



Temporary agency work: national reports

United Kingdom

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Summary

Temporary agency employment constitutes a small but dynamic segment of the UK labour market. Latest figures suggest that it accounts for 2.3% of employment or 557,000 people. In views of trade unions as well as employers federations many temporary agency jobs provide welcome work opportunities with reasonable if not good terms and conditions. At the same time there is clear agreement and evidence of abuse and malpractice.

The main problems for temporary workers are a lack of clarity over employment status, lack of clarity over the employer (agency or hiring firm) and the linking of basic employment status to length and continuity of employment.

The industry is largely unregulated: there are no limits on the length of temporary agency employment and only minimal restrictions on the circumstances under which TAW can be provided. There are no obligations for agencies to register or be licensed. The legislation is currently under review. New draft proposals are mainly aimed at increasing transparency, accountability and professional conduct in the industry; it is unlikely that they will fundamentally increase the level of regulation or employment rights.

Slightly over half of TAW are unhappy with their employment status. There are strong gender differences in the acceptance of TAW. Women generally are more positive, particularly regarding the flexibility offered by agency work.

Empirical reviews of the industry are faced with an embarrassment of riches: several recent surveys offer dramatically different estimates on the gender, industry and occupational distribution of TAW. A recent representative TAW industry survey (BMG Survey) suggests that the Labour Force Survey underestimates TAW by a factor of two (mainly due to respondents' confusion over their employment status).

The temporary agency sector represents a mature industry with easy access and strong price competition. There are approximately 10,000 businesses in the industry, none have a market share of more than 5%.

With a few exceptions, most notably the broadcasting and entertainment industry, there are no general sector agreements covering more than one agency.

According to the Labour Force Survey (LFS) in 1999 8% of agency workers were unionised (compared to 28% of all employees). Union density has kept pace with the expansion of the industry. In the majority of unions, TAW are a small minority of the membership. There are no specialist unions for TAW.

1 Temporary workers in employment statute

The temporary employment industry in the UK is largely unregulated. With few exceptions there are no restrictions on the circumstances under which temporary workers can be provided in the UK or on the length of time of their contracts. The restrictions are concerned with a prohibition of providing temporary employees to replace workers on strike in industrial action and ensuring that temporary workers have legally required qualifications for relevant work.

The conduct of temporary agencies is regulated by the 1973 Employment Agency Act and the related 'Conduct of Employment Agencies and Employment Businesses' Regulations from 1976. The law applies to all agencies providing workers to hiring businesses, including recruitment and executive search agencies, theatrical and model agencies and agencies dealing with au pairs. Agencies dealing with qualified nurses and midwives are governed by separate legislation, the Nurses Agency Act 1957. In practice many agencies deal with both nurses and other staff, and hence are covered by both acts.

The enforcement of the Act and the regulations is the responsibility of the Employment Agency Standards Office (EASO) of the Department of Trade and Industry (DTI). The EASO has the right to inspect premises and records of agencies to ensure that they comply with the standards set by the regulation and investigates complaints; it has the powers to bar operators from running agency services in case of gross misconduct. The Employment Agency Standards Inspectorate receives approximately 10,000 complaints a year (pay is the biggest complaint), leading to 1300 formal investigations (DTI 1999 para 3.6). There is no obligation on agencies to register or have a license for operation; this was abolished in 1995. The old licensing procedure is generally recognised as having been rather weak, with more convictions and operating prohibitions having occurred since its abolition than before. However, the enforcement powers of the agencies, especially in terms of more proactive investigations is somewhat limited by the size of the inspectorate of less than 20. The supervision of the provision of qualified nurses and agencies is the duty of local authorities, and relevant agencies are subject to licensing by local authorities.

Current regulations of temporary employment agencies

Conduct regulations impose the following main duties on agencies: The agency

- must, before the start of the actual contract, inform the hirer of their current terms of business, procedures in case the worker proves unsatisfactory, fees payable in case the hirer wants to employ the temporary worker on a permanent basis ('temp- to- perm fees'), and whether the worker provided is employed by the agency or is self-employed. These terms must be provided in writing within 24 hours of the start of the contract.
- must obtain adequate information about the job from the hirer to be able to identify a suitable worker;
- must provide written information to the worker about their terms and conditions, minimum pay, employment status, and the kind of work to be done; changes to these terms must also be provided in writing;
- before supplying the worker, must provide the worker with all available information about the nature of the hirer's business, the kind of work, hours and rate of pay applicable; and, where relevant, must ensure that the worker has the relevant qualifications required by law for the work;
- must not prohibit or restrict the worker from entering direct employment with a hirer;
- must not refuse to pay a worker because the agency has not been paid by the hirer;

- must not supply workers to replace employees on strike action;
- must not supply a hirer with a worker who was directly employed by the hirer within the last six months (unless there is written agreement from the worker)
- must not approach workers in direct employment to induce them to become agency employee instead;
- is not allowed to charge the worker a fee for finding either temporary or permanent work (with a few exceptions in the model and entertainment business and a registration fee for au pairs).

Thus in principle temporary agency workers have the right to clear and accurate information about the job they are referred to; a clear statement of terms and conditions; only to be referred to jobs for which they have the relevant experience and qualification - particularly in terms of health and safety - and to be paid for the work they have done by the agency. In practice however there are many cases of abuse and negligence.

Both pieces of legislation are currently under review. A consultative paper on the reform of the employment agencies regulation was published in May 1999 by the Department of Trade and Industry (DTI); draft legislation has been delayed several months but is expected before the end of the year 2000. Reforms are concerned with simplifying and streamlining the regulations and with increasing clarity, transparency and efficiency in the industry without fundamentally restricting the scope of the industry. They will make it obligatory for agencies to provide clear written statements of terms and conditions at the outset of any engagement. Work seekers often register with more than one agency, and written terms and conditions are seen as helpful to them to decide between competing job offers. It will also help them to get redress in case of disputes.

It is currently illegal for agencies to charge work seekers for the provision of jobs. The exception is the entertainment industry. According to Equity and BECTU, the unions operating in the field, it is common practice for agents to charge fees to clients just to be put on their books, with no obligation to actually find work for them. The new regulations increase the financial accountability of agents in the entertainment industry and will restrict the use of signing on fees in model agencies.

The Consultative paper also proposed to make it illegal for temporary agencies to charge a fee to hirers should a temporary worker subsequently be placed into a permanent job. The government believes that this 'temp - to - perm fee' discourages employers from offering permanent positions, and hence is harmful to temporary workers, a view that is shared by unions. The industry is opposed to the abolition of this fee. Since the original consultative paper the government has issued amended proposals on this point which aim for a compromise. Under the proposal agencies would still be allowed to charge a transfer fee, as long as this is agreed explicitly at the outset of the contract, and as long as hiring firms are offered the alternative of contracting the employee through the agency for an extended period, before a free transfer into permanent employment can occur; final regulations of course have not yet been agreed (DTI 1999; DTI Feb 2000).

The consultative paper summarises its approach to the industry as follows: "In view of its diversity, the rapid turnover in small operators, the small proportion of staff with professional qualifications and the responsible position that bureaux occupy, allowing the market to determine standards in the industry is not an option' at this stage." The overall objective of tightening and modernising the regulations governing the industry is welcome by both the major trade federation, REC, and by the trade unions. Yet both sides to some extent feel that the draft regulations are not going far enough, that they are tinkering rather than fundamentally redrawing the current statutory framework. Trade unions in particular are calling for the re-introduction of licensing or some form of registration. It is unlikely that this will be introduced in the new regulations.

“Many staff are directly employed by reputable agencies and are happy with the flexibility that agency work gives them. But a significant number are exploited. Just as there are good and bad bosses employing permanent staff, there are good and bad agencies.”

John Monks, TUC General Secretary (1999)

In the views of trade unions as much as of the major employers’ federation, many temporary agency jobs provide welcome work opportunities with reasonable if not good terms and conditions. Part of the industry is clearly concerned with providing a quality workforce to their clients and will invest in training and proper pay and conditions to achieve this. At the same time however there is clear evidence of considerable abuse and malpractice. Some of these abuses are in contravention of industry regulation, others stay within the law but exploit the lack of protection for temporary agency workers in the UK.

