rates as directly employed staff doing the same jobs. Even where agency workers have been on assignment for months

1,940 of the agency workers working in the BT call centre are employed on pay between assignment contracts, meaning they receive far less pay than their permanent counterparts who are doing the same job. Pay between assignment contracts are the default contract for agency workers working at BT call centres. There is no option to switch contracts and people who refuse to work under such arrangements would not be offered work.

CWU, the union representing workers at BT, has found that the lowest paid agency workers can earn as much as £3.26 per hour less than their directly employed counterparts for doing the same work, which equates to £122 less per week and £529 less per month.

Some of their members have reported the practical effect this has on their work and personal lives:

Luke Dennis, Truro

"It doesn't make any sense to me when we are all doing the same role diligently and professionally. Frankly it's demoralising. It makes you feel disheartened; it makes you feel de-motivated. If you do the same job you should have the same rate of pay. The currently situation is simply unfair and makes you feel discriminated against. You have two 'classes' of people in the office - BT contracts and Manpower (employment agency)."

CWU have reported, that because of the large pay differentials, agency workers carry out more anti-social shifts than the directly employed staff. Agency workers receive an unsocial allowance for working beyond 9pm, and on Sundays and bank holidays.

Agency workers in Argos warehouses and distribution centres

Argos is dependent on large warehouses that store and supply the goods they sell in their retail outlets. A significant proportion of the workforce who pick and pack the goods that Argos sell, are agency workers. The Unite convenor at an Argos distribution centre has highlighted how agency workers are being exploited, by being paid less than other workers who are doing the same jobs.

In this particular warehouse there are around 550 workers. 350 workers are employed on permanent contracts and are referred to as "core staff warehouse operatives". 200 workers are supplied by an agency. The agency workers and "core staff warehouse operatives" do the same jobs. They have the same roles and responsibilities.

At the Argos distribution centre, agency staff earn £7.50 an hour, which is the current National Minimum Wage rate for people over aged 25 and over. Core staff operatives can earn up to £11.86 per hour. This is a pay differential of £4.36 per hour. Core staff operatives are earning 63% more than their agency counterparts.

At the Argos site, agency workers miss out on other key workplace rights, such as equal treatment on holiday entitlement, Core staff operatives receive 32 days including bank holiday and then a further 5 days for long service spread out over a 10 year period, whereas agency staff receive 28 days.

They often find themselves working more anti-social shifts and longer hours to make up the shortfall in their wage packets.

Agency workers looking for work at Argos have little choice but to accept pay between assignment contracts. If they refuse to work under a pay between assignment contract they will not be offered work by the agency.

Agency workers who were already working at Argos and working on standard agency contracts (where after 12 weeks they would qualify for the same pay rates as core staff) were forced to accept new pay between assignment contracts. These agency workers were threatened with the sack if they opted not to sign a pay between assignment contract.

The stark reality for Argos agency workers is that they are forced to sign contracts which mean they are no longer entitled to an additional £4.36 an hour or an extra 4 days holiday per year.

Agency workers working in food manufacturing

USDAW represent workers in a variety of occupations and industries including factory and warehouse workers. Food manufacturing and processing plants are often heavily reliant on agency workers. Employers adopt this strategy to minimise their legal obligations to their workforce and save on wage costs.

USDAW has reported numerous cases where agency workers are placed on Pay Between Assignment contracts, which prevents agency workers from receiving the same terms and conditions as the core staff working in the processing plants.

USDAW highlighted one factory where there are around 70 agency workers, supplied by the employment agency, and employed on pay between assignment contracts.

The agency workers are restricted to lower skilled jobs such as hand packing, cleaning and moving pallets round with hand trucks. Permanent staff will fill these roles if there are no higher skilled jobs available. However, when higher skilled jobs are available, permanent staff will move onto these roles with associated premiums.

Agency workers qualify for equal treatment on pay and other core terms and conditions after 12 weeks of working on an assignment. The employer at the food manufacturing plant has regularly sacked workers before they reach the 12 week qualifying period, to avoid their obligations under the Agency Worker Regulations.

The employer is using loopholes in the Regulations to avoid paying agency workers the same pay rates as core staff who are doing the same jobs.

This results in large pay differentials between agency workers and core staff.

