



Agency Workers: Counting the cost of flexibility

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Acknowledgements

Many thanks are due to everyone who assisted in the production of this report. In particular, thanks go to colleagues at GMB, Unison, and at Citizens' Advice, to colleagues in the TUC Equality and Employment Rights, Campaigns and Communications, Economic and Social Affairs and Information Services Departments and of course to agency workers who have contacted us about their problems at work

Executive Summary

This TUC report looks at agency working in the UK today and outlines the problems that agency workers face due to their vulnerable position in the labour market. The report explores how the current legal framework reinforces this insecurity, through denying agency workers the right to equal treatment with directly employed colleagues – even where they are carrying out exactly the same work. The report looks at agency working in two sectors and uses these to highlight the hidden costs of labour market flexibility – not only for the agency workers themselves, but also for users of the goods and services they provide and for the companies and organisations that provide the services. It argues that using agency workers in an attempt to keep costs down may prove to be a false economy.

Some of the key findings of the report are set out below:

- The UK labour market continues to be characterised by ‘permanent’ employment; temporary work accounts for only around 6% of employment and temporary agency work for 1%. Temporary work did increase its share of total employment during the 1990s, but has fallen back since, demonstrating the role temporary labour plays in providing flexibility for employers during uncertain times. Agency work has increased its share of total employment since the early 1990s, but largely at the expense of other forms of temporary employment. Permanent employment has also increased over the same time period (1992 – 2006). The overwhelming reliance on permanent employment, indicates that the impact of introducing new laws to provide greater protection for temporary workers are likely to be more limited in their impact than some in the business lobby would like to believe.
- Many agency workers are drawn from groups of worker that are vulnerable to exploitation in the labour market. Temporary agency workers tend to be young, are more likely to be from an ethnic minority background, and tend to be slightly less qualified than the workforce overall. Men and women are equally likely to engage in temporary agency work, but are concentrated in different industries and occupations.
- A significant proportion of agency workers are reluctant temps. Just under half of all agency temps in mid-2006 were undertaking temporary agency work because they could not find a permanent job.
- Although temporary agency work is traditionally seen as being of short duration, a significant minority (just over one-quarter) of agency workers were in an assignment for over one year. Yet confusion over their employment status acts to deny these workers important employment

rights that would apply to permanent employees who had been with one employer for at least one year.

- Agency workers are economically vulnerable: they have no security of tenure and can be laid off and face unemployment at any time.
- This economic insecurity is reinforced by their legal position. In an economy where employment rights are often dependent on being an employee and having worked for the same employer for at least one year, agency workers lose out on both counts.
- As a result, agency workers tend to be paid less, be engaged on worse terms and conditions than directly employed workers in the same organisation and often have access only to statutory minimum benefits and rights such as the national minimum wage, statutory sick pay and maternity/ paternity pay and state pension only. The TUC is even aware of cases, where agency workers do not receive these statutory minimum entitlements, to which they are entitled.
- The report considers temporary agency work in two sectors in particular (hospitality and social care) and uses these to illustrate the range of problems that agency workers face. The cases studies contained in this section of the report show why we should all be concerned about the treatment of agency workers, whether we are co-workers, providers of services, or customers of these services.
- The report concludes by outlining what needs to change and why we need equal treatment legislation for agency workers along the lines of the proposed EU Temporary Agency Workers Directive. Given the political impasse at EU level, the report calls on the UK Government to translate its stated support for the principles of this Directive into reality by introducing domestic legislation now.
- The report is being launched in response to the Department for Trade and Industry's consultation into agency workers' rights, running from 20 February – 31 May 2007. This consultation is extremely limited in its scope, and will fail to address the wider issues of inequality and discrimination that agency workers face as a result of inadequate legal protection.
- A Private Members Bill has been introduced in the House of Commons by Paul Farrelly MP. This Bill would provide agency workers with the right to no less favourable treatment (along the lines of the Regulations that exist to protect part-time and fixed-term contract workers). At the time of preparing this report, the Bill awaits its second crucial reading. It is expected that the Government will not support the Bill, therefore severely impeding its progress and prospect of becoming law.

The Current Position: How the law fails agency workers

In order to understand why temporary agency workers are so vulnerable in the UK labour market it is necessary to consider the legal framework governing the sector.

Agency workers are legally entitled to some general employment rights that apply to all workers. This includes entitlement to the National Minimum Wage and Working Time Regulation rights. In UK employment law there is an important distinction between ‘employees’ and ‘workers’. Most agency workers are classed as workers and this serves to exclude them from entitlement to important employment rights such as unfair dismissal and redundancy protection, which are only available to employees.

Deficiencies in the current legal framework

No right to equal treatment

At present employers are free to discriminate against agency workers in terms of pay and/or working conditions. This is perfectly legal. They are therefore free to hire agency workers on much lower hourly rates than they would pay directly employed workers – provided this is at least the minimum wage – and on worse terms and conditions. This is institutionalised discrimination and given the numbers of women, migrant and young workers who work through employment agencies, has a disproportionate effect on the most vulnerable workers, who are already likely to experience discrimination. The lack of equal treatment rights for agency workers together with lack of clarity as to their employment status undermines the effectiveness of equality legislation for these vulnerable groups of agency worker. This is particularly the case for equal pay claims, as the Equal Pay Act requires a worker to identify a comparator of the opposite sex employed by the same employer. Confusion over which party (if any) is the employer of the agency worker makes it difficult for them to establish such comparators.

It is worthwhile noting that other groups within the so-called flexible workforce, do enjoy legal equal treatment rights. Part-time workers and fixed-term contract workers are covered by regulations that entitle them to ‘*no less favourable treatment*’ than a full-time or permanent comparator. It is also worth noting that at the time of preparing this report, a Private Members Bill has been introduced to Parliament, which if enacted would provide protection for agency workers along similar lines to the legislation on Part-time and Fixed –Term Contract workers. Unfortunately, the Bill is unlikely to gain the support of the Government and this will severely impede its progress and ultimately its chances of becoming law.

Unequal pay

Table 1 below reveals the wage gap between temporary and permanent workers in the UK. The sample size means that results for agency workers are too small to be reliable for most occupational groups, however, the wage gap between permanent and all temporary workers gives a general indication of the inequalities

that exist. The table shows that the wage gap exists across all occupational groups, to the detriment of the temporary worker. The differential ranges from 61% - 94% of permanent earnings, giving an average differential of just under 80%.

Table 1: Temporary workers earnings by occupation- gross hourly pay (£)

	Permanent employees	Temporary employees	Agency workers	All employees	Temporary pay as % of perm pay	Temporary pay gap £ (perm-temp)
1 Managers and Senior Officials	17.20	10.50	*	17.10	61.0	6.70
2 Professional occupations	17.50	15.70	*	17.40	89.7	1.80
3 Associate Professional and Technical	13.10	11.10	*	13.00	84.7	2.00
4 Administrative and Secretarial	9.20	8.40	*	9.10	91.3	0.80
5 Skilled Trades Occupations	9.30	8.50	*	9.30	91.4	0.80
6 Personal Service Occupations	7.30	6.90	*	7.30	94.5	0.40
7 Sales and Customer Service Occupations	6.80	5.40	*	6.70	79.4	1.40
8 Process Plant and Machine Operatives	8.60	7.00	6.40	8.60	81.4	1.60
9 Elementary Occupations	6.50	5.50	5.20	6.40	84.6	1.00
Total	11.40	9.10	8.60	11.20	79.8	2.30

Source: LFS summer 2006.

Notes: * = results too small to be statistically rigorous
Adult NMW summer 2006 = £5.05

A research report produced by the TUC (*Below the Minimum: Agency workers and the minimum wage, 2005*) revealed that far from receiving equal pay and conditions to directly employed workers, there are many instances of agency workers not even receiving the minimum wage that they are legally entitled to.

Case studies gathered by the TUC revealed that some agencies were:

- Making deductions for payments for benefits such as meals, (which in reality the agency worker has no choice but to accept as part of the package) and then counting those deductions towards the minimum wage.
- Counting deductions for items such as uniforms, equipment and transport towards national minimum wage pay, contrary to the legislation. In one case, workers had £500 deducted from their wages, allegedly in payment for their return fare to Spain. The TUC was also told about workers being charged for health and safety equipment in direct contravention of the law.
- The TUC has also received reports of migrant agency workers being forced to live in over-crowded, sub-standard accommodation and then being charged exorbitant rates for the accommodation. Migrant workers are particularly vulnerable to abuse from unscrupulous operators in the sector, due to language difficulties and a lack of awareness of their rights.

A recent e-mail to the TUC Working on the Edge website revealed that an agency worker who had been injured at work and who had to attend A&E was told that they would only be paid for the hours they had worked as ‘he had not finished his shift’. The union representative that discussed this case with the agency was told that ‘agency workers are effectively self-employed’ and that ‘it’s up to them to do it (the work) or they don’t get paid’.

Advice agencies, such as CABx from around the country also frequently receive enquiries from agency workers, who have suffered the sort of abuse set out above. Some examples are included later in this report.