There are three main sources of information on the problems temporary agency employees face at work: the DTI (formally charged with enforcing the Employment Agency Regulations) has a complaints line as part of its monitoring and enforcement role. Citizens Advice Bureaux, an NGO network charged with providing advice on a broad range of legal and social issues, offer individual employment rights advice to people and hence are a good source for the type of problems occurring in the industry. Trade unions pick up some problems although of course the majority of temporary agency workers are not union members. There also have been a couple of recent one-off studies which touch on the issue (Wiseman and Gilbert 2000; Tremlett and Collins 1999).

In this section we will look at the key issues for temporary agency workers in terms of contractual status, health and safety, pay and conditions and training and will then look at more general evidence on attitudes to temporary agency work among workers. We will then review the new proposals for the regulation of the industry.

Contractual status

“...the employment status of agency workers is a highly complex issue, and many such workers will not qualify as employees of either the agency or the company for which they are actually working”

(NACAB 1997, para. 120).

Temporary agency workers face three problems related to their contractual status: it is often not clear who their employer is; it is often not clear whether they are employed or self-employed; where employment status has been established, they often do not qualify for basic employment rights because such rights are linked to length and continuity of employment.

The 1973 Employment Agency Act differentiates between ‘employment agencies’ and ‘employment businesses’.[...] in simple terms, in an employment agency situations the worker has a contract with the hirer to do the work and in employment business situations[the most common arrangement], the worker has a contract with the employment business. Questions of who pays the worker, handles his taxes, national insurance or other aspects of the arrangement are in many cases irrelevant for these purposes.” (DTI 1999, para 5.10). A minority of agencies, such as Manpower, directly and formally employs agency workers, and hence there is clarity over the employment relationship. But this is uncommon. Temporary agency work constitutes a triangular contractual relationship, where the agency is generally responsible for paying the wages and taxes of the worker and for overall performance management whereas the client is responsible for

directing the work of the temp. In cases of dispute, for example over health and safety or discrimination, to some extent both parties are responsible- and none. The lack of clear lines of responsibility makes it difficult for temporary workers to get redress.

The new draft regulations (see above) will address this problem partially. Temporary agency workers will have to be provided with written terms and conditions and a description of the job before starting the job. This will provide clear standards and accountability. According to the survey conducted for the HSE, 87% of agencies claim that they already comply with this by given workers written particulars as soon as they register, but only 69% of the agency workers interviewed said they actually received written particulars (Wiseman and Gilbert 2000: 6). However, the regulations do not go as far as making the worker a formal employee of either the agency or the client.

British employment law differentiates between 'contract of services' (the usual employment contract) and 'contract for services'. Under the latter there is no mutual obligation to either provide or accept work; no requirement for a disciplinary or grievance procedure to be established (many agencies instead operate complaints procedures), and notice of termination can be given at any time. This contract implies that the worker is self-employed, and is hence responsible for paying their own taxes and national insurance, without the right to paid leave, statutory sick or maternity pay or redundancy pay. The TUC is concerned about the growth in unscrupulous re-interpretations of the employment contract of this kind (TUC 1999 b). Research for the Health and Safety Executive (Wiseman and Gilbert 2000:p. 37) shows clear disparities in perceptions - and hence expectations - in terms of employment status:14 % of agencies said they provide workers on a self-employed basis while only 2% of interviewed temporary workers understood their status in the same manner.

During the 1980s and early 1990s tax regulations and employment statute more generally strongly encouraged such notional self-employment and many employers took advantage of the opportunity to save national insurance contributions and benefits payments by employing workers on a self-employed basis. UCATT, the construction industry union, estimates that in the mid 1990s there were about 700,000 construction workers on notional self-employment contracts (TUC 1998). This is also a major problem for lecturers in further and higher education. In response to increased employment rights for part time workers in the early 1990s, many colleges reacted by making their part-time staff redundant and rehiring them as self-employed through employment agencies. The largest of these, Education Lecturing Services (ELS), explicitly suggests savings on employment related costs for part time staff as a reason for using their services. NATFHE, the union for teachers in further and higher education, is currently pursuing a case on behalf of one of its members, Mrs Allonby against Rossendale FE College, who, together with several hundred colleagues, was made redundant in 1994 and asked to return to work on lower wages and without employment related benefits by signing a contract with ELS as a self-employed worker. The case is currently in the final appeal stages. Natfhe estimate that about half of all part time teachers are employed on a casual basis (though not all through agencies) (TUC 1998).

Reforms of tax regulations in 1998 and in April 2000 have made it more difficult for workers or agencies to avoid the payment of tax and national insurance. But even though workers might be counted as employed for the purposes of taxation¹, this still does not necessarily imply that they qualify for employment status in relation to other rights.

¹ that is not qualify for IR 35 status www.inlandrevenue.gov.uk/ir35/seprelease.htm

Most rights at work in the UK are linked to employment status and length and continuity of employment. This includes rights to statutory sick pay, maternity pay, redundancy pay and protection against unfair dismissal. The linking of employment rights to employment status is a major problem for temporary workers. Some recent employment legislation has taken account of this problem by explicitly extended new rights to 'workers' instead of 'employees'. Hence temporary and contract workers are covered by the National Minimum Wage, introduced in the 1998 National Minimum Wage Act, and are entitled to 20 days paid annual leave as a result of the 1998 Working Time Regulations, the UK implementation of the Working Time Directive.

Even where employment status is established, many temporary workers do not qualify for basic employment rights because they fail to build up the necessary continuity or length of employment. The right to paid holidays for example applies once a person has been in employment for 13 weeks. This provides a clear incentive to agencies to limit contracts to 12 weeks. Indeed, BECTU, the Broadcasting, Entertainment, Cinematograph and Theatre Union, is currently taking a case to the European Court of Justice arguing that the 12 week- threshold introduced with the Working Time Regulations constitutes indirect discrimination, and is in breach of European law. The Advocate General of the European Court of Justice has recently given his opinion, supporting BECTU's argument. According to the 1999 Labour Force Survey slightly under a fifth of agency workers had been in their job for less than three months at the time of the survey. Other rights, such as to maternity leave, only apply after a year's service. A third of agency workers, according to the LFS, said that their job would last less than one year, and thus clearly would not be covered by these regulations.

Health and safety

The monitoring of health and safety at work is the responsibility of the Health and Safety Executive (HSE). After a couple of recent high profile cases- leading to a fatal accident in one case - the issue of health and safety for temporary agency workers has received considerable attention. There are two particular issues: Workers are put at risk because of inadequate training or preparation for the position; this is often linked to either the agency not making sufficient enquiries about the job, or the client not providing sufficient details. Where an accident has occurred both agency and hiring firm may refuse liability because of the lack of clarity in the employment relationship.

1992 Management of Health and Safety Regulations puts obligation on employers to ensure that workers have the necessary capabilities and training to be able to perform their job safely; to ensure that temporary workers are provided with information about specific features of the jobs they fill affecting health and safety; and to ensure that temporary workers are provided with information about any special occupational qualifications or skills required to carry out their work safely. While the HSE research found some ignorance over the obligations under these regulations from both hiring companies and agencies, awareness was generally higher among agencies dealing with higher risk sectors. Nevertheless, once again the survey points at discrepancies between the perceptions of agencies and hirers and of workers. The large majority of employers and agencies say that they provide information on health and safety issues to workers, yet only 25% of the sample workers had received such information from the hiring company and 20% from agencies. The proportion raises to 48% for workers in the construction industry, and 59% in transport, storage and communication but still below the level claimed by companies (Wiseman and Gilbert 2000:44).

The Health and Safety Executive itself, formally responsible for monitoring accidents, does not keep separate records which would allow to investigate in detail the accident rates. In any case the lack of clarity over responsibility for agency workers is likely to lead to under-reporting of such accidents. The Labour Force

Survey suggests that agency employees have a slightly higher accident rate than permanent employees, 5.1% compared to 4.1% reported a work-related accident in the preceding 12 months in 1999. Given the high level of agency employment in higher risk sectors such as construction, transport and communication this is perhaps not unexpected. This does highlight the need for proper procedures, training and information on health and safety for agency workers. Interestingly accident rates among agency workers are much higher than for other temporary employees, such as people on fixed term contracts or on casual and seasonal contracts.

