



# Reducing Precarious Work

## Protective Gaps and the Role of Social Dialogue in the UK

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# Overview

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

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

## Identifying 'Protective Gaps' in the UK

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

### i) Employment rights gaps

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

Where minimum legal standards have greatest effect –for example, in those parts of the private sector where collective worker representation is weak- employers often use them as a ceiling rather than a floor of employment conditions.<sup>3</sup> Many workers in jobs offering low or variable hours, short-term contracts or low pay find themselves ineligible for statutory protections such as maternity and sick leave pay. This is because entitlement requires minimum periods of continuous employment with the same employer and/or minimum weekly earnings.

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

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

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

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

## ii) Social protection and integration gaps

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

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

## iii) Representation gaps

Protection of workers in the UK by trade unions, collective bargaining structures, and joint consultative committees has declined significantly over the last 40 years in the UK. This means that while non-union channels of representation have been strengthened by legislation, six in seven workers in the private sector have no formal representation through independent channels of social dialogue (e.g. collective bargaining, see table 1). While there are no formal differences in the eligibility of different groups of workers for representation through unions and other channels of social dialogue, in practice certain groups are under-represented –e.g. migrant workers, temporary agency workers and low-wage workers. Although unions have attempted to involve vulnerable and precarious workers through organising campaigns, slow progress means many still lack effective representation at work.

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

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

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

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

## iv) Enforcement gaps

Despite relying on an individual rights-based system of employee protection in the UK, the evidence suggests enforcement of rights is highly variable. The structure of certain types of work (e.g. care work with no fixed place of work) combined with cost-cutting employer practices (e.g. non-payment of travel time) means employees risk falling below minimum standards. The ability of regulatory and industry watchdog bodies such as ACAS (Advisory, Conciliation and Arbitration Service) and the GLA (Gangmasters' Licensing Authority) to protect and support workers is challenged by the austerity regime. Moreover, their narrow remit means the scope and coverage of protection varies.

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

## Types of Precarious Work

### Diminished standard employment

Precarious work can be found in standard employment relationships, namely full-time and permanent jobs. Job security standards have diminished due to the erosion of statutory rules and customary practice (e.g. among downsizing public authorities). The right to reasonable working hours remains contentious with the UK's opt out from the EU maximum hours rule and poor performance in European rankings of excessive hours worked. And real wages have stagnated for most workers alongside a persistent high share (≈13%) of full-timers in a low-wage job.<sup>6</sup> Social protection gaps are widespread. State pensions are low so that decent pensions depend upon employer provision which is far from common, particularly in the private sector and small firms. Also, new 'Universal Credit' welfare rules risk encouraging employers to reduce guaranteed hours in the knowledge that welfare benefits may top up lost hours. Gaps in representation undermine the standard for collective worker voice, especially for low-wage employees. In the private manufacturing sector, the share of workplaces with any union members dropped from 22% to 12% during 2004-2011.<sup>7</sup> At the same time, more private sector

<sup>5</sup> The ILO warned the UK government, 'the high fees to file claims on discrimination may constitute an obstacle to the enjoyment of the rights embedded in the [Equal Remuneration] Convention' ([http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100\\_COMMENT\\_ID:3251189](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3251189)).

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

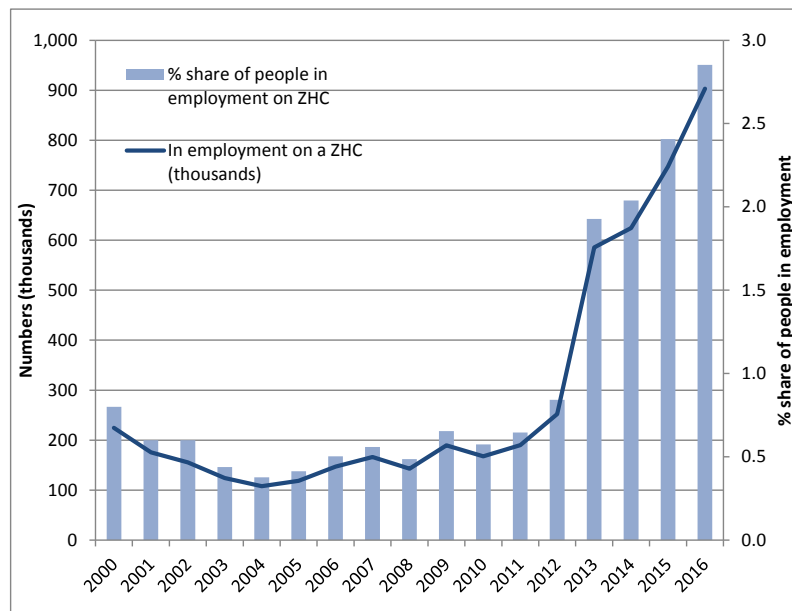
<sup>7</sup> Van Wanrooy, B. and colleagues (2014) *The 2011 Workplace Employment Relations Study*, Dept. Business, Innovation and Skills.