The Government has acknowledged the pay gap that exists between agency workers and directly employed workers. Its Regulatory Impact Assessment, produced in response to the proposed European Union Temporary Agency Worker Directive, calculates an average pay gap of £110 per week and admits that agency workers earn only around 68% of the earnings of permanent employees. It also acknowledges that agency workers are less likely to benefit from training to improve their skills. The pay gap between temporary and permanent staff (to the detriment of the former) is also recognised by the OECD in its 2002 Employment Outlook Report which states that ‘*Temporary employment is associated with a wage penalty.*’

Employment status

Although agency workers are from time to time found by employment tribunals to be employees of either the employment agency or the organisation they are placed with, agency workers will usually be engaged as workers under a contract *for services*. In the eyes of the law, this means they are classed as a worker rather than an employee. As a result, they will be entitled to some statutory employment rights – statutory paid annual leave, statutory maternity pay, statutory sick pay, national minimum wage, 48 hour maximum working week. – but not to the full range of employment rights which are available only to employees. Most agency workers will therefore never acquire rights to a minimum notice period, unfair

dismissal rights, rights to redundancy payments, or rights to maternity/paternity/parental leave.

Further, whilst directly employed workers may receive enhanced occupational entitlements (to annual leave (including bank holidays), sick pay and maternity pay, for example) agency workers are more likely to receive only the minimum statutory entitlements. A 2006 TUC report '*Working on the Edge*' provided survey evidence of this unequal treatment. Recent e-mails to the TUC '*Working on the Edge*' website also provide evidence of less favourable treatment of agency workers. One agency worker, reported that she had been working in the same placement for over two years and that whilst directly employed staff received enhanced benefits such as 40 days annual leave, flexi-time, occupational pension, she and other agency workers only received the statutory minimum holiday entitlement (20 days) only statutory minimum sick pay and had no access to the pension scheme.

Recent case law suggests that, where there is a 'tri-partite' employment relationship (a three party relationship involving an agency worker being provided to an organisation on a temporary basis through an employment agency), tribunals will look to see whether an employer/employee relationship does in reality exist. But even in those, still rare, cases where an employment tribunal does find that an agency worker is an employee, this will have been decided on a case by case basis and requires a worker to bring a claim to an employment tribunal - an unnecessarily stressful, bureaucratic, individualistic and costly exercise for all parties. Understandably, many workers will be reluctant to take such a step.

A recent Employment Appeal Tribunal case (*James v Greenwich Council*, 2007) provides an unhelpful development in the determination of the employment status and relationships of an agency worker and their agency and end user organisation. Previously cases, such as *Dacas v Brook Street* and *Cable and Wireless v Muscat* had begun to establish helpful precedents in essentially implying a contract of employment between the agency worker and the end user. *Jones v Greenwich Council* undermines this. Essentially the case decision provides the following guidance in interpreting these triangular relationships between agency worker, agency and client company:

- In a genuine 3-way agency, worker, client relationship, it will be rare for there to be evidence justifying the implication of a contract between worker and client.
- Although the possibility of an implied contract should be considered, the key question is whether the way in which the contract is performed is consistent with an employment relationship or an agency arrangement.
- The ability of the client to insist on the agency supplying a particular worker is a key feature of an employment relationship
- The length of time that an agency worker is placed with an organisation does not in itself justify a finding that there is an employment rather than an agency relationship

- A tribunal will be more likely to find that there is an employment relationship where an agency relationship has been superimposed on an existing employment relationship (as in the Cable and Wireless case).

What this case and the above guidance does in practice is to narrow down the circumstances in which an implicit contract of employment may be deemed to exist. It is an unhelpful and unwelcome development for agency workers, which will make it harder for them to demonstrate that they are an employee.

Regulation of the UK agency sector

There are two key pieces of legislation that regulate the UK agency sector specifically; the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

The 2003 Conduct Regulations were “*designed to govern the conduct of the private recruitment industry, and establish a framework of minimum standards that clients (work-seekers and user-enterprises) were entitled to expect*”.

The regulations:

- Make it unlawful for the agency to withhold pay for work done whether or not worker can produce a timesheet and whether or not the agency has received payment from client
- Make it unlawful for the agency to make a job offer conditional on the worker paying for additional services provided by the agency
- Require agencies to obtain information about any health and safety risks and the steps that the hirer is taking to prevent or control those risks
- Require agencies to inform workers of either the rate of pay payable to the worker, or the minimum rate of pay; details of when the worker will be paid; and the amount of paid holiday that will be given
- Prescribe the circumstances in which agencies can charge transfer or ‘temp-to-perm’ fees
- Require agencies to specify whether the worker is an employee of the agency or is hired under a contract for services
- Make it unlawful for agencies to place any restrictions on agency workers designed to inhibit their mobility around the labour market.

In practice, the TUC is aware of many instances of abuse, even in the above areas that are already subject to legal regulation. The Government has also acknowledged that there are problems. The Department for Trade and Industry’s 2006 ‘*Success at Work*’ policy statement outlined a number of areas of concern.

1. **Supply of additional services by the agency** – It is currently unlawful for agencies to make a job offer conditional on the worker paying for additional services supplied by the agency such as accommodation and transport. Despite this, some agencies continue in effect to impose such

conditions whilst charging exorbitant rates for the provision of the services.

2. **Deduction of loan repayments** – Although it is unlawful for agencies to charge interest on loans made to workers to enable them to take up an assignment, there is evidence that some agencies continue to make high interest loans, particularly to overseas workers, and proceed to deduct the repayments from the worker's wages without the worker's express consent.
3. **HGV drivers** – The Government points to cases of HGV drivers working through agencies without the proper driving qualifications and exceeding the legal working time limits for HGV drivers.
4. **Up-front fees for the provision of services to actors/models** - Unscrupulous agents may hire a venue for very short period, invite would be actors/models to attend and then engage in hard-sell tactics to persuade them or their parents to pay high fees for the provision of 'services' and the promise of work that never materialises.

The TUC shares the DTI's concerns about the above abuses and would add the following concerns as well:

Fees – currently prohibitive transfer fees may still be charged by agencies, hindering an agency worker's chances of making the step into permanent employment. Although these so called 'temp-to-perm' fees are restricted in the time periods that they may be applied to, there is no limit on the amount that can be charged, and this plus the time periods that they may be applied to, are probably sufficient to deter many employers from taking on temporary agency workers on a permanent basis.

Absence of licensing – There is currently no requirement for agencies operating in the UK labour market to register or obtain a licence in order to operate. The lack of an over-arching licensing regime opens the door to rogue operators and makes it more difficult for enforcement to be properly targeted. At present only agencies that meet the definition of 'Gangmaster' and which are therefore covered by the Gangmasters' Licensing Act, are required to register with the Gangmasters Licensing Authority (GLA) and obtain a license to operate as a supplier of labour.

The Recruitment and Employment Confederation (REC) the industry body for UK agencies requires its members to sign up to a Code of Professional Practice as a condition of membership. However, the REC is a voluntary body and there is no obligation on UK agencies to join or to abide by the code. REC members that breach the Code may be expelled from membership, but they can continue to operate as an agency in the UK. The current position of partial regulation (of the areas covered by the GLA only) means that the less reputable type of agency may switch their operations to the unregulated sectors, undercutting more reputable agencies.

The Gangmasters Licensing Act provides one useful model of how licensing could be applied across the whole agency sector. The Act requires that suppliers of labour in the agriculture, horticulture, fish processing, shellfish gathering, dairy farming industries or the processing or packaging of these products, must obtain a license from the Gangmasters Licensing Authority (GLA). To supply labour without a licence or to use labour from an unlicensed agency is an offence, punishable by a prison sentence or fine. A condition of being granted and maintaining a licence is adherence to a range of ten labour standards. The standards cover important issues such as payment of wages, debt bondage, provision of accommodation, working time, health and safety, contractual arrangements and underage working. Enforcement of these minimum standards is needed across the entire agency sector not just in those sectors covered by the GLA, as later case studies in this report will demonstrate.

The Department for Trade and Industry is responsible for the operation of an Employment Agency Standards Inspectorate (the EASI). The EASI exists to enforce the minimum standards within the UK agency sector, set out in legislation such as the 1973 Act and the 2003 Conduct Regulations. However, the woeful inadequacy of current inspection and enforcement activity for agencies operating outside the GLA sectors is demonstrated by the fact that according to its 2004/05 annual report, the EASI employed only twelve field inspectors (some of whom were part-time) four staff on their helpline, and a management team of three. The same annual report revealed that although a total of 1,380 complaints were received or initiated (an increase of nearly 30% on the previous year and the highest number ever received) no agency was prohibited from operating and the only successful prosecution case taken by the EASI during the year was overturned on appeal. The current regulation of the agency sector and the resources available to enforce even the limited standards set out in the 2003 Conduct Regulations and the Agencies Act are totally inadequate.

Approach of other EU member states

TUC research produced in 2005 showed that most countries within the European Union - including those that acceded in May 2004 - have introduced equal treatment rights for agency workers, in relation to pay and some other basic working conditions, through a mixture of legislation and/or collective agreements. In most EU countries, the agency worker is employed by the temporary work agency, either on a fixed term or (more unusually) an open-ended contract. In most EU countries, agencies are required to obtain a licence or to register in order to operate as a supplier of temporary labour.