Working hours

Long hours are a particular problem in some industries where free lance and agency work is common. Unions report pressure on workers to sign exemption clauses under the Working Time Regulations. The exposed nature of temporary employment makes it more difficult for workers to resist such arrangements. Problems appear particularly severe in the broadcasting and film industry where production schedules push for long hours. Danger is not limited to injury during working time but such working patterns also endanger workers through fatigue during their travels to and from work.

Pay and benefits

The introduction of the National Minimum Wage, explicitly covering 'workers' not just 'employees', has addressed some of the most extreme cases of low pay. However, deductions and lack of clarity over contractual hours offer possibilities for circumventing the minimum wage regulations.

Pay is the biggest area of complaint for temporary agency workers. This covers a variety of areas:

- The worker is not paid because the client fails to pay the agency.
- Disproportionate deductions are made for lateness or disciplinary issues.
- The work is agreed for a specified number of hours per week but the client actually requires less hours - hence pay is lower than expected.
- Agencies deduct monies for tax and national insurance but fail to pass it on to the relevant institutions.
- The right to paid annual leave (pro rata 20 days per annum once a person has been employed for more than 12 weeks) is circumvented by simply stating that it is incorporated into basic pay rates, without increasing basic rates.

There is considerable anecdotal evidence for the latter practice from NACAB; evidence for this practice also comes from the REC survey of the industry's charging structure. REC expected agencies to pass on at least some of the increased wage costs due to the new rights to paid leave but found no evidence for this in the 1998/ 99 survey (FRES 1998/99).

In terms of general pay levels (which are not adjusted for hours worked) the average weekly income of full-time agency workers in 1999 was 68% of the average weekly income for all employees in the UK, of £370.95. This is considerably higher than casual and seasonal pay - as one would expect: low paid work is more likely to be carried out by directly employed casual or seasonal workers. Average pay for full-time people on fixed-term contracts on the other hand is significantly higher, at 89% of general average pay. Since 1995 there has

been a clear change: average incomes of agency workers have increased (from 58%) - suggesting perhaps that as a result of labour shortages agency employment has moved into slightly better paid job categories. At the same time fixed-term incomes have declined - from 102% of general pay levels.

The picture looks rather different for part time contracts. Average weekly incomes for part time workers in agencies is actually higher than that of the general population. It is not clear whether this is linked to average hours of work or to rates of pay although one would expect that agency work would tend to pick up 'longer' part time jobs.

Training

There have been a number of studies on non-permanent workers; access to training and development usually is the main grievance cited. These findings are only partially born out by the Labour Force Survey (LFS). According to this in 1999 21% of all agency workers had received training within the last 13 weeks of the survey, compared to 28% of permanently employed workers. People on fixed term contracts had a higher likelihood of training at 39%. The Labour Force Survey does not include questions about the nature or extent of training and hence the frustration of non-permanent workers might be related to the level and quality of training on offer. A priori one might expect basic induction training to be higher in the non-permanent group.

The relatively low differential in the likelihood to have received training between permanent and agency workers- however supports claims by the industry federation REC that reputable agencies provide considerable training for their staff not least because current labour shortages make it otherwise impossible to provide staff of the required calibre. Some agencies in teaching and medical services - where continuous training is semi-compulsory - formally cooperate with local education authorities to ensure workers are trained. REC quotes another agency which has set up its own driving school to overcome shortages of heavy goods vehicle drivers. Agencies dealing with secretarial and administrative jobs are also well known to provide training which allows workers to update their skills, especially important in relation to IT and word processing skills, and to provide one route for 'women returners' to refresh their skills.

Another interesting example of finding training solutions which deal with the more transient employment status is film and broadcasting. The industry has a very high level of free lance and agency employment, up to 50% of technical and related staff according to BECTU; while such practices go back a number of years, trends have accelerated a lot in the last decade since the BBC was formally required to source at least 25% of its productions externally. Some research suggests that the switch to external sourcing seriously effected the availability of certain skills as the BBC ran down its internal training programmes (Wright 1996). BECTU, the relevant union, however feels that training and maintenance of the skill pool is not a major problem for the industry. Training is coordinated by 'Skillset' - a national agency responsible for training in the industry- and is partly financed by a training levy paid by members of the independent producers association (PACT).

A survey conducted for the Health and Safety Executive (Wiseman and Gilbert 2000: 47) similarly found that a high proportion of agency workers - 69%- had received some training either prior or during their engagement. Training took the form either of induction or was in some way job related, less common was health and safety training. In the vast majority of cases - 59% compared to 9% - the training had been

provided by the hiring company, not the agency.

Attitudes to temporary employment

We have not come across studies which specifically deal with the psycho-social impact of agency work. It is clear however that the majority of temporary agency workers would prefer permanent employment - 53% according to the LFS in 1999. Less than a third of LFS respondents said that they actively prefer agency employment. The proportion of involuntary temporary employment has fallen significantly since the early 1990s.

A recent survey of temporary employment conducted by the Department of Education and Employment (Tremlett and Collins 1999) found a considerable difference in gender in attitudes to non-permanent employment. Women were generally more likely to positively seek non-permanent employment, mainly because of the flexibility it provided. The National Health Service has recently started its own employment agency -NHS Bank- to stop nurses from leaving the NHS to work for private agencies because these provide greater control over shifts and hours of work. Men on the other hand were more likely than women to mention financial benefits from their non-permanent status.

Research on the psychological contract of non-permanent workers is less conclusive. A longitudinal analysis of the British Panel Household Survey between 1991 and 1997 found that, on average, fixed-term workers reported lower levels of job satisfaction, receive less work related training and were less well paid than permanently employed counterparts (Booth 2000). A study by Guest et al (1999 et al) of the attitudes and work commitment of permanent and non-permanent employees in 40 organisations on the other hand found, that, on the whole fixed term employees were no less, if not more motivated and committed at work than permanent employees (with the exception of access to training).

3

Labour market organisation

Employment

The level of temporary agency employment in the UK has been the subject of dispute for a number of years. Anecdotal evidence, the growth of the industry, its employers federations and employer based surveys suggest widespread use and rapid growth of temporary agency employment, and of non-permanent employment more generally. According to the Labour Force Survey (LFS) temporary agency work accounts for just over 1% of the workforce, with all workers on non-permanent contracts accounting for just 7% of total employment. (The UK LFS, since 1992, has included specific questions on non-permanent employment. Respondents are asked whether their employment is permanent or not; those who reply that it is not permanent are then asked whether their employment is casual, fixed-term, through an agency or seasonal). Even though the LFS records a rapid growth in agency employment, absolute levels, of 254,000 people, were seen as questionable. In comparison, the annual survey of the Recruitment and Employment Agency Federation (REC²) suggests that at the end of 1998 agencies had close to a million people on their payroll in the relevant survey week (Table 1). Even though REC acknowledges that this is likely to present an overestimate of actual people concerned because many temporary workers are on the books of more than one agency, this nevertheless presented a considerable discrepancy.

The DTI therefore, as part of its review of the costs and benefits of temporary agency employment, commissioned a targeted survey of agency work (BMG survey) in order to test the accuracy of the LFS and other estimates (Hotopp 2000). The BMG survey was based on a telephone survey of a sample of companies listed in British Telecom's directory, identified through the Standard Industrial Classification Class 74.50 (labour recruitment and provision of personnel). The British Telecom database includes data on numbers of employees at each establishment; a sample of 1218 establishments, weighted by size, was selected from the 9940 establishments listed. Methodological problems, worth mentioning because they are likely to be shared by other countries, include inaccuracy in terms of the employment data for each establishment because of confusion over directly employed staff and workers hired out by an agency.