workplaces have appointed stand-alone non-union representatives, from 6% to 10% (2004-2011). Developments in the inspection regime are mixed with budget cuts in some areas offset by more effective targeting of activity in others.

## Variable and part-time hours employment

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

Zero hours contracts are a growing problem (figure 1). Their ambiguous legal status means a worker’s entitlement to rights and employment conditions is not consistently applied. Also, variability in working patterns means both financial security and work-life balance are subject to the vagaries of market conditions and employer demand. More broadly, part-time and zero hours contract workers are at risk of low pay and face obstacles to progression through training and career development.



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

Source: ONS employment data, authors’ compilation.

## Temporary work

Both agency workers and fixed-term contract employees may only acquire certain rights (such as equivalent rates of pay or entitlement to maternity pay) after a specified period of continuous employment. While fixed-term temporary workers face problems of job/contract insecurity, temporary agency workers experience the additional risk of exclusion from formal rights and entitlements by virtue of their classification as ‘worker’ rather than ‘employee’, or due to the limited duration of their employment contract. Much temporary work is involuntary: around two thirds of workers aged 20-59 in temporary agency work would prefer a permanent employment contract<sup>8</sup>; and many become trapped in a ‘low pay, no pay cycle’. Around one in ten workplaces make use of agency workers and around 1.1 million are engaged on assignments each day. Agency workers are entitled to equal rights with employees at client organisations, except under the ‘pay between assignments’ (‘Swedish derogation’) model. There is considerable debate as to whether this is a regulatory loophole, enabling employers and agencies to diminish standards, or an alternative flexible mechanism for ensuring minimum protection.

<sup>8</sup> Labour Force Survey data, April-June 2014.



## Cost-driven subcontracting work

Cost-driven sub-contracting is often associated with conditions of intensive cost competition and undercutting of labour standards, such that the job and income security of subcontractors and their workforces is highly contingent on the steady supply of work packages from higher up the supply chain. Our assessment suggests the long and complex supply chains sometimes obscure the boundaries of the employment relationship and make it difficult to establish and enforce an employer's social and legal responsibilities to meet worker rights and employment conditions.

TUPE protections<sup>9</sup> have been weakened and now offer less protection of employment conditions for employees transferring from one employer to another with an outsourcing contract; the evidence suggests employers are exercising greater flexibility to restructure working practices and recruit new staff on lower pay and conditions. False self-employment is another means by which employers can avoid specific obligations by transferring responsibility for terms and conditions such as sick pay and holiday pay onto the individual worker.

## Four Case Studies of Precarious Work

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

### i) Local successes but how to spread the gains?

Because industrial relations in the UK is generally decentralised and fragmented, where union bargaining does occur it tends to be isolated or 'cellular'. This means unions cannot easily replicate local successes and face obstacles to coordinating strategies across disparate workplaces and firms within a sector. For example, at case study 1 social dialogue proved critical in reducing precarious work among local government subcontracted care workers. But the local political context, weak union representation and limited union resources meant this local success could not be easily replicated: *'We would like to get in to represent these people in [more care provider organisations] but it's a difficult area to recruit in. ...We don't even know half of the new providers...'* (local union rep).

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

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

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

LG = local government; SER = standard employment relationship

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

**Table 2. Summary features of case studies 1-4**

## ii) Social dialogue against dualism

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

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

### iii) Social dialogue systems to regulate labour relations

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

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

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

## So what recommendations?

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

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

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