The Sectors

Who cares? Agency work in the health and social care sectors

'Social care makes a substantial positive difference to peoples' lives. It helps people retain or regain their independence or dignity. It helps them overcome difficult situations or transitions in their lives, giving them more choice and control and rebuilding fractured relationships. It safeguards individual children and adults from harm, helps individuals who are more likely to harm others, and protects society from potential harm. Social care is vitally important to the estimated 2 million individuals (adults and children) who receive social care services in England.'

'It is the people that provide the care that make the difference.'

'Options for Excellence: Building the social care workforce of the future' DfES / DoH October 2006

The term 'social care' covers a wide range of services designed to protect and support people and to help them retain their independence. It works in partnership with other public services such as health, and service delivery involves some 30,000 provider organisations delivering services to around two million service users.

A 2004 report by Skills for Care *'The state of the Social Care Workforce Report'* estimated that 922,000 people are in paid employment in social care including social work, residential, day and domiciliary care staff, agency staff and some NHS staff. Nearly two-thirds of these staff work in services for older people.

Local authorities employ around one-third of the workforce directly and the remainder (62%) are employed in the private and third sector. Around 80% of social care expenditure is on the workforce, it is an extremely labour intensive sector and in a sense the service provided to clients is the workforce. The quality of the professional relationships between social care workers and their clients is vital to the effectiveness of the service provided and to the quality of life for the client. As the DfES 'Options for Excellence' report acknowledges: *'It is the people that provide the care that make the difference.'*

An effective social care workforce needs to be properly trained and skilled and given the importance of the relationship between worker and client, continuity of care is vitally important.

The reality of social care today can be very different however. The demand for social care workers exceeds the supply. The vacancy rate in the social care sector is double that for all types of industrial, commercial and public employment, and is higher than for secondary school teachers and qualified nurses. It is not surprising therefore, that in 2005 some 5.8% of the total local authority social

care workforce were agency workers. Demographic trends are likely to exacerbate staffing problems; an aging population will increase demand for services for older people. It is estimated that by 2020, the number of staff needed to work with older people will increase by over 25%.

Agency staff are often brought in to fill social care vacancies. This has implications for the quality of the service provided in terms of continuity, quality and reliability. This in turn can adversely affect outcomes for service users. This is not the fault of the individual agency workers, the majority of whom do the best they can but are often equally frustrated by the lack of continuity in service provision and the inadequate time they are allocated per client, together with the lack of training for their role. A high degree of reliance on agency staff may also prove extremely financially costly for employers, who have to cover not only the temporary workers wage costs, but also the agency's fees.

Counting the cost – the workers

A 2003 study carried out for UNISON, GMB and the TGWU, found that whilst most local authorities had a relatively small proportion of agency workers amongst their overall workforce, at some larger local authorities and in some occupational areas such as care work, up to a fifth (20%) of staff could be agency workers. The survey found that although some groups of agency workers (professionals such as social workers for example) did receive higher basic pay rates, they and other agency workers, fared worse on other important terms and conditions such as leave and pension entitlement. In addition, they had no security of tenure and could have their employment terminated with little or no notice.

'Penny pinchers' – privatisation of home care services by the London Borough of Wandsworth

A report commissioned by the local branches of UNISON, GMB, and Battersea and Wandsworth Trades Union Council, documents the implications of the privatisation of home care services by the local authority for both the in-house workforce and for the workers engaged by private agencies. The report showed how Wandsworth attempted to minimise its obligations under Transfer of Undertakings Protection of Employment legislation (TUPE) in pursuit of its goal of switching home care services to local private providers in such a way as to avoid large scale staff transfers.

As the report states, most of the 'savings' from contracting out the services come from the fact that the private contractors staff are paid on lower rates and with far worse conditions than the in-house staff. The report notes that private sector home care firms *'do not invest in proper training in personal care; nor do they pay the level of pension contributions, sick pay or travelling time which WHCS staff as council employees, are still entitled to.'*

The report also showed how the process of contracting out services also adversely affected the terms and conditions of in-house staff in the affected services, as they came under intense pressure to compete with private contractors (who were competing on cost, not quality of service) to win contracts. The report revealed

that private care providers were paying basic pay rates of 40-60 pence an hour less than local authority care staff. The discrepancy was more in some cases as the council employed a senior grade – senior home carers, which the private agencies did not. In addition, the private agencies provided inferior pension, sickness and holiday entitlements and did not pay for travelling time. In an extremely labour intensive service, this is how the private agencies were able to compete to win contracts, through driving down staff costs. As the report noted:

‘Many private providers appear to employ staff on an almost casual basis, dependent on the volume of work from day to day, and offering no guaranteed minimum number of hours per week.’

Cases reported to citizens’ advice bureaux (CABx)

The cases outlined below are representative of the types of problems agency workers face and which they report to agencies such as CABx. The exploitation of migrant workers in particular, both by agencies in the UK and in the country of origin is notable, but UK workers are often vulnerable too.

CAB South Eastern region: female client from India with Indian nursing qualifications paid £2,500 to a recruitment agency for a course that would enable her to nurse in the UK. On arrival in the UK she was told that the college was no longer accredited to provide this qualification and she would receive her money back. She has not received the money back and has been working as a care assistant.

CAB North West Region: female client – Asian British. Worked as a carer through an agency for 10 months. During this time she had problems being paid the correct amount due to errors in calculating her hourly rate and in making deductions. At the time of visiting the CAB she had not received her final pay instalment from the agency which was in the region of £600.

CAB Midlands Region: female worker was being made redundant as the care firm she worked for has lost the contract to provide local authority care. The client said that this was the result of a large agency who only offer self-employed status to their workers undercutting all other agencies. The client and many other workers faced worse terms and conditions as a result of this intense price competition in bids to win local authority tenders.

CAB Midlands Region: male Filipino worker (qualified nurse in Philippines) had paid an agency in the Philippines £2,500 for their help in getting him to the UK. He had also paid a UK agency £1000 for help in finding a care home job and had been asked for a further £335 (twice) and £153 by the agency. It was not clear what these sums were for. The agency had retained the client’s documents. The client was working in a nursing home and had been told by the owner that if he left, he would have to pay the home £1,500.

As the report now goes on to consider, it is not only the individual agency workers who lose out.

Counting the cost – service users

‘I have had 30 social workers in 10 years. You get to know one and they leave and you have to start from scratch with a new social worker.’

Young person reported in Department for Education and Skills and Department of Health *‘Options for Excellence – Building the Social Care Workforce of the Future.’* This document sets out the vision that by 2020, employers will no longer be relying on temporary staff to cover tasks that would normally be carried out by a permanent social care worker and that clients of social care services will have continuity of care. The report suggests initiatives such as developing local and regional non-profit agencies to provide local authorities and other employers with a flexible staff supply and to reduce reliance on staff supplied by commercial agencies.

‘Time to Care?’ According to this 2006 report by the Commission for Social Care Inspection (CSCI), councils need to change how they organise home care services so that they respond more sensitively to people’s care needs.

The CSCI report states that at least 163,000 people are employed as care workers and puts this figure as broadly equivalent to numbers employed in the hotel industry. It goes on to identify serious recruitment and retention issues in the sector in many parts of the country. This in turn reflects the low pay and poor terms and conditions on offer, compared with for example, the retail sector. Worryingly, the CSCI report identifies that where agencies face particularly acute staff shortages, they sometimes ‘cut corners’ in their recruitment and selection procedures – including not carrying out the necessary checks on a person before they start work. Given the vulnerable and dependent nature of the client group, this is obviously cause for concern.

The report revealed that many users of home care services feel that their care workers were too rushed: *‘the ’15 minute slot’ model of service – where a care worker is allotted only a few minutes to get a person up, washed and dressed before they are out of the door and on to the next person – can be undignified and unsafe.’* (CSCI, 2006)

According to CSCI research, *‘the appreciation expressed towards individual workers is often tempered by concerns, usually associated with a perception that care workers are ‘rushed’. We found widespread problems in relation to the shortness of visits, the timing of visits and reliability (associated with care workers rushing between visits and turning up late). The experiences of many of the older people interviewed during this study was that services were short-staffed.’*

These concerns are serious: older people may be extremely vulnerable, physically frail, confused and lonely. If care workers are so rushed and have so little time allocated to each client, they may fail to notice problems that need addressing and may leave the client feeling that they are simply a burden. This obviously seriously compromises the quality of the service delivered.

Serious flaws in service delivery were also documented in the joint union report ‘Penny Pinchers’ which looked at the privatisation of home care services in the

London Borough of Wandsworth. A few examples follow that outline the impact on the client.

Private sector home care providers did not invest in proper training in personal care, for example in lifting techniques and in using hoists to move heavier people. Worryingly, the report also revealed that relevant police checks were not being made on staff by private providers.

'Informed by housebound client that no carer had turned up the previous week and no explanation was given. Client normally receives two visits for shopping and housekeeping.'

'client reported carer did not turn up on day of discharge from hospital. He said carer did not phone and agency said carer was delayed. Matter resolved following day.'

'Client terminally ill man suffering with chronic confusion. He was discharged on 16 December with a home care package (3 calls per day). First call was due in the evening – no one turned up....It seems carer went to wrong client and was then unable to get correct address. Complaint made to agency.'