According to the BMG survey, in January 1999 there were 557,000 temporary agency workers in Britain, more than twice the level suggested by the LFS, and accounting for 2.3% of total employment. Three reasons are suggested for the under-estimate by the LFS (Hotopp, 2000: 461):

- *Self-employment*: as discussed above, this is quite a common practice in agencies particularly in some sectors. The LFS for example includes 40,000 self-employed people in clerical and secretarial jobs and 8,000 self-employed nurses, occupations with high levels of agency employment and which are not traditionally strong sectors for small businesses or self-employment. Another indicator for the under-estimation of self-employed agency workers is the fact that 70% of BMG workers are male, compared to 53% of LFS agency workers. The use of self-employed status is particularly common among agencies operating in the construction industry.
- *Second jobs*: anecdotal evidence suggests that people often do agency work in addition to their main employment. LFS questions about second jobs are not as detailed as those about the first job. The LFS includes 50,000 nurses with a second job, and 30,000 associated professionals in care work. Again, it is very common in the health service to do additional work through agencies.

² REC is the result of a recent merger between the Federation of Recruitment and Employment Services (FRES) and the Institute of Employment Consultants; it has 7500 corporate members and 7500 individual members.

- *Fixed-term contracts:* Hotopp (2000) suggests that this might be another area of confusion for LFS respondents particularly in the education sector where, as we discussed above, it has been common practice particularly for part-time teachers, to hire these through agencies. This might add up to 6000 people to the temporary agency total.

The BMG survey provides no longitudinal data. However, both the LFS and the REC surveys show very similar trends in terms of overall growth rates. The LFS survey suggests that since 1992 (when questions about temporary agency work were first included) temporary agency work has dramatically increased its general share of both permanent and non-permanent employment. The actual number of agency workers captured by the LFS more than tripled between 1992 and 1999 while agency employment as a share of total employment grew from 0.4% to 1.05%; and as a share of all non-permanent employment it more than doubled from 6.7% to 15.5%. The same explosive growth has not occurred in all categories of non-permanent employment. The share of directly employed fixed-term workers for example increased from 2.7% of total employment in 1992 to 3.8% in 1995 but has fallen slightly since then, to 3.4 in 1999. This is not unexpected in the context of tight labour markets and skill shortages where employers might want to hold on to scarce skills where possible. Seasonal and casual employment has stayed unchanged during the period.

The annual REC survey includes an estimate of the number of temporary employees on the payroll of all agencies; data is collected for a single day in November. The survey methodology has remained constant over a considerable period so that the REC survey is a good indicator of longitudinal trends; however the survey has a response rate of less than 10% (in 1998: 638 usable responses from a sample of 11,950). REC/ FRES acknowledge that the figure is likely to overestimate the actual number of temporary workers because many agency workers register with more than one agency. Initial research among the larger agencies suggests that "during the course of a year up to seven times the average number of workers on payroll each week work for the agency." (FRES 1999 p.10).

Table 1: *Temporary workers on the payroll of UK temporary employment agencies (last Friday in November) 1994-1998*

| Year | Temporary workers on payroll |
|------|------------------------------|
| 1994 | 580,000 |
| 1996 | 769,085 |
| 1997 | 878,619 |
| 1998 | 976,130 |
| 1999 | 1,128,993 |

Source: *FRES 1999; REC 2000*

Temporary agency employment and gender

The majority of agency workers are male, according to both the LFS and the BMG survey. However, LFS figures suggests a much more balanced gender distribution, with 53% of the temporary workforce male, whereas 70% are male according to the BMG survey. These discrepancies are not really explained by the reasons put forward for the overall underestimate in the LFS - nursing, secretarial and clerical work and part time teaching (the quantitatively most significant areas of false unemployment suggested by Hotopp 2000) are

all mainly performed by women.³ Another - albeit smaller- survey conducted by the Department of Education and Employment on the costs and benefits of temporary employment, found that the majority of temporary workers were female (Tremlett and Collins 1999)⁴.

Temporary agency work reflects the strong occupational segregation found in the wider economy. According to the BMG survey, men are over 90% of agency workers in engineering and electronics, driving and building but are less than 30% of staff in medical care and clerical, secretarial and junior office occupations.

Whatever the precise current gender distribution, it is likely that the expansion of temporary agency employment has led to a change in gender distribution with more men moving into this type of employment. According to the LFS in 1992 women were 70% of agency workers, by 1999 their share had fallen to 47% of the workforce - the same distribution as in the general workforce. Among all non-permanent workers women continue to be in a slight majority.

The same approximation to the general workforce has also taken place in relation to part time employment. In 1992, part time employment accounted for 35% of the temporary agency workforce, by 1999 it had fallen to 25%, the same levels as the general workforce. Part time employment is much higher for other forms of temporary employment, accounting for 34% of fixed-term employment, 54% of seasonal employment and, not surprisingly, 85% of casual employment.

Ethnic minorities and agency employment

The access to permanent employment shows signs of racial bias. Overall, white people⁵ are less likely to be in non-permanent employment, and hence black and ethnic minority people more likely, than one would expect given their respective shares of the total working population. This applies particularly to fixed-term contracts and agency work. Since 1992, differences have become less marked in relation to agency employment but have become more marked regarding direct non-permanent employment. Casual and seasonal employment on the other hand shows no such differences.

There are a number of factors likely to account for these differences: agency work and non-permanent employment in general is highest among the younger age groups (see below) and black and ethnic minority people make up a higher share of this age group than of the general population. Agency work is also particularly predominant in some sectors which have traditionally attracted black and ethnic minority staff. One of these is nursing. As a result of racism, black and ethnic minority nurses are more likely to be in more junior positions, and are more likely to resort to agency and casual employment in the sector. More speculatively, the public sector factor might also account for some of the differences. Public sector organisations are twice as likely to use fixed term contracts than private employers and are heavy users of

³ The gender distribution of the UK sample of agency workers in the EF Third European Survey on Working Conditions (2000) is 63% female, 37% male. It is likely that this significantly under-represents male workers in the industry.

⁴ This survey was based on telephone interviews of 607 temporary workers (of which just under 20% were agency workers).

⁵ There are too few observations from black workers in the LFS to allow a statistically reliable analysis of black workers and agency work.

agency employment in some areas. Public sector employers have made conscious efforts to open up job opportunities to black and ethnic minority staff, and in so far as new jobs during the past few years have had a higher likelihood to be non-permanent, this might contribute to the unequal distribution. There might of course also be direct bias at play in the allocation of permanent contracts.

The reverse side of the coin is limited access for black and ethnic minority staff to the better type of agency work. The contribution of agencies to racism in employment was highlighted by a high profile TV documentary which found that 16 out of 20 employment agencies complied with demands from employers to only send white staff. This was complemented by formal investigations of two employment agencies by the Commission for Racial Equality (CRE) in 1990. The CRE report highlighted the formal and informal pressures that might lead individual agency staff to collude with direct or indirectly racist demands because of the financial rewards linked to successfully placing staff. Staff, of course, might also want to protect black temporary workers from rejection and negative experiences should they be sent to racist employers. The formal recommendations of the CRE included the development of equal opportunities, their communication to staff and client companies, training and guidance on non-discriminatory practices to all staff and the institution of proper monitoring procedures of applicants and job placements by ethnic origins.

The CRE has not formally revisited this issue since. The CRE, together with the Department for Education and Employment, are trying instead to provide more informal good practice models and have hosted forums for the industry to discuss anti discriminatory practices. Anecdotal evidence from REC, as well as the changing LFS figures, suggest that attitudes among agencies have changed, at least among those who are members of REC. Equal opportunities policies play an important part in REC's code of practice and are taken seriously by member organisations in REC's experience. The REC legal helpline also frequently gets enquiries from members about the legality of requests from clients (such as to send 'English staff' only), suggesting that awareness of race discrimination issues among agency employees is relatively high. It is of course not clear whether the change in approach is the result of the adverse publicity generated by the investigations or whether high levels of labour shortages have broadened employers' outlook. The fact that clients appear to continue to make discriminatory requests suggests that there remains cause for concern.

Sectoral and occupational distribution of non-permanent employment

Here once again different surveys are showing slightly different pictures. While the BMG survey suggests that secretarial and related jobs only account for one in ten of all temporary workers supplied (Table 2), such jobs account for 26% of agency workers according to the REC survey (Table 3) and for over 40% of temporary agency workers according to the LFS (Table 2). The Workplace Employee Relations Survey 1998, based on interviews with managers in workplaces with at least 25 employees, finds an even higher share of secretarial jobs (Table 3).