Pay rates	Agency Workers	Core staff
Day shift	£7.53	£10.24
Night Shift	£8.53	£11.37
Weekend day	£11.77	Sat: £16.63 Sun: £18.77
Weekend night	£13.57	Sat: £17.77 Sun: £19.90
Overtime	n/a	Up to £17.06

Agency staff also miss out on significantly enhanced rates of overtime pay. Agency staff can work overtime but they are paid at the same rate. Agency staff do work extra hours in the week on a regular basis alongside permanent staff but very rarely at weekends. Core staff receive a premium rate of pay for overtime hours (after 40 hours, Mon-Fri), seeing their normal pay rates uplifted by 50% per hour.

Agency workers do not receive the same holiday entitlement as permanent staff. Permanent staff start with 26 days, plus the 8 days bank holidays. They receive 2 additional service related days after 10 years, 1 further at 20 years and 1 additional at 25 years. Agency workers receive 28 days.

6. How can we end the undercutters charter?

Collective bargaining by trade unions has been an effective means to address some of the deficiencies of the Agency Worker Regulations by negotiating agreements with employers that improve the working conditions of agency workers and secure better access to permanent, secure employment for agency workers.

But it's not right that workers not yet covered by a union agreement should miss out. That's why we need government to end the undercutters' charter now.

Bargaining for job security

Unite's agreement with Bentley

Unite has negotiated an agency agreement with Bentley. Bentley Motors is a premium car manufacturer based in Crewe and is a subsidiary of Volkswagen.

Agency workers comprise around 12 per cent of the Bentley workforce. This is the company's preferred employment route into manufacturing. New starters are predominantly agency workers unless highly skilled candidates apply to join the business.

Agency workers on the assembly line carrying out a number of tasks including paint, engine installation, trim and logistics.

The agreement, negotiated between Unite and Bentley, gives the 'Company Council' oversight over any proposed reductions or increases in the level of agency work when issues arise including fluctuations in volume changes and project impacts. The agreement sets out clear principles for the employment of agency workers including equal pay, specifying appropriate on-the-job training, skills development and entitlement to both team and individual bonuses. This landmark agreement resulted in agency workers receiving an annual £7,000 pay uplift.

Furthermore, the agreement stipulates that if an Agency Worker exceeds three contract extensions or a period of 36 months collectively, a review must take place with the aim of moving the agency worker into permanent employment. This has led to 500 agency workers being transferred onto permanent contracts, greatly improving their job security and widening their access to key employment rights. 380 more agency workers could make the transition to permanent contracts later this year.

The agreement, negotiated between Unite and Bentley, has led to greater retention amongst the skilled workforce at Bentley. Increased pay and the opportunity to move into secure employment means that skilled workers are more likely to want to remain working at Bentley.

CWU's agreement with BT

The CWU has been campaigning since 2006 to secure fair treatment for agency workers and for legal changes to ensure employers cannot use Pay Between Assignment (PBA) contracts to deny agency workers' pay parity with their directly employed permanent

colleagues in identical roles. The CWU was concerned about the high number of agency staff being used at BT as well as the level of work off-shore.

Around 3,000 agency staff were working in BT call centres in 2014, 90 per cent of whom were employed on PBA contracts. As outlined above, the CWU had evidence that agency workers were paid significantly less than permanent staff and were not entitled to the same family-friendly working practices and career development opportunities.

By 2014, pay differentials were stark and the CWU launched a campaign to convert agency staff to BT employees to tackle this pay disparity. The CWU successfully negotiated a conversion process to move agency staff onto BT contracts and secure permanent jobs. Between October 2014 and the end of 2016, BT offered contracts to around 1,600 existing agency staff in nine separate conversion phases at the contact centres around the UK.

In December 2015, the union also negotiated the Transformation Agreement with BT Consumer, aiming to return work to the UK and reducing the reliance on agency staff. BT agreed levels of 80 per cent of direct labour jobs in sales areas and 90 per cent in service areas and to handle 90 per cent of calls in the UK.

BT Consumer is now recruiting for direct labour jobs across the UK. Since October 2014, the company has recruited over 2,500 direct labour jobs (excluding agency conversions) that would previously have been recruited via the agency route or been employed off-shore.

Why government needs to act now

We know that unions have been effective in negotiating a better deal for agency workers - securing improved rates of pay and access to permanent employment for agency workers.

That's why we want better rights for unions to access workplaces, and why extending the ability for unions to negotiate pay rates across sectors is so important for stopping undercutting.

But the government also needs to act fast and ditch the undercutters' charter which allows employers to pay agency workers far less than directly employed staff.

Ministers should bring forward legislation to end the undercutters charter now.

Even the government's own review into modern working practices, carried out by Matthew Taylor, recommended that the loophole should be closed. It's time for government to act.