The above examples illustrate the confusion and breakdown in communication between the care agencies and their workers and between the agencies and the service purchaser (the local authority). It is the service user and their relatives and other unpaid carers who bear the brunt of this confusion and poor performance however. Users of these services are often highly dependent on their home care visits which enable them to remain living in their own home. The serious implications of care packages breaking down cannot be overstated.

Counting the cost: service commissioners and providers

A 2003 research report carried out by Incomes Data Services for UNISON, GMB and TGWU, found that agency staff in local government were mainly engaged in administrative and clerical work and in social services - both social work and care services. It is striking that when councils were asked whether they could make an assessment of the relative costs of employing agency staff compared to directly employed staff, most were unable to do so. In fact, many of the central personnel departments of the councils surveyed were unable to report accurately on the number of agency workers engaged by the authority, as the decisions to take on agency staff were in many cases devolved to departments. This lack of awareness of numbers of agency workers engaged and the relative costs of doing so leads to the conclusion that councils are unsure of the cost-effectiveness of engaging agency staff. This is particularly so, given that the research revealed that councils had generally not carried out any comprehensive investigation into the impact of using agency workers on service delivery. Some of the surveyed councils did say that they had a formal policy of not using agencies on cost grounds, but that in practice departments had to use agencies to cope with staffing problems of various kinds.

Some of the surveyed councils were able to comment about the impact of using agency workers on service delivery. One inner London borough referred to the

pressures on management to be ‘continually vigilant, particularly in the area of home care, on the continuity and quality of service.’ This council and an outer London borough referred to the effects of using agency workers on labour turnover and morale and how this in turn compounded problems of service delivery both in terms of quality and continuity. A county council referred to the need to manage relative pay rates of agency and in-house staff to avoid resentment amongst directly employed staff and tension between the two groups. The same council referred to problems where agency workers were provided who lacked the necessary skills for the job.

The following examples are taken from the ‘Penny Pinchers’ report into the privatisation of home care services in the London Borough of Wandsworth. They illustrate the problems that inadequate service from care agencies can pose for the commissioner of services on behalf of clients, when communication and service delivery breaks down.

Purchaser of Home Care Services for the elderly. Problems faced include timekeeping, missed appointments, unskilled provider, inappropriately telling client that other clients had not complained.

Purchaser of Home Care Services for the elderly. Agency due to start the service on 9 July. However, when client contacted the following week was informed that he had not been visited or contacted by the agency. Agency said they had not received the SRF or the CAF which had been faxed on 3 July. Agency contacted client and arranged service to start on 20 July.

Agency work in the NHS. In the health sector, the 2001 Audit Commission report ‘Brief Encounters’ highlighted the problem of escalating NHS spending on agency staffing and quality of in-house bank arrangements. The report proposed some solutions including the establishment of the NHS temporary staffing service – NHS Professionals.

NHS spending on agency staff rose from 0.6 billion in 1998/9 to 1.3 billion in 2004/5. The estimated spend in 2005/6 is lower at 1 billion and this reflects better management of in-house banks, use of agency framework agreements and the competition generated by NHS Professionals. However, according to an NHS Employers Briefing (June 2006) there is likely to be greater demand for temporary staff in the future as a means of achieving flexibility in the workforce. The emergence of new providers of NHS services, growth in the numbers of foundation trusts, new treatment innovations, and increased care outside of hospitals has meant workforce planning is increasingly complex and challenging and trusts may view temporary staffing as a way of achieving greater flexibility.

According to the Healthcare Commission report ‘Ward Staffing’ (2005) there are direct links between increased spending on temporary staffing and lower patient satisfaction. This reflects lack of continuity of care and familiarity with the working environment as well as potential risks to patient care from overtired or misplaced temporary staff.

The NHS Employers June 2006 Briefing acknowledges variability in compliance with the quality standards that agencies are expected to meet: *‘training in*

procedures such as infection control for example, may not be applied and monitored to the same extent as for directly employed staff.'

The Sectors

Hospitality

In the European economy, hotels, restaurants and catering form a major service sector. The UK is home to less than 10% of the EU enterprises in this sector; however, it employs 24% of the EU workforce and accounts for 24% of the sector turnover (Eurostat, 2004). The hotel and catering industry is heavily dependent on tourism and many of its activities are seasonal. Fluctuating demand shapes the structure of the sector's labour force, making it difficult to maintain high permanent staffing levels. There is a tendency to operate on the basis of a core staff and a 'buffer zone' of labour needed for day-to-day operations under atypical contractual arrangements (ILO, 2001). As a result, there is a very high proportion of part-time and casual work compared with many other industries.

The sector is heavily dependent on tourism, and as a result the future demand for labour is uncertain; recent international developments such as the threat of terrorism and the impact of global climate change (and possible future political initiatives to tackle these) make it hard to predict. The demand for labour in the sector is also being shaped by developments in IT which are affecting areas such as hotel, restaurant and theatre reservations, food preparation for the restaurant trade and hotel housekeeping.

The sector's workforce tends to be younger and less skilled than in many other sectors and there are a higher proportion of women employed, who tend to be concentrated in jobs such as travel attendants, housekeeping and restaurant work. Often men fill the more senior jobs in the industry. The sector is characterised by high levels of labour turnover and employers argue that this reflects the nature of the workforce young, mobile workers, students and young mothers who are not seeking permanent employment. Employees however, are more likely to cite poor pay and other basic terms and conditions and lack of a career structure as reasons for changing employment (Reported in ILO 2001).

Employment and Working Conditions

Working conditions in the hotel and catering sector are characterised by low wages, long and often anti-social hours, and poor career structures. Work is often physically demanding and work-related injuries are more frequent (although generally less serious) than in construction. Staff in the sector are often at risk of verbal or physical violence and / or sexual harassment from often inebriated customers. The dominance of small enterprises in the sector means that many employers lack the means to support and protect their staff from these pressures and also makes it logistically difficult for trade unions to reach and to organise workers in the sector.

Subcontracting

A growing trend within the sector has been the subcontracting of various services in order to reduce costs and outsource risk. Services such as food and beverages, housekeeping, laundry services, security and valeting have been particularly affected by this trend. Hotels increasingly are grouping together to employ a common Internet reservation system provider, reducing the demand for jobs of this nature in individual hotels. Hotels are also leasing out their restaurants. Some of the case studies presented below, explore the consequences of this trend towards subcontracting for workers and for service users and providers alike.

Counting the Cost: the workers

'I wouldn't wish it on my worst enemy to work in the workplace I did.'

Female housekeeping worker, large hotel chain, working through an agency

In 2005, Queen Mary College, University of London in association with London Citizens, produced a report which looked at low paid employment in four sectors in the City of London. The report included interviews with workers employed in hotels and hospitality work in London.

The research found the sector to be dominated by employment of migrant workers, notably those from Eastern Europe (Poland and Lithuania in particular) and from Africa (Ghana particularly).

The research revealed that workers in the sector experienced the lowest pay rates of all the four sectors surveyed (the others were cleaning on London Underground, office cleaning and care work). Workers were often paid per room cleaned and some 17% earned below the minimum wage as a result. A further 17% earned the minimum wage (£4.85 adult rate at the time the research was carried out). The largest number of workers earned between £4.86 and £5.50 per hour, although this is above the NMW, it gives an annual salary of only £9,097 - £10,296 before tax and National Insurance. In London in 2005, this is hardly a living wage.

Subcontracting in the sector emerged as a key theme of the report. In particular, there were significant differences in pay and conditions of in-house and agency staff. One agency was reported as paying their Polish workers who were working in a luxury hotel in West London a derisory piece rate of £1.70 per room. This was in stark contrast to the wages paid to in-house staff in similar hotels, which ranged from £4.85 to £5.20 per hour.

Agency workers in the sector were also engaged on inferior terms and conditions. As the report noted:

'Agency workers in general also received no sick pay or paid holidays, nor were they paid for staying over to finish the heavy workload of up to 15 rooms that have to be cleaned in a day. Not surprisingly then, high labour turnover was a

key feature of this sector. Over one half (51%) of all workers in hotels and hospitality had been with their current employer for just 12 months or less, which is the highest proportion of all sectors. It is also likely that the increase in the use of low-paid agency workers which we identified in a number of the hotels, will lead to the erosion of the benefits enjoyed by 'in-house' staff over time.'

Abuse of workers, often migrant workers, in the hotel and catering sectors has been reported elsewhere. In 2006, a Sky News reporter spent 6 days working undercover as a housekeeper for a Jury's Inn hotel in Southampton and was paid just £58 which worked out at an hourly rate of £1.50. The reporter was placed at the hotel through an employment agency Foremost Logistics Services. The staff worked an average of six hours per day cleaning rooms but at £1.80 per room, they would need to clean 17 rooms a day to earn more than the NMW. When confronted by Sky News, the agency apologised and said that they would pay the NMW. The only explanation for their failure to do so in the first place was that there had been a *'serious communications collapse.'*

In April 2006, the Guardian Newspaper also ran a feature on abuse of migrant workers in the hotel sector. The article reported on the increasing reliance on migrant labour in the sector (accounting now for around 60% of the industry's workforce in the UK). The article revealed the 'upstairs, downstairs' life in some of the top hotels with workers being subjected to intensive working practices, poor pay and conditions and bullying and harassment. In particular:

- Long working hours, being required to work double shifts, no overtime pay
- No written employment contracts
- No sick pay or holiday pay – or 'rolled up' holiday pay arrangements which make it difficult for the worker to know if they are getting their legal minimum entitlement
- No breaks
- Delayed payments or unlawful deductions from pay
- Bullying
- Unfair dismissal

Jan Mokrzycki, chair of the Federation of Poles is quoted in the article, outlining the plight of Polish migrant workers in the sector:

'In the hospitality sector they're expected to overwork beyond their capacity – such as working 14 hours a day – and not get overtime pay. Most of them are employed by agencies that pay them much lower than the normal rate, some below the minimum. In such cases, agencies do not give payslips or register the workers, therefore forcing them to become illegal.'