According to the LFS on the whole occupational changes over time have not been particularly marked. This also applies to the distribution between manual and non-manual jobs: The share of non-manual agency jobs has fallen from 68% in 1992 to 60% in 1999, while in the general population there has been a marginal increase in the number of non-manual jobs from 59% to 61 % during the same period. However, the manual - non-manual split provides a good indicator for employers' approaches to different types of non-permanent employment. Employers are much more likely to employ manual workers directly on seasonal or casual contracts - 73% of seasonal staff and 55% of casual staff are in manual jobs - than to resort to agency or fixed-term contracts.

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Table 2: *Temporary agency workers by occupation: BMG survey*

| | Jan 1999 |
|--|----------|
| Secretarial/ clerical/ junior office staff | 10 |
| Management and executive | 1 |
| Accounting and finance | 5 |
| Engineering and electronics | 12 |
| Computing/ IT/ telecom | 22 |
| Drivers | 10 |
| Building tradesmen/ craftsmen | 3 |
| Building labourers | 2 |
| Other un/ semi-skilled labourers | 12 |
| Medical, nursing and healthcare | 2 |
| Hotel/ catering | 3 |
| Other | 16 |

Table 3: *Temporary agency workers by occupation: LFS 1992 -1999 and WERS⁶ 1998*

| | Spring 1992 | Spring 1995 | Spring 1999 | WERS 1998 |
|--------------------------------------|-------------|-------------|-------------|-----------|
| Managers and administrators | 4 | 4 | 4 | 2 |
| Professionals | 5 | 6 | 5 | 19 |
| Associate technical and professional | 14 | 7 | 9 | 12 |
| Clerical and secretarial | 47 | 42 | 42 | 58 |
| Craft | 3 | 5 | 4 | 6 |
| Personal services and security | 9 | 5 | 8 | 6 |
| Sales | 1 | 0 | 2 | 2 |
| Plant operators and assembly | 9 | 22 | 15 | 11 |
| Other occupations | 7 | 9 | 11 | 17 |

Source: *For WERS data: Department of Trade and Industry (1999b)*

Survey data from employment agencies, the REC survey, shows a much starker change in the sectoral demand for agency employment. According to the REC/ FRES survey, during the 1990s secretarial and clerical placements have somewhat lost their dominance in the market, down from 40 percent earlier in the decade. The share of engineering and technical placements has almost halved, down to 14 percent in 1998. On the other hand the share of temporary placements of blue collar workers and of nursing and medical staff have almost doubled (Keynote 1999 p.6).

⁶ The authors acknowledge the Department of Trade and Industry, the ACAS, the ESC and the Policy Studies Institute as the originators of the 1998 Workplace Employee Relations Survey (WERS98) data, and the ESRC-funded WERS98 Data Dissemination Service as the producers of the WERS tabulations used in this work. None of these organisations bears any responsibility for our interpretation and analysis of the data.

Table 4: *Temporary placements by occupational sector, (based on FRES/ REC survey)*

| | Nov 1998 | Nov 1999 |
|---------------------------|----------|----------|
| Secretarial/ clerical | 26 | 31.2 |
| Blue collar | 25 | 26.2 |
| Technical/ engineering | 14 | 10 |
| Drivers | 8 | 7.5 |
| Computing/ IT | 7 | 5.6 |
| Nursing | 7 | 6.4 |
| Hotel/ catering | 5 | 3 |
| Professional / managerial | 3 | 1.4 |
| Financial | 1 | 2 |
| Other | 4 | 7.3 |

Source: *FRES 1999; REC 2000*

Sector distribution

Sector data has not yet been published on the BMG survey. According to the LFS two sectors between them account for half of all temporary agency employees: banking and financial services and other services (which includes public services). The use of temporary agency workers in banking and finance is over twice the level one would expect given the overall size of employment in the sector. In 1992, it was three times the level but the overall growth in banking and financial services employment, as well as the growth in agency employment in other sectors of the economy has led to a slight lessening of this imbalance. The share of temporary agency workers accounted for by other services has also fallen since 1992, from 29 to 24% but unlike banking and financial services, this is less than the overall share of employment in this sector.

Quantitatively less important but with a share of agency workers three times the level one would expect given overall employment is the energy sector. In 1999 it accounted for only 1 % of overall employment but for 3 % of agency employment. Unions report that, prior to a recent collective agreement which limits the level to ten percent, agency contract employment in the gas industry accounted for up to half of all staff in some organisations.. The transport sector is also a comparatively heavy user of agency staff. Retail and wholesale distribution and catering on the other hand account only for half of what one would expect in terms of overall employment share. In this sector contractual flexibility is much more likely to be supplied by employing people directly as seasonal or casual staff.

Table 5: Change in industry distribution of temporary agency employment, based on LFS data

| | 1999 | 1999 | 1999 | 1995 | 1995 | 1995 | 1992 | 1992 | 1992 |
|---------------------|----------------------------------|-----------------------------------|-----------------------------|----------------------------------|-----------------------------------|-----------------------|----------------------------------|-----------------------------------|-------------------------------------|
| | Total employment by sector | agency employment by sector | % of agency in sector | Total employment by sector | agency employment by sector | % agency in sector | Total employment by sector | agency employment by sector | % agency employment in sector |
| Agriculture | 1 | 0 | 0 | 1 | 0 | 0 | 1 | 0 | 0 |
| Energy | 1 | 3 | 3 | 2 | 4 | 2 | 2 | 5 | 1 |
| Chemicals/ minerals | 3 | 4 | 2 | 3 | 5 | 1 | 3 | 3 | 0 |
| Metal manufacture | 9 | 9 | 1 | 9 | 11 | 1 | 11 | 13 | 0 |
| Other manufacture | 8 | 6 | 1 | 9 | 10 | 1 | 9 | 4 | 0 |
| Construction | 5 | 4 | 1 | 4 | 4 | 1 | 5 | 2 | 0 |
| Distribution | 20 | 11 | 1 | 20 | 9 | 1 | 20 | 5 | 0 |
| Transport | 7 | 10 | 2 | 6 | 9 | 0 | 6 | 7 | 0 |
| Banking and finance | 14 | 29 | 2 | 12 | 30 | 1 | 11 | 32 | 1 |
| Other services | 33 | 24 | 1 | 33 | 18 | 2 | 32 | 29 | 0 |
| Total | 100% | 100% | | 100% | 100% | | 100% | 100% | |

Labour market flows

A major concern for policy makers is whether temporary employment acts as a gateway to permanent employment or whether temporary workers are more permanently trapped in a secondary labour market. There are no studies to our knowledge which directly examine this issue. The Labour Force Survey has a question about whether respondents were in employment one year previously but without differentiating by type of employment. In future it will be possible to examine individual employment histories through the LFS over five quarters but this data is not yet available. The British Household Panel Survey provides longitudinal data since 1991 on the fate of temporary workers in the labour market (Booth et al 2000). This however does not differentiate between fixed term and agency workers, just fixed-term and seasonal/ casual. In the period 1991 to 1997 they find that fixed term employment can lead to permanent employment but with a long lead time, between 18 months to 3 years (for women, but not for men, this effect is stronger for those who are more highly educated and work in non-unionised private companies) (Booth et al 2000). Booth et al also find that women get higher returns on their educational capital, that is higher wages, after fixed term employment, whereas men do not.

The 'bridge role' of temporary employment hence has to be judged mainly from inferences. A number of indicators provide evidence: the average age of temporary workers; the employment status prior to their current job; the conversion of temporary into permanent jobs.

Firstly, an analysis by age shows that non-permanent employment clearly is much more prominent for people under the age of 25 than for the total population. People in this age group are twice as likely to be agency staff than their share of the working population. The growth of agency employment during the 1990s has been particularly centred on this age group while there has been a relative fall of temporary agency work among people of primary working age (Table 6). Agency employment for under 20 year olds has grown seven-fold since 1992, and three-fold for 20 to 24 year olds.

