Reducing Precarious Work through Social Dialogue:

An analysis of ‘protective gaps’ facing people at work in the UK

Part 1 report

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Executive Summary

This report highlights significant challenges in identifying, addressing, and reducing the prevalence of precarious work in the UK. Furthermore, the protections available to workers in both ‘standard’ and ‘non standard’ forms of employment are under threat from economic restructuring and changes in the legal and regulatory environment. The growth of an individualised ‘rights-based’ regime in the UK mirrors the decline in collective forms of employee representation and voice and means workers (and trade unions) face significant difficulties in building solidarity across a fragmented and highly dispersed workforce. New forms of civil society and grassroots activism can bring pressure to bear on employers over discrete issues such as living wages but the formal coordination of these campaigns is relatively limited, and means that general upward pressure on employment standards is weak.

This UK interim report is one of six country reports commissioned for a wider European research programme, ‘Reducing Precarious Work in Europe through Social Dialogue’, funded by the European Commission (VP/2014/004). It represents a first stage in a 24-month research project, to be followed in September 2016 with a second part that details the findings from detailed case studies of precarious employment experienced in different organisational contexts and supply chains.

This interim report has three main objectives:

- To identify the ‘Protective Gaps’ which exist in the UK economy and labour market
- To explore how these Protective Gaps impact upon different groups of precarious workers
- To identify key areas where social dialogue may play a role in reducing the extent and severity of Protective Gaps

In order to set the context, Section 2 outlines key trends in the structure of the UK labour market, and changing patterns of precarious and low paid work. This provides a baseline for the substantive content of the report, which draws on expert interviews with a range of employer, union, regulatory and civil society bodies. A full listing of interviewees, and the respective organisations, is provided in Section 3, along with further details of the research methods.

The nature of ‘Protective Gaps’ in the UK

This report develops the analytical framework of ‘Protective Gaps’ as a means to capture the multi-layered experiences and meanings of precarious employment. It assesses the evidence of four protective gaps: employment rights gaps, representation gaps, enforcement gaps, and social protection and integration gaps. Drawing on secondary data (policy documents, labour market data, relevant websites) and primary interview data, section 4 critically assesses the nature, extent and severity of these four protective gaps in turn.

i) Employment rights gaps

Standard employment rights in the UK are set at a relatively low level compared to other European countries. Moreover, there is relatively limited scope and incentives for employers to improve, coordinate and integrate rights.

Statutory **minimum standards** such as the National Minimum Wage together with earlier established rights such as parental leave tend to be set at a low level. Moreover where minimum
standards have greatest effect (i.e. in parts of the private sector where collective worker representation is weak) they are often used by employers as a ‘ceiling’ rather than a ‘floor’ of employment conditions. Most categories of workers are eligible for basic statutory protections including those engaged on fixed-term, agency or zero hours contracts (with the exception of self-employed workers). Eligibility for employment rights such as maternity and sick leave pay is contingent on completing minimum thresholds for continuous employment and earnings, which workers on low hours or short-term contracts may struggle to achieve.

The scope for regular and consistent upgrading of employment rights is relatively limited; several areas experience adjustments with the changing political orientation of government (e.g. employment protection rules), while others are heavily influenced by macroeconomic concerns. Collective worker representation is limited in scope and highly decentralised in the private sector, meaning that any localised improvements in standards are dependent on employer goodwill. A close integration between employment rights for different types of workers has largely been achieved, which means part-time, fixed-term and temporary workers for example enjoy the same protections as full-time permanent members of staff. However, there are major gaps: the qualifying period of continuous employment can limit agency workers’ entitlement to equivalent standards as permanent staff; outsourcing is a significant mechanism in driving the dilution of standards across the supply chain; zero hours contracts have emerged as a significant ‘grey’ employment form; and bogus self employment appears to act as a substitute for standard employment forms.

ii) Representation gaps

The protection of workers through institutions such as trade unions, collective bargaining structures, and joint consultative committees has declined significantly over the last 40 years in the UK. This means that whilst non-union channels of representation have been strengthened by legislation, a high share of workers in the private sector (six in seven) have no formal representation through ‘independent’ channels of social dialogue such as collective bargaining with trade unions. Whilst there are no formal differences in the eligibility of different groups of workers for representation through trade unions and recognised channels of social dialogue, in practice certain groups such as migrant workers, those on temporary agency contracts, and those in low paying jobs are much less likely to be unionised than UK born, permanent and higher paid workers. Although trade unions have attempted to involve vulnerable and precarious workers through organising campaigns, slow progress means that many are even more likely to lack effective representation at work than permanent and full-time workers.

iii) Enforcement gaps

Despite the relatively heavy reliance on an individual rights-based system of employee protection in the UK there is evidence that the enforcement of rights is highly variable. Furthermore, 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 that employees risk falling below minimum standards such as the hourly equivalent of the National Minimum Wage. The ability of regulatory and industry watchdog bodies such as ACAS, the ESA and GLA (which depend on public funding) to both protect and support vulnerable workers is challenged by the economic climate of austerity, and their narrow remit means the scope and coverage of protection varies.
The efforts of central government to increase compliance with statutory protections such as the NMW run counter to the general rebalancing of legal protections in favour of employers, and relies on the **awareness** of workers as to their employment rights and their **power** to successfully challenge illegal or discriminatory employer practices. The commitment of the government to ‘reducing red tape’ on businesses, cutting entitlement to legal aid and charging workers fees for employment tribunals clearly weakens the position of workers who feel discouraged from challenging employer practices and face barriers to justice. The emergence of new civil society groups offers some scope for building solidarity among low paid and insecure workers but the single-issue campaigning nature of these organisations (such as the living wage foundation) means that the coordination of action on multiple issues facing precarious workers is still problematic.

iv) **Social protection and integration gaps**

The **eligibility and entitlement** of workers to social protections is highly contingent on the structure and level of household incomes, and the **contribution** made to systems social insurance. The value of these entitlements is being reduced as a result of welfare reform (e.g. cuts to in-work benefits and caps on housing benefit). From the perspective of **integration**, variable and insecure working hours and working periods attached to certain types of contract means some workers face challenges in accessing social protections, compounded by the limited access to finance and credit.

**How do Protective Gaps apply to different types of precarious work?**

Precarious forms of employment challenge normative standards and redistribute risks of insecurity from employers to workers. Unlike the catchall term ‘flexibility’, precarious work is not defined by employer needs (numerical or functional, for example), nor does it equate to non-standard contractual forms (e.g. part-time, temporary, self employed). The report interrogates the