The article reported on the outsourcing of staff, particularly housekeeping staff, in the sector and revealed how this is leading to a two tier workforce in the sector,

with a largely migrant workforce deployed through agencies and a diminishing in-house staff. The in-house staff are invariably on better pay rates and terms and conditions, but these are at risk due to the outsourcing and deployment of agency staff on far worse pay and conditions. This in itself provides a potential source of tension between the two groups of workers – a fact that unscrupulous employers are keen to exploit. The article also revealed a further form of exploitation, the requirement for staff to undertake ‘training’ or ‘inductions days’ without pay when they start their employment. Intimidation and easy dismissal of staff who complain is a feature of employment too and the poor working conditions and high levels of turnover make it difficult for trade unions to organise workers in the sector.

The exploitation of migrant workers in the hotel and catering sector was also reported by the public sector union UNISON in its submission to the Low Pay Commission in September 2006. The union reported on research carried out through the London Citizens’ organisation in the summer of 2006. This research entailed interviews with workers in London hotels, universities and museums. The majority of the workers were employed by private contractors or employment agencies that were contracted to provide cleaning, catering and security services. The workers were largely migrants (legal and undocumented) or from black / minority ethnic backgrounds.

The research revealed a catalogue of abuse and illegal practice. This included:

- fines for calling in sick
- deposits charged for name badges and locker keys (and not refunded when the items were returned)
- charges for meals in canteens – whether requested or eaten or not
- weekly charges to cash pay cheques
- Unpaid ‘training’ days and overtime
- Systematic under-recording of hours worked
- Pay slips impossible to understand or not provided at all.

The researchers also found that some agencies deliberately adopted a strategy of engaging ‘irregular’ immigrants who they then underpaid, or failed to pay at all and when the workers complained about this, they threatened to hand them over to the immigration authorities. Such arrangements serves only the agencies interests – the workers are exploited but are unable to complain as they face a ‘double whammy’ due to their illegal status – they are unlikely to be able to enforce their contractual terms, as their status and contract is illegal and are then likely to face deportation.

The London Citizens Workers’ Association (LCWA) has compiled evidence of exploitative and illegal employment practices in a leading hotel chain. Housekeeping, waiting staff and porters were engaged to work in the hotels through employment agencies. Their testimonies reveal low pay (sometimes well below the National Minimum Wage) unpaid overtime, unlawful deductions,

health and safety abuses and bullying and harassment as the following examples show:

Female worker – housekeeping. This worker was hired through an agency to work as a maid for the hotel chain. She worked for a year before quitting. She was required to undertake 2 days unpaid ‘training’ before starting. She was initially given 8 rooms to clean and was paid by room at a rate of £2.53 per room ($8 \times £2.53 = £20.24$ for an 8 hour shift). This is considerably less than the minimum wage. This worker usually had to work overtime to get her quota of rooms completed, delays included having to search for basic supplies such as linen when these were not where they were supposed to be. She also had to wait for staff to check out or leave rooms / remove do not disturb signs. As she was paid by room and not by time worked, there was no overtime pay when she was delayed in this way.

Male worker – waiter – worked for the hotel chain through the same agency as the female worker above. He did not receive a contract or written confirmation of terms and conditions from the agency. This is in breach of the Conduct Regulations 2003. This worker reported frequent deductions from wages for lateness (even one or two minutes late) that were not authorised by contract or written agreement. This worker lived in accommodation provided through the agency and was fired for speaking about his problems and seeking external advice. He was owed money by the agency for work carried out.

Female worker – housekeeping – worked for the same agency as above, for 5 months. Her first 3 days were considered ‘training’ days . She worked a full 8 hour shift for each of these days and yet was only paid £12.60. Was charged £3 out of this for cashing the money in the office. The worker said ‘*effectively, I was paid 26 pence for each hour that I worked and I feel humiliated.*’ The worker now works a 7hr, 15 minute shift and in that time is supposed to clean 15 rooms in order to earn the NMW. This unrealistic schedule results in her having to work 1-2 hours extra every day. She is not paid for and doesn’t have time to take the 30 minute lunch break. She often has to wait at the start of her shift for keys to be issued and then again at the end for a further 30-40 minutes while the rooms are checked. All of this time is unpaid. She also reported health and safety concerns, having to clean without the correct products and being asked to turn all mattresses in the 15 rooms she cleans on the same day, which is damaging her back.

Female worker – housekeeping. This worker works for the same hotel chain but through a different agency. She was required to attend 3 days training for which she was paid £58 for 3 eight hour shifts. For her first month of working she was unable to clean the 16 rooms required per 7.5 hour shift in order to earn the NMW and she therefore earned less than the NMW. She does not think she gets any sick pay and is unsure that she will get any paid holidays. She wants to visit her family at Christmas, but says the agency refuses to give her paid holidays.

Female worker – housekeeping – worked for the same agency as the worker above for 18 months. She had to undergo 3 days unpaid ‘training’ – in this case she was

reimbursed after 6 months. Had to clean 16 rooms per 7.5 hour shift in order to earn the NMW, but was unable to clean this number in the allotted time. She managed to clean 12- 14 rooms and was only paid for these, therefore earning less than the NMW. After one year she was promoted to a more senior maid position meaning she had to clean 14 rooms instead of 16 and managing to do this, she earned the NMW. She was later promoted to supervisor but had pressure put upon her to intimidate the housekeeping staff and was told she could be demoted when she refused to adopt this approach.

Female worker – housekeeping. This worker worked for the hotel chain for 4 months through a different agency to the above. This worker described how she was allocated 30 minutes per room to empty rubbish, change two beds, Hoover bedrooms, dust all surfaces, clean tiles, glass and toilets in the bathrooms, replenish depleted sundries and check for and collect laundry bags. She earned £2.53 per room. This worker reported her health and safety concerns, saying that she was rarely given adequate supplies or protection from cleaning chemicals. She spoke of the arduous nature of much of the work, turning mattresses, pushing heavy trolleys and moving large items of furniture. She also reported how management adopted intimidatory tactics and penalised those who complained by docking pay and dropping them from rotas. A pregnant colleague was required to carry on her normal cleaning duties and no attempt was made to adjust her duties or carry out a risk assessment. This worker referred to their treatment as ‘dehumanising’.

The London’s Citizens research revealed that some agencies were purposefully engaging irregular immigrants, because of their vulnerable position in the labour market. These workers were frequently underpaid or not paid at all and were threatened with being turned over to immigration authorities if they complained about their treatment. One cleaning contractor was providing such workers to clean a university’s halls of residence, which were being used as hotel accommodation during vacation periods. New workers who could not provide valid passports or visas to work were engaged under other workers’ documentation. Often the worker would not know under which name they were engaged and this made it very difficult for them to claim their wages as they did not appear on the pay roll. The workers also spoke of the damaging effects on their health as a result of inadequate (or non-existent) health and safety training and the lack of proper protective clothing and equipment and inadequate ventilation when using hazardous cleaning chemicals.

Citizens’ Advice Bureaux Evidence

The following cases have been reported to Citizens’ Advice Bureaux from around the country.

CAB Eastern Region: female agency worker (Spanish) placed in hotel. Not being paid the minimum wage, only £3.35 per hour (£94 for 40 hour week). The hotel makes deductions for accommodation and food, although these deductions are not set out in any contract.

CAB North West Region: female agency worker, Polish. Paid £300 to an agency in Poland for a referral to a UK agency to find her work in the UK. She is now working in a hotel on very low pay and has deductions for accommodation and food. She is still owed wages and when she tries to raise this says that she feels intimidated.

Midlands CAB Region: Clients from Indonesia entered into an agreement with an agency in Indonesia to find them work in the UK. The agreement gave the clients a net income of around £9,000pa, but £4,500 was to be paid to the agents for the arrangement of work. The clients believed all costs regarding accommodation and utility bills were to be included in this agreement. On arrival in UK, clients worked for a hotel and lived in accommodation provided by the agent. This was described as very poor (and was without heating or hot water for a month). They were paid a maximum of £170 (net) per week, based on a 40 hour week, but a 40 hour week is not guaranteed. A fixed amount of £126 was payable to the agent – irrespective of wages received. So even when the clients had worked a full 40 hours, they would still only have £44 left for all bills for food, clothing, transport and utilities (which were not included in the fixed deductions as they had been led to believe). The clients reported feeling intimidated by the agents and having arbitrary penalty payments deducted from wages.