Table 6: *Non-permanent employment by age (LFS) 1999*

| | Under 25 | | | 25 – 49 | | | 50 plus | | |
|------|-------------------|-----------------------|--------------------|-------------------|-----------------------|--------------------|-------------------|-----------------------|--------------------|
| | % of agency staff | % of fixed term staff | % of all employees | % of agency staff | % of fixed term staff | % of all employees | % of agency staff | % of fixed term staff | % of all employees |
| 1992 | 27 | 21 | 18 | 58 | 63 | 62 | 15 | 16 | 22 |
| 1995 | 29 | 22 | 16 | 55 | 63 | 63 | 15 | 14 | 19 |
| 1999 | 31 | 19 | 15 | 51 | 65 | 63 | 17 | 17 | 22 |

Source: *LFS Spring quarter*

Data on labour force status a year prior to the survey date also shows the role of agency work- and of non-permanent work more generally - of a stepping stone into paid employment. Slightly under a third of agency workers were in paid employment a year earlier, compared to 88% of all permanently employed workers. Agency workers are also more likely to have been unemployed, in full-time education or looking after the family (Table 7). Finally people who suffered from long or short term illnesses are also significantly over-represented among both agency and directly employed temporary workers.

Table 7: *Work status one year ago of agency workers, fixed term workers and permanent employees: (LFS) 1999*

| 1999 | % of agency staff | % of fixed term staff | % of all employees |
|----------------------|-------------------|-----------------------|--------------------|
| In paid job | 64 | 73 | 86 |
| Unemployed | 7 | 6 | 2 |
| Full-time student | 9 | 14 | 4 |
| Looking after family | 2 | 3 | 1 |
| Temporarily sick | 1 | 1 | 0 |

The current debates about the justification of the ‘temp - to - perm’ fee- levied on hiring firms when they offer permanent employment to workers introduced to them through temporary agencies - suggests that there is a significant transition from agency into permanent employment. REC estimates that about a quarter of temporary workers placed by agencies are offered permanent employment as a consequent of their temporary job. ‘Temp -to -perm’ fees currently run at about 15-20% of the workers starting salary (DTI 1999 para 6.7.14); particularly for lower level jobs this can be a strong disincentive for hirers to take people on permanently. The conversion rate from agency into permanent employment might be higher if this fee was abolished or significantly reduced.

Employers use of temporary agency workers

There is a significant relationship between the size of a hiring company and its use of agency staff. Larger workplaces are much more likely to use agencies, and to use them more frequently. According to the HSE survey, only 5% of a representative sample of 15,000 employers had used agency staff in the preceding 12 months (2% had used them for permanent recruitment); however among employers with 200 or more staff over two thirds had used agencies (Wiseman and Gilbert 2000:17).

In the large majority of workplaces temporary workers are a clear minority of the workforce. Of the employers who had used agencies during the period the large majority of these - 62% - had employed 10 or less agency workers. This is also supported by the Workplace Employee Relations Survey (WERS):

Both the WERS 1998 survey and a smaller survey conducted by the Industrial Relations Services (IRS 1998) suggest that traditional reasons for using temporary agency workers continue to predominate: Short term cover for staff absences and vacancies is by far the biggest category (60% according to WERS), followed by matching staff to peaks in demand (38%), the inability to find permanent staff (19%), maternity or holiday leave (16%), the need to fill specialist skills (12%) and a freeze on permanent staff (11%).

Interestingly, almost two thirds of employers say that agency staff carry out work which used to be done by permanent staff (WERS 1998). This replacement effect suggests that underlying the continued traditional reasons provided for the use of agency work there might have been a more fundamental shift in labour resourcing.

The WERS survey did not include a prompt on ‘labour cost savings’. This has clearly been a factor in some sectors, particularly in education (as discussed above). In the IRS survey - which includes only 57 employers, hence having more the status of a series of case studies, only 2% of companies mentioned the reduction in payroll costs, and 1% a reduction in training costs.

Industry structure

The agency sector represents a mature industry with easy access and strong price competition. The UK temporary employment agency industry is highly fragmented. Capital requirements for setting up in the business are very low; there is no need for professional qualifications or membership of a professional body for operating in the industry and, as mentioned previously, there no longer is a need to be licensed. Hence there are no significant barriers to entry. At the time of the abolition of licensing in 1995, annually about a fifth of all operators in the industry did not renew their license while an equal if not higher share of people applied for new licenses. The HSE survey found that a third of operators had been in business for less than one year.

No single company dominates the industry or has a market share of more than 5 percent. In 1998 there were approximately 25 agencies with an annual turnover in excess of £100 mil whereas 80% of businesses in the industry have a turnover less than £1 million per year (Keynote 1999 p.10, estimate based on VAT returns). Eight agencies in 1998 had annual turnover in excess of £200 million: Manpower, Adecco, Hays Personnel Services, Corporate Services group, Spring Group Plc, Reed Executive Plc (part of Manpower), Delphi Group Plc, Kelly Services. The largest corporation in the field is Select Appointments (Holdings) Plc which owns seven different groups and has 540 offices in 25 countries (Keynote 1999:16). A third of the top twenty UK agencies are foreign owned, particularly by US but also Dutch and Swiss parent companies.

The majority of agencies (58% of agencies according to the above mentioned HSE survey (Wiseman and Gilbert 2000) provide both permanent and temporary placements, while 21 % of agencies provide only temporary placements. According to the same survey, 30% of agencies operate across sectors, a quarter specialise in providing workers in the production and construction industries, 25% in public services, including health, and 50% in traded services (banking and finance and real estate are particularly prominent).

The majority of establishments are small, employing less than ten workers on the site. One in ten recruitment agencies approached by the HSE survey had only one worker on site (Wiseman and Gilbert 2000).

In the absence of licensing there are no precise national figures on the size and number of operators in the industry (DTI 1999). Estimates provided by the Recruitment and Employment Federation (REC) (formerly the Federation of Recruitment and Employment Services (FRES) suggest that in 1999 there were approximately 10,000 businesses in the industry providing temporary and permanent placement, with a total number of approximately 14,000 branches. Given that many businesses deal with both permanent and temporary employment, no estimates are available for temporary agencies alone. . According to REC's annual survey in 1998 the industry billed 14.8 billion pounds for temporary employment (estimates by the ONS and by the DTI survey are slightly - though not dramatically- lower). Temporary employment accounts for the lion share of the turnover of agencies covered by REC, for between 92 and 93%; this proportion has remained stable for the last three years.

Fees for temporary placements - all levied on the hiring companies and not on the work seekers - are 15 to 25 percent; the proportion has not increased during the last few years, in spite of the buoyancy in the market - another sign of the highly competitive nature of the industry.

As can be seen from Table 8, the industry is strongly effected by cyclical swings in the economy. The recession in the early 1990s caused a clear decline in the number of offices and in turnover. Since 1993 there has been clear growth; turnover has almost quadrupled, the number of businesses has increased by one third

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and the number of branches by 60 percent. Average annual turnover growth for temporary and permanent employment agencies from 1996 to 1998 was 28.4%. There are signs that the market is slowing down considerably, with 5% growth rates in 1999. Keynote Market research predicts an actual decline in market size by 2002 (Keynote 1999, p4); REC members, according to a recent REC conference, are more optimistic that the industry will continue at current levels of demand even against the background of a general economic downturn.

Table 8: *The UK employment agency industry (temporary and permanent employment), 1990 to 1999*

| Year | No. of businesses | No. of offices/ branches | Turnover in £ bil (temporary and permanent placements)* |
|-------|-------------------|-----------------------------|---|
| 1990 | 7,000 | 9,500 | 7 |
| 1991 | 7,000 | 10,000 | 6.5 |
| 1992 | 6,500 | 8,5000 | 6 |
| 1993 | 6,250 | 8,250 | 4.5 |
| 1994 | 6,250 | 8,750 | 6.5 |
| 1995 | 6,500 | 9,500 | 8.5 |
| 1996 | 7,500 | 10,800 | 10.2 |
| 1997 | 8,200 | 11,800 | 14.1 |
| 1998 | 9,500 | 13,500 | 16.0 |
| 1999* | 10,000 (e) | 14,000 (e) | 16.8 (e) |

Source: *Keynote 1999 p.9, based on FRES research*

* At least between 1997 and 1999, temporary employment accounted for ca 92% of turnover

TAW and collective bargaining

The approach to temporary agency employment by UK unions is best described as pragmatic. Unions and the TUC recognise that agency employment suits many people, and that agency employment is a growing and permanent feature of the labour market. The focus for unions is to prevent abuses by clarifying and strengthening the employment rights of temporary workers by improving enforcement and regulation of the industry.