Counting the cost: service users

The testimonies of the workers above have provided a graphic description of the conditions that contract and agency waiting and housekeeping staff are employed under in the sector. The implications of the impossible schedules, the payment by room and the lack of adequate supplies and protective equipment / clothing to do the job are obvious and have worrying implications not just for the workers but also for those who use the (in this case hotel) services. One of the workers interviewed for the London Citizens' research said that she was worried about the health and safety of the hotel guests. She was given inadequate equipment and was instructed to clean all dirty bathroom surfaces with the toilet brush and the possible consequences of this for guest health and safety are obvious and alarming.

Counting the cost: service providers / commissioners

Major organisations like the hotel chain in the research above, contract out services such as cleaning, catering and security in order to control costs and in particular to reduce costs associated with employing staff in these labour intensive services. However, just as in the social care sector, this strategy may be a false economy. In contracting out the services, the organisation is giving up control over the delivery. As the above examples show, if workers in the contracted out services are put under extreme pressure to complete very demanding work schedules, just to make the minimum wage (or sometimes less), there is a temptation to cut corners. If the subcontractor / agency is cutting corners too by providing inadequate equipment to complete the job safely, then the service to customers is likely to suffer and with it the organisation's reputation and demand

for their service. Giving up control over the day-to-day operation of these services may well have hidden costs and these could be quite considerable indeed, for example a customer falling ill through food poisoning, or contact with dirty surfaces, which in turn could lead to litigation and / or adverse publicity.

What needs to change - equal treatment for agency workers

This report has illustrated the vulnerability of agency workers in the current UK labour market and legislative framework and has argued that this form of labour market flexibility is costly not just to the workers involved but also to the clients and customers of the services provided and to those who are ultimately responsible for the delivery of the service and for the quality of service provided.

What the Government is proposing

The Government has recognised that abuse of agency workers takes place and in its *Success at Work* Policy Statement published in March 2006, it committed itself to consult on a limited number of issues that it identified as problematic and where it considered agency workers were vulnerable to abuse.

The *Success at Work* policy statement committed the government to consulting on agency work. A limited number of possible reforms were suggested in the paper:

1. Introduce a **right for the agency worker to stop using additional services** offered by the agency without suffering detriment (e.g. loss of the assignment)
2. Prevent agencies from deducting loan repayments from wages **without the express consent** of the agency worker
3. Require all agencies placing drivers to make **reasonable checks** to ensure that the drivers are properly qualified and **do not exceed working time limits**.
4. Introduce a **cooling-off period where up-front fees are charged in the modelling / entertainment sectors**, for example by making it unlawful for the agent to take or seek fees on the same day that the actor/model meets the agent.

This limited range of issues form the basis of the government consultation which was launched in February 2007. In addition, the Government has undertaken to look at how it can simplify the information provision requirements on agencies supplying workers for very short-term tasks. It has proposed removing some of the information provision requirements on agencies where an assignment is short-term (defined as being less than 5 days). Far from protecting the rights of vulnerable workers, this proposal actually erodes their protection. The TUC is concerned that such measures could prove counter-productive for all parties leading to confusion and therefore disputes, over what was agreed contractually.

Employment Status

The DTI's long awaited response to the employment status review was also contained within the *Success at Work* paper. The DTI has concluded that the evidence gathered during the employment status consultation does not support the

case for legislative change and that any such changes could damage labour market flexibility and result in a reduction in overall employment: “*we believe changes to the legal framework would not prevent instances of abuse or lack of awareness*”. This last point is a rather strange one: surely, few pieces of legislation can claim to prevent instances of abuse 100%, what they can do however, is provide legal redress for those who have suffered through infringement of the legislation and in this way provide some deterrent to those who intend to offend.

The DTI plans instead to help employers and workers understand the *current* framework better by improving guidance, through the new employee pages on the direct.gov website. An interactive tool will also be developed on the site, “so that individuals have a much clearer idea of their legal position and are not tricked out of their rights”. (A 2005 DTI survey of employees’ awareness of rights at work suggested that 16 per cent would use a website/the Internet to find general information about their rights at work, whilst the majority would ask their employer). Being aware of and understanding the current legal framework is not much help if in practice you have few rights under it.

There was a broad consensus among unions, voluntary sector organisations and legal experts that responded to the 2002 Government employment status review that the present legal framework lacks certainty, often leads to injustice for workers, and is interpreted unpredictably by the courts and tribunals.

Businesses on the other hand argued that any extension to the present coverage of employment rights would lead to:

Fewer atypical jobs being offered by businesses, which would not necessarily be replaced by more jobs for permanent employees

More workers having rights so greater potential for dispute and more applications to employment tribunals

Businesses expecting greater commitment from atypical workers and therefore changing the terms of their contract to make it more restrictive

Businesses redesigning their recruitment procedures to be more cautious in selection, which could work against those who are disadvantaged in the labour market.

In summary, businesses argued that an important reason for the continued success of the UK in world markets is the comparative flexibility of the labour market and that any changes that restricted this flexibility would risk undermining this.

The DTI seems to have accepted these arguments. In February 2007, it launched its *Consultation on measures to protect vulnerable agency workers*. The stated intention of the consultation is ‘*to address the bad practices highlighted in Success at Work, that can affect the most vulnerable agency workers.....without placing burdens on the majority of reputable agencies who would not use such practices.*’

The consultation document identifies four key areas of proposed change. These are extremely limited and are based on concerns already identified in the 2006 Success at Work document. The proposed changes will do little to address the discrimination and inequality that agency workers face. The need to maintain

labour market flexibility appears to be the driving force shaping the consultation. The argument that it is the nature of the contract (i.e. duration, worker engaged through third party, etc.), rather than the employment rights available to the worker, which should be the basis of flexibility in the labour market, does not appear to have been addressed by the Government.

The rights agency workers need

Whilst action is needed to stamp out the abuses identified in *Success at Work* and the subsequent consultation, it is unlikely that the action proposed by the Government will be sufficient to achieve this. For one thing, much of the identified abuse is already unlawful under existing legislation.

To minimise the risks of abuse and exploitation of agency workers, the regulatory regime needs to be amended to ensure:

- **Equal treatment** – so that agency workers receive the same core employment rights as directly employed workers. The regulations should state that an agency worker engaged on an assignment at a user enterprise should, for the duration of the assignment, be engaged on terms no less favourable than the user enterprise would engage or does engage a directly employed worker doing the same or similar tasks. Where there is no direct comparator, the regulations should provide for a hypothetical comparator.
- The regulations should provide that the right to be treated no less favourably shall apply from the first day of the assignment and should spell out what is covered by the “no less favourable treatment” provision, which should at the very minimum comprise pay, holiday entitlements and working time rules, including overtime, work breaks, rest periods and night work.
- In 2002, the European Commission adopted a proposal for a Directive on temporary agency workers. This set out the principle of equal treatment, under which temporary agency workers would be entitled to the same pay and working conditions as permanent workers carrying out the same or similar jobs in the company to which they were assigned. The DTI 2006 *Success at Work* and the 2007 Consultation Documents state that the UK Government continues to support the underlying principles of the EU Temporary Agency Worker Directive. In practice however, the Government has continued to play an active role in ensuring that the Directive remains blocked as along with a small number of other member states, it does not support day-one rights and is insisting on a long qualifying period for entitlement to equal treatment. The current draft of the TAWD provides for a qualifying period of six weeks and the UK government will not support this. The opposition of the UK and other states has ensured that the draft Directive has failed to progress. The TUC is therefore calling on the UK Government to demonstrate its

professed support for the principles of the Directive by introducing UK legislation based on it.

As TUC research produced in 2005 showed (*Temporary Agency Work across the European Union*), most countries within the European Union - including those that acceded in May 2004 - have introduced equal treatment rights for agency workers, in relation to pay and some other basic working conditions, through a mixture of legislation and/or collective agreements. In most EU countries, the agency worker is employed by the temporary work agency, either on a fixed term or (more unusually) an open-ended contract. In most EU countries, agencies are required to obtain a licence or to register as an agency.

- **Unreasonable transfer fees should be abolished** – the legislation should be bolder in indicating what is acceptable by way of a fee in the situation where the user enterprise wishes to engage the agency worker on a permanent basis, with the guiding principle being that any such fees should not be so exorbitant as to present a barrier to the user enterprise seeking to engage the agency worker as a permanent, directly employed employee. If temporary agency work is to provide a genuine stepping stone to more secure forms of employment, then this change must be introduced.
- **Up-front fees should be abolished** in the entertainment sector.
- **Licensing of all employment agencies** – not just those covered by the Gangmasters' Licensing Act. This would help to ensure that client organisations only use agencies that have been certified as reputable, that the enforcement authorities are better able to target inspections and enforcement; and will prevent individuals who have been banned from operating an employment agency from simply setting up 'phoenix' agencies or from moving from the regulated to the unregulated parts of the economy.
- **Strengthening the existing provisions governing the supply of agency workers to organisations where official industrial action is taking place.** At present this is governed by the 2003 Conduct Regulations which state that agencies should not *knowingly* provide agency workers to cover the work of a directly employed worker who is engaged in official industrial action. Nor should they supply an agency worker to cover the work of an employee who has been transferred to cover the work of another worker engaged in official industrial action. Recent industrial disputes, including that at JJB, have illustrated the inadequacies of current regulation and enforcement mechanisms. The TUC wishes to see a legal requirement on client companies to inform any agencies that they wish to use for the supply of temporary workers, of any current or impending industrial

action. Employers should also be prohibited from hiring agency workers to replace workers participating in official industrial action.