Temporary agency workers are only a small proportion of the total workforce and have, as one would expect, a lower level of trade union density. According to the Labour Force Survey in 1999, only 8% of all agency workers captured by this survey are members of unions, compared to 28% of all employees. Importantly though, between 1992 and 1999, a period when agency employment almost tripled, union density only fell slightly (from 10.1% in 1992), less than the fall in total union density. The actual number of unionised agency employees in other words also almost tripled during this period, at the same time as there was an absolute fall in the total number of unionised employees.

Collective agreements

With a few notable exceptions in the entertainment industry, there are no general sector agreements covering more than one agency, though in a few sectors related to the building and maintenance industry, which are dominated by agency work, national collectively bargained rates are agreed. The largest employers' federation, REC, does not negotiate directly with trade unions on behalf of its members. REC believes that it is up to individual members to build relationships with unions where they see these as beneficial. After a recent review of REC's relationships with trade unions there has been a greater emphasis on developing the informal links with their counterparts within the TUC in order to co-operate on policy areas of mutual interest. These include, for example, training, health and safety and enforcement of good practice in the industry. A TUC representative sits on REC's internal 'Ethics and Disciplinary Committee'.

To our knowledge the only multi-employer agreements in the industry exist in the broadcasting, film and entertainment industry. Freelance work is particularly high in the industry, and rising. The Broadcasting Entertainment, Cinematograph & Theatre Union (BECTU) estimates that at least half of the approximately 60,000 technical workers in film and TV are freelancers, contract or agency workers. BECTU has a number of agreements with Producers Alliance for Cinema and Television (PACT) and the Advertising Film and Videotape Producers Association (AFVPA) about the conditions of employment for freelance workers, including those supplied through agencies. PACT has over 1000 members among independent production companies. The agreements with PACT (or rather the organisation preceding it) go back to the early 1970s, an important factor in maintaining momentum for continuous negotiations. The main agreement with PACT includes detailed basic pay rates for different categories of staff, hours of work, overtime and unsocial hours payments, pensions and insurance, as well as issues of representation. Pay levels determine the minimum acceptable rates - members are actively encouraged to negotiate better deals and most reputable companies would provide better terms.

While PACT negotiate on behalf of their members, they do not enforce compliance with the agreement. This is a major cause of grievance between BECTU and PACT. BECTU nevertheless believes that the agreement is useful in terms of setting minimum terms and conditions; it has also in the past served as a legal reference point in disputes with employers. The agreement is mainly observed by independent TV production companies, including big producers such as Sky and Channel 4. Its coverage is more patchy in feature films because of the huge variety in financial circumstances of productions. BBC and ITV are not signatories to the

agreement but use it as a point of reference. The agreement is also used as a reference point by agents supplying workers to the industry, and by production managers responsible for working out budgets.

A new agreement was signed in 1999 after more than a year's gap in negotiations. The implementation of the Working Time Directive was a particular sticking point; the final agreement accepts the union's interpretation of the Working Time Regulations in exchange for not increasing pay rates until at least 2001.

Agreements with individual agencies

A number of agencies have concluded collective agreements with trade unions. Manpower is the most important agency in the field. It has agreements with several trade unions, including the TGWU, its main partner, and UNiFI at national level. Agreements with the TGWU go back to 1983. Adecco is the other major agency actively engaging with trade unions. It has recently concluded a national agreement with the GMB for example. Manpower and Adecco jointly sponsored a TUC employment rights leaflet aimed at agency workers. There are also agreements with several smaller regional or sector specific agencies. The AEEU for example, as the most important union representing skilled electrical, technical and engineering workers, has agreements with ten of the forty key agencies in the electrical and mechanical engineering sector.

According to the relevant union officials, agreements are just as much the result of approaches from agencies as the outcome of pressure from unions. Particularly in relatively unionised industries, trade union recognition increases the legitimacy of the agency. The TUC names one smaller agency which has agreed to pay the union dues of new workers for the first month (TUC 1999 b). The GMB makes it a condition of their dealing with agencies that these are members of the Recruitment Employment Confederation (REC) and are signatories to its code of conduct. It believes that the internal enforcement and arbitration rules of REC provide at least some protection against irresponsible agencies. The TGWU believes that, at least for negotiations at national level, conditions provided by Manpower provide a stronger point of reference than the REC's weaker code of conduct. However, at local level there is more flexibility for coming to agreements with agencies.

The TGWU national agreement with Manpower covers rights to individual representation, information about the union in the induction pack for new workers; check-off facilities; an agreement that pay rates for agency workers are at the same level as the rate for the job that they fill, or, where no reference job exists, that pay rates are negotiated locally; there are also some provisions regarding training. Similar items are mentioned in other union agreements. These agreements, in other words, tend to be more procedural than substantive.

The AEEU agreement with agencies includes the issue of employment status. The sample agreement includes the following clause: "All workers to be given the preference and option of 'direct employment'". This recognises that direct employment is not necessarily the preferred choice of individual members who might prefer a self-employed status for tax reasons. One agency, in co-operation with the union, offers workers three options: direct employment with an all-inclusive rate; direct employment with holiday pay calculated on a weekly basis; and engagement on a self-employed basis (on the basis of composite company(IR35)). Though the union is in principle opposed to these arrangements, which allows employers to discharge their employment responsibility by formally employing people on a self-employed basis. However, as the union has many thousands of members who formally have this status, it believes in getting the best possible deal and presentation for them. BECTU similarly has many members with IR35 status. They are negotiating with the Inland Revenue on behalf of their members for an agreement which allows people in the industry a mixed status as employee in relation to national insurance contributions, and as self-employed in relation to tax status, in recognition of the genuine fluctuations in work flows.

Unions make the point that, given the precarious nature of contracts, implementation or enforcement of agreements with agencies is often difficult. Check-off facilities are very difficult to implement in the typical situation where one person might be registered with several agencies and might be getting work through more than one of them. (This is less of an issue for Manpower because they directly and exclusively employ all their agency staff). Time constraints make it difficult for unions to take up their rights to address new agency workers, for example at introductory evenings or initial interviews for prospective workers. Access cannot be guaranteed, either, at the place of work because the hiring company might be hostile to unions. In more direct contravention of agreements, several unions point to disputes over who is allowed to represent workers in cases of grievance or problems, as well as cases of more direct harassment of agency workers who started to take an active role in their union.

An unresolved issue currently on the negotiating table of more than one union is the discontinuation of contracts after 12 weeks, ostensibly to circumvent responsibilities for employment rights accruing after 13 weeks of continuous employment. BECTU is currently challenging the 13 weeks qualifying threshold in the European Court of Justice.

Trade union organisation of TAW

None of the unions we have approached keeps separate records on the number of temporary agency workers among their employees. To our knowledge there are also no specific sections for agency workers within any of the unions. Temporary agency workers pose a number of problems for unions:

- They are difficult and resource intensive to recruit because of their dispersion across workplaces and their high turnover.
- They frequently change jobs and hence might come under the remit of different unions, leading potentially to inter-union disputes; the TUC co-ordinates relevant trade union affiliated unions in this area to limit disputes.
- They frequently are on the books of more than one agency, making it difficult, for example, to institute check-off procedures. Unions are therefore encouraging payment by direct debit wherever possible.
- They take up a relatively high degree of the time of full-time officials because of difficulty in building up a lay representative structure among agency staff or alternatively of getting lay representative of permanent staff to represent them.

The employment status of agency workers is precarious, hence making them particularly vulnerable should they decide to take an active role in their union. Lay officials among permanent employees are unlikely to be able to support them; partly because employers are unlikely to concede that this constitutes legitimate time-off. In some cases, particularly in public services, non-permanent employees can be perceived as a symptom of intensification and casualisation of work, making permanent shop stewards less willing to take on representative tasks. Both the TGWU and the GMB have reacted to this by having dedicated named full-time officials who are responsible for a particular agency. The AEEU does not have dedicated officers but ensures that officers who work in sectors with high levels of agency employment are trained and aware of the issues facing agency staff.