Answering the critics: exploring the myths about agency workers and their rights

It is commonplace for many elements of the business community and for the recruitment industry lobby in particular, to react with horror to proposals for improving the rights of agency workers. In the debate about the need for better rights, many sweeping statements and assumptions are made about agency work and agency workers. In this final section we explore some of the objections to introducing better rights and also explore some of the assumptions made about agency work and those who undertake it

The impact of enhanced employment rights

Table 1 shows that six per cent of employees work on a temporary basis. The most common form of temporary work is fixed term contract working, which accounts for 41 per cent of all temporary employees. This is followed by casual work (22 per cent) while agency working accounts for just under 18 per cent. Seasonal work accounts for 8.5 per cent. All other forms of non-permanent employee work account for 11 per cent of temporary workers.

Table 1: Temporary employees in the UK

	thousands	Per cent of temporary employees	Per cent of all employees
Seasonal work	126	8.5	0.5
Contract for fixed period fixed task	606	40.9	2.5
Agency temping	263	17.7	1.1
Casual work	324	21.8	1.3
Not permanent in some other way	164	11.1	0.7
All temporary employees	1,483	100.0	6.0

Source: Labour Force Survey, Summer 2006

Table 2 shows that temporary work as a whole increased during the slow economic recovery of the mid-1990s, but that this was followed by a return to permanent work as the economy neared full employment.

Overall therefore, the UK labour market remains dominated by so called 'permanent' employment (accounting for just under 95% of all employment in both 1992 and 2006). Agency work is often used as a 'buffer' during times of economic downturn to provide organisations with numerical flexibility in an uncertain climate. Given the relatively low (although increasing) incidence of agency work and the reasons why agency workers are primarily hired, it is unlikely that legislation to offer greater protection to agency workers in the UK,

would have a catastrophic impact on the number of workers engaged this way, as is sometimes claimed by various elements of the business lobby.

Choosing to Temp?

Temporary work is often portrayed as a desirable option that is welcomed by employees. However, for many temporary workers it is very much a second choice. This is even more likely for agency workers. According to LFS figures for 2006, almost half of temporary agency workers (45%) simply say that they would prefer a permanent job. This is significantly higher than the average for all temporary jobs (23%). Male agency workers were much more likely to say they could not find permanent work than female agency temp workers.

29% said they temped because they did not want a permanent job. This is in line with the average for all temporary workers. Women were more likely to say they did not want permanent work than male agency temps .

Table 4: Reasons for undertaking temporary work (thousands and percentages)

	<i>Contract inc training</i>	Contract for probationary period	<i>Could not find permanent job</i>	<i>Did not want permanent job</i>	<i>Some other reason</i>	<i>Total</i>
Seasonal work	3* (3.3%)	Nil	23 (18.2%)	63 (50.0%)	36 (28.5%)	126 (100%)
Contract for fixed period fixed task	68 (11.2%)	32 (5.3%)	140 (23.1%)	117 (19.3%)	249 (41.1%)	606 (100%)
Agency temping	7* (2.6%)	2* (0.7%)	119 (45.3%)	77 (29.3%)	58 (22.1%)	262 (100%)
Casual work	4* (1.1%)	2* (0.5%)	42 (12.9%)	176 (54.3%)	101 (31.2%)	323 (100%)
Not permanent in some other way	7* (4.4%)	13 (7.9%)	23 (14.0%)	35 (21.3%)	86 (52.4%)	164 (100%)
All temporary workers	89 (6.0%)	47 (3.2%)	346 (23.3%)	468 (31.6%)	531 (35.8%)	1,482 (100%)

- Results of less than 10,000 (starred) are indicative

Source: LFS, Summer 2006

The Government has said that *'Many who choose part-time work do so through an agency - because this way they can get flexibility and variety to enter the job*

market.' (Success at Work, 2006). This rather overstates the role of employment agencies. In spring 2005, there were 6.4 million part time employees but just 72,000 (1.1%) were employed through agencies. This is hardly a ringing endorsement for the role of employment agencies in facilitating part-time work.

Table 5: Reasons why undertaking agency work: fulltime and part-time

	Contract inc training	Could not find permanent job	Did not want permanent job	Some other reason	Total
Full-time	3.3	50.8	23.4	22.6	100.0
Part-time	1.4	30.8	44.8	23.1	100.0

Assignment Duration – here today, not always gone tomorrow?

Unsurprisingly, the average tenure in agency work is quite short. 34 per cent of agency workers have been employed for 3 months or less and 73 per cent for less than a year. However, a significant minority of these workers are with the agency on a long-term basis, with over a quarter (27%) per cent being employed for more than 1 year. Those who are directly employed by one employer for one year or more gain important employment rights such as protection from unfair dismissal and redundancy entitlements, however long-term agency temps are likely to miss out on these as they are not considered employees.

Table 7: Length of time employed by agency

<i>Time in post</i>	<i>Per cent agency workers</i>
Less than 1 month	9.2
1-3	24.9
4-6	18.2
7-12	20.5
1-2 years	12.3
2-4 years	7.6
More than 4 years	7.2
Total	100.0

Source: LFS, Summer 2006

Skills / Qualifications

Table 7 shows that the agency temping workforce is slightly less qualified than the whole employee workforce. In particular, 22 per cent of agency temps have lower level 'other qualifications¹' compared to 12 per cent of the whole population.

Agency workers with 'other' qualifications are more likely to say that they are temping because they could not find a permanent job (51 per cent). This leads on

¹ According to ONS, 'other' qualifications include: BTEC SCOTVEC first/general certificate; SCOTVEC modules, City & Guilds Foundation/Part 1, YT YTP certificate, Key Skills Qualification, Basic Skills Qualification, Entry Level qualification, CSE below grade1 and GCSE below grade C.

the argument that agency work acts as a stepping stone into the labour market for those who are disadvantaged in some way. However, whether agency temping does act as a stepping stone and whether agency workers are able to progress to more secure forms of employment is largely untested.

Table 9: Agency temping - highest qualification

Highest qualification	Per cent agency workers	Per cent all employees
Degree or equivalent	24.6	22.2
Higher education	7.0	9.9
GCE A Level or equiv	20.7	23.8
GCSE grades A-C or equiv	20.5	23.1
Other qualifications	18.3	12.1
No qualification	8.9	8.9
	100.0	100.0

Source: LFS, Summer 2006

Agency work as a stepping-stone?

One argument frequently advanced for not giving agency workers the same rights as permanent workers is that this would reduce the opportunities for the unemployed to find their way back into the labour market and eventually into a permanent job. In particular, it is argued that agency work provides opportunities for workers who would otherwise have faced discrimination, to demonstrate to employers that they can do the job. Agency work it is argued, acts as a bridge for the long-term unemployed, ethnic minorities, and older workers.

Table 12 looks at the status of workers one year ago. It is not surprising that those who were out of the labour market for various reasons are more likely to take temporary work than those who were in a job. The crucial question however, is whether having provided a foothold in the labour market, temporary agency work enables workers to move on to more secure forms of employment. Here the conclusions of the OECD in their 2002 Employment Outlook report are relevant.

Although referring to temporary work overall and not just agency work, the OECD set out clearly some of the costs associated with temporary employment.

‘Temporary employment is associated with a wage penalty, even after using regression techniques to control for differences in individual and job characteristics....up to one-fourth of temporary workers are unemployed two years later – indicating a far greater risk of unemployment than is observed for workers in permanent jobs – and an even larger share are still in temporary jobs. Since employers provide less training to temporary than to permanent workers, persons spending an extended period of time in temporary jobs may be compromising their long-run career prospects.’

This is an area worthy of further research. The OECD observations sound a note of caution, it is possible that far from empowering workers, spending too long in temporary agency assignments could actually impede upward labour mobility and trap workers into low paid and insecure work. As temporary agency workers are less likely to benefit from training than permanent staff (the companies they are placed with are likely to consider it not worth investing in training for those who

may be with them for a short while) it is possible to argue that they may not be in a strong position to move on to better paying and more secure work.

Table 12: Who do agencies recruit? Status one year ago.

<i>Status in spring 2005</i>	<i>Temporary agency</i>	<i>All temporary work</i>	<i>All employees 2006</i>
In a job	71.8	70.3	91.7
Full time student	12.0	17.2	4.0
Unemployed and seeking work	8.9	5.8	1.8
Looking after family or home	2.3	2.0	0.9
Sick, injured or disabled	0.3	0.2	0.2
other	4.7	4.5	1.4

LFS spring 2006

Note: The LFS 'employment status 1 year ago' question is only asked in the spring quarter.

European comparisons

14 per cent of employees in the European Union are temporary workers. By comparison, the UK has relatively few temporary workers, less than half the EU average.

Table 12 shows that, as expected, countries with lower employment rates and higher unemployment tend to have more temporary workers. Employers are more likely to want to use temporary workers during difficult economic times. For instance, the share of temporary work in France and Germany has increased by 3 or 4 per cent since 1990.

However, as the economy improves and labour becomes scarce employers tend to prefer to engage more permanent workers. For example, it is worth noting that the Republic of Ireland manages to have a good economy with a much smaller share of temporary work than the UK.

Table 13: European Union temporary workers

<i>Country</i>	<i>Per cent temporary employees</i>	<i>Per cent employment</i>	<i>Per cent unemployment</i>
Spain	34.6	65.2	8.2
Poland	28.6	55.6	13.2
Portugal	21.6	68.2	7.9
Finland	18.2	70.8	6.8
Sweden	18.1	74.7	6.4
Netherlands	17.1	74.7	3.6
Slovenia	17.1	67.2	5.7
Germany	14.5	67.7	9.9

Cyprus	13.7	70.4	4.0
France	13.7*	50.9*	8.8*
Italy	13.2	58.4	6.2
Greece	11.4	61.5	8.5
Austria	9.4	71.9	4.3
Denmark	9.2	78.2	3.7
Belgium	9.0	61.2	8.2
Czech republic	8.2	65.4	7.1
Latvia	7.7	68.0	6.4
Hungary	7.3	57.6	7,5
UK	5.7	71.7	5.7
Slovakia	5.3	59.9	12.9
Luxembourg	5.3*	53.1*	4.5*
Lithuania	4.4	64.2	5.7
Ireland	4.2*	59.8*	4.4*
Malta	3.7	55.5	6.8
EU 25	14.9*	64.6*	8.3*

Source: Eurostat Summer 2006 (except * latest data available = spring 2006)

Notes: All data aged 15-64 only. Temporary work data for Estonia excluded because it is unreliable due to

Small sample.

Appendix Agency work in the UK today

It is difficult to accurately assess the extent of agency working in the UK. Different sources of information, give very different estimates. According to the official Labour Force Survey (LFS) in 2005 there were 1.4 million employees who were temporary workers, amounting to 5.7 per cent of all employees. Of these, about 18 per cent or 250,000 said they were temping for employment agencies, which amounts to one per cent of all employees.

Some employer organisations say that these statistics underestimate the scale of the agency sector in the UK, and argue that there are really over one million agency workers working in any given week. Few outside the recruitment industry and those opposed in principle to the extension of rights for agency workers would endorse these figures. A recent Regulatory Impact Assessment (RIA) from the Cabinet Office notes that while the recruitment industry figures are widely quoted *“they are not considered very reliable”*.

The DTI also thinks the official Labour Force Survey under-estimates the number of agency workers and it is highly likely that the total number of agency workers is higher than the Labour Force estimate for a number of reasons. For example, official statistics are likely to under-report the number of short-term migrant workers, yet we know that many migrant workers are supplied by employment agencies.

The LFS reports that 55,000 (22 per cent) of temporary agency workers are not British nationals, a figure which represents about 1 in 8 of all migrant workers. This figure is likely to be an underestimate, as a number of factors combine to make migrant workers less likely to be sampled by official surveys.

These uncertainties about the size and nature of the UK temporary labour market are not a surprise. Research on employment status shows there are a significant minority of workers with complex employment relationships that do not fit neatly into conventional survey classifications.

The Recruitment Industry

There are at least two very different sorts of business in the UK recruitment industry. One type consists of a small number of international conglomerates, each of which owns several of the high street 'names'. The five largest companies have 97 subsidiaries and employ 40 per cent of those working in the personnel and recruitment industry. The largest 'name' company has 280 offices in the UK (Source: Fame company information database).

At the other end of the scale, the number of smaller recruiters has been increasing. In 1994 there were 6,500 recruitment businesses registered for VAT. By 2005 this had increased to 16,800. There is a fair amount of turnover at the bottom end of the sector, with the VAT statistics showing that 1,990 recruitment businesses (12 per cent) had de-registered in 2004. .

The number of people employed in the industry itself currently amounts to 17,500 of which 20,000 are self-employed. It is interesting to note that 30,000 workers in the recruitment industry (12 per cent) are themselves temporary employees and that 20,000 of them are supplied by an agency. In other words, eight per cent of the temporary agency workers in the UK are working at headquarters in the recruitment business itself.

Table 1 shows that temporary work as a whole increased during the slow economic recovery of the mid-1990s, but that this was followed by a return to permanent work as the economy neared full employment.

According to LFS statistics, agency workers account for 1 per cent of all employees. Between 1992 and 2001 employment agencies tripled their share of employment, before falling back slightly. Nevertheless, their share of 1 per cent is still well above their 1992 position and this gain has been made at the expense of other types of temporary work.

Table 1: Temporary employees as a percentage of all UK employment

	1992	1997	2001	2005	2006	Change 1992-2006
Seasonal work	0.8	0.8	0.6	0.6	0.5	-0.3
Contract for fixed period fixed task	2.9	3.8	3.1	2.6	2.5	-0.4
Agency temping	0.4	1.0	1.1	1.1	1.1	+0.7
Casual work	1.4	1.7	1.3	1.2	1.3	-0.1
Not permanent in some other way	0.9	0.8	0.8	0.6	0.7	-0.2
Permanent employees	93.6	91.9	93.0	93.8	94.0	+0.4
Total	100.0	100.0	100.0	100.0	100.0	-

Source: Labour Force Survey (LFS) (summer quarters)

Table 2: Who works in temporary jobs?

	<i>All temps</i>	<i>Agency temps</i>	<i>All employees</i>
Men	46.2	49.4	50.9
Women	53.8	50.6	49.1
Full-time	52.4	71.9	74.5
Part-time	47.6	28.1	25.5
White	86.8	81.1	91.9
Ethnic minority	13.2	18.9	8.1

Source: LFS, Summer 2006

Temporary workers overall are much more likely to work part-time than permanent employees. However, this is not the case for agency workers who have an employment profile much more like that of the workforce overall. Agency workers are predominantly full time, especially male agency workers.

Workers from ethnic minority groups are more likely to be engaged in agency work. 19 per cent of agency workers are from ethnic minorities, compared with 13 per cent of temporary workers as a whole and just 8 per cent of all employees. Research conducted for Defra in 2004, produced estimates of foreign national workers supplied via agencies in UK agriculture and horticulture and this estimated that 66% of such workers were foreign nationals, compared with 34% who were UK nationals.

Temporary work across the economy

Temporary agency workers are mainly employed in the private sector (78 per cent). However, the public sector has increased its share of agency workers from 19 per cent to 23 per cent over the last 6 years. This is not surprising given the pressures on public sector budgets and a tight labour market.

Female agency workers are more likely to work in the public sector than male agency temps (32 per cent of female temps compared to just 17 per cent of male temps).

Agency workers are heavily concentrated in three industrial sectors. More than half work in banking, finance and business services, manufacturing, and health and social work.

Female agency temps were more likely to work in the finance and business service industries and in the public service based industries, while male temps were more likely to be employed in manufacturing and construction.

Although ONS reports that the latter industry employed only 13 per cent of all agency temps and that temps represent only one per cent of the construction workforce, the role of agencies in construction may well be much larger through the supply of labour with self-employed or permanent status.

Table 3: Temporary agency working by industrial sector

<i>Industrial sector</i>	<i>Agency workers (thousands)</i>	<i>Percentage of agency workers</i>	<i>Agency workers - per cent of total employees</i>
Private sector	201	77.5	1.1
Public sector	59	22.5	0.9
Manufacturing	45	17.0	1.3
Wholesale, retail & motor trade	19	7.2	0.5
Transport, storage & communication	26	9.9	1.6
Financial intermediation	15	5.9	1.3
Real estate, renting & business activities*	54	20.7	2.1
Public administration & defence	20	7.8	1.0
Education	16	6.0	0.6
Health & social work	37	14.0	1.1
Other community, social and personal	12	4.6	0.9
All other industries	19	6.9	0.6
Total	262	100.0	1.1

- This sector includes labour personnel recruitment, which accounts for 35,000 agency workers. 1 in 5 (20.2%) employees in the recruitment sector are supplied by the agencies themselves.
- The recruitment sector employs more than 1 in 8 (13.3%) of all agency workers

Source: LFS, Summer 2006

Agency workers by occupation

Agency workers are concentrated in unskilled “elementary” jobs (23 per cent) and admin and secretarial jobs (27 per cent). There were also significant numbers of semi-skilled manual jobs. Professional and associate technical and professional jobs (such as teachers, doctors, nurses and technicians) together accounted for 19 per cent of the total.

Women were most likely to work in admin and secretarial jobs (35 per cent of all women agency workers), whilst 14 per cent worked in personal services and 12 per cent in professional, associate professional and elementary jobs respectively.

Men were far more likely to work in unskilled jobs (33 per cent of all male agency temps) and in semi-skilled manual jobs (23 per cent of all male agency temps compared with less than 3 per cent of females).

Table 4: Temporary agency working by occupation

<i>Occupation</i>	<i>Agency workers</i>	<i>Percentage of temporary agency workers</i>	<i>Agency workers - per cent of total employment</i>
Managers and senior officials	*	*	*
Professional occupations	24	9.0	0.7
Associate, Professional and Technical	25	9.5	0.7
Administrative and Secretarial	71	27.1	2.1
Skilled Trades Occupations	12	4.5	0.6
Personal Service Occupations	26	9.8	1.2
Sales and Customer Service Occupations	*	*	*
Process, Plant and Machine Operatives	36	13.7	2.0
Elementary Occupations	60	23.0	2.0
Total	262	100.0	1.1

* Number too small to be statistically rigorous

Source: LFS, Summer 2006

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