Attitudes by permanent employees to non-permanent workers might improve as a result of the recently introduced rights to recognition⁷. Temporary workers, including agency workers, are explicitly counted as part of the workforce for the purposes of the act, providing an incentive for permanent shop stewards to recruit and involve them.

In the large majority of unions temporary agency workers are only a small minority of members, and one that is particularly resource intensive both in terms of recruitment and servicing. It is probably fair to say that the organisation of temporary agency workers is therefore not a major priority for most unions. One notable exception is BECTU.

BECTU estimates that a third of their 30.000 members in technical professions in film, TV and entertainment are freelance, agency and contract workers. BECTU also negotiates on behalf of 'artistes' (though Equity is the main union representing actors). It has built up a whole range of services directly targeted at non-permanent workers. These include the provision of free public liability insurance as part of membership fees (this presents a big saving for self-employed people); free legal advice; sample contracts; a copyright service for script writers; an industry directory with free listing for members; targeted legal and tax advice for people with self-employed status; negotiating with the Inland Revenue on behalf of members over tax status (the objective here is to allow people in the industry a mixture of self-employed status (in terms of taxes); and employment status (in terms of national insurance contribution) in recognition of the fluctuating employment patterns in the industry). Many unions provide some of these services but the centrality of freelance work in the industry covered by BECTU means that services here have become much more targeted and sophisticated because temporary workers are a core component of BECTU's membership.

Agreements with employers about the use of TAW

Collective agreements with employers in general frequently cover the use of temporary employment. Such conditions might include an overall maximum level of temporary employment; length of contract before a position becomes permanent; and the conditions for which temporary employment might be used, such as maternity or long term sickness, or seasonal peaks. Agreements might also include the conversion of post from temporary to permanent after a certain period of time. Such agreements are mostly made at local levels. Unions report on some success stories, such as getting an agreement from some utilities companies to limit the overall level of agency employment to 10% of the staff, or in another instance, to stop the closure and independent sourcing of in house facilities at the BBC. In both cases being able to point to some of the costs of an extensive reliance on agency and freelance employment played an important part in convincing employers to change policy. Yet there are equally many examples, particularly from the banking industry or higher education, where unions have been unable to effect the level of temporary employment (TUC 1998).

Issues raised by temporary agency members

The issues raised by temporary agency members depend on the industry they work in. In those sectors where agency and or free land workers form a significant part of employment- construction industry, film and broadcasting, gas - issues tend to reflect those of general agency workers as discussed above: disputes over

⁷ Employers have to recognise trade unions if at least 50 % of the workforce and 40% of those eligible to vote, vote for recognition, according to the 1999 Employment Relations Act.

payments and contractual status; disputes over holiday pay; sudden termination of contracts. Health and safety, particularly working hours, is also an issue. High turnover of staff can also lead to a worsening of safety standards because the lack of training and experience of temporary staff may put both temporary and permanent workers at risk. UNISON also mentions particular problems for the utilities industry- the gas sector is particularly prone to using agency staff. The fluidity of the industry is such that agencies might lose their contract to supply staff virtually from one day to the next when a cheaper provider appears, exposing the actual contract workers to considerable uncertainty. Under those circumstances UNISON tries to negotiate with the new agency to take on the existing contract staff.

In other sectors, because unions mainly deal with more respectable agencies, the problems encountered by their agency members often are not very distinct from those of permanent staff. Unionised agency staff, supplied by agencies with trade union agreements, are more likely to work in unionised workplaces. Hence they are less likely to encounter the worst excesses of the industry. More common are issues related to discipline or absenteeism; such problems would usually be dealt with by local shop stewards but given the absence of representative structures for agency staff, end up directly with full time officials. Health and safety issues are generally not a problem brought to their attention by agency staff. This is not necessarily because there are none but because these would also be faced by permanent staff and hence would be likely to be taken up through permanent shop stewards.

Officials might also be called upon to mediate between permanent and non-permanent employees. Where there are high levels of temporary agency staff, this can put considerable pressure on permanent staff who have to use time to induct people. Where payment is linked to achieving sales targets or certain output, people might suffer financially, hence resentment may develop.

The UK has one of the most flexible labour markets in Europe. This includes the regulation- or rather lack of regulation- of temporary agency employment. Collective agreements have been unable to introduce alternative forms of regulation on the industry. While the legislation is currently under review, it is unlikely that it will lead to a major change in the status of agency workers. The new regulations are aimed at curbing the abuse of workers rights in the industry, not at restricting temporary agency employment in a more substantial manner. While the lack of regulation is likely to have contributed to the rapid growth of agency employment during the 1990s it is also likely to have contributed to the lack of clarity over the actual extent of temporary agency employment. This review of data sources on temporary agency employment shows a clear need for further research on the size, composition and labour market function of temporary agency employment. This does not least apply to trade unions' approach to temporary agency workers. Temporary agency workers are a small section of the workforce, and one that is comparatively resource intensive to service. Understandably perhaps, temporary agency work is not a priority for most unions. Given the rapid rise in absolute numbers of agency workers - unionised and non-unionised- unions might want to pay more attention to this group in future.

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Definitions and abbreviations

Definitions

A **temporary agency worker** is in a triangular relationship between the temporary employment agency and the hiring businesses for whom the work is performed. Generally a temporary agency worker is employed by the agency but is subject to the discipline, direction and control of his or her work by the hiring organisation. In this case the payment of wages, taxes and national insurance contribution, is the responsibility of the agency. However, the agency worker might also have the status of self-employment in which case he or she will be responsible for their tax and national insurance contributions.

Temporary agencies are not allowed to supply temporary workers to replace workers who are involved in industrial action. Unless the worker gives written consent, it is illegal to hire out a worker to a hiring company which previously employed the worker directly. With the exception of theatrical agencies, it is illegal to charge workers for finding work. There are no other restrictions.

Temporary agency workers are entitled to receive the national minimum wage. Protection against unfair dismissal as a result of sex or race discrimination or trade union activity applies from the beginning of their contract, protection against unfair dismissal applies after one year, as does the right to paid maternity leave. Agency workers are entitled to paid annual leave of four weeks pro rata after 12 week of employment.

Part time work: according to the Part time workers (prevention of less favourable treatment) Regulations 2000, a part time workers is someone who “is paid wholly or in part by reference to the time he works and, having regard to the custom and practice of the employer in relation to workers employed by the worker’s employer under the same type of contract, is not identifiable as a full-time worker”. In other words there is no absolute definition of part time work in terms of an daily or weekly hourly threshold.

Part t-time workers have the right to equal treatment in comparison to an equivalent full-time employee in relation to pay and conditions, access to training and promotion. For the purposes of this Regulation, that is for defining equivalent contracts, part-time workers are defined as those NOT on fixed -term contracts. However in practice part-time workers are considerably more likely to have fixed term contracts than full-time workers.

For the purposes of labour market statistics, anyone working 30 hours or less per week is counted as part time.

Fixed-term employee: A fixed-term employee is a worker who is directly employed by the organisation but whose contract is time limited. There are no restrictions on the type, circumstances or context of fixed-term employment. It is no longer legal for fixed-term employees to sign disclaimer clauses in their employment contract which relinquish their right to protection against unfair dismissal. However, it is still legal to include disclaimer clauses on the right to redundancy payments if their contract is in excess of one year (the threshold for employment rights). The implementation of the EU Fixed-term workers directive is expected in April 2001.

Abbreviations

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| AEEU | Amalgamated Engineering and Electrical Union |
| BECTU | Broadcasting, Entertainment, Cinematograph and Theatre Union |
| CRE | Commission for Racial Equality |

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| DTI | Department of Trade and Industry |
| EASO | Employment Agencies Standards Office |
| GMB | General union, predominantly manual |
| HSE | Health and Safety Executive |
| LFS | Labour Force Survey |
| NACAB | National Association of Citizens Advice Bureaux |
| NATFHE | National Association of Teachers in Further and Higher Education |
| NHS | National Health Service |
| ONS | Office of National Statistics |
| REC | Recruitment and Employment Confederation |
| TAW | Temporary Agency Workers |
| TGWU | Transport and General Workers Union |
| TUC | Trade Union Congress |
| UCATT | Union of Construction, Allied Trades and Technicians |
| UNISON | General union, mainly public sector |
| UNiFi | Finance sector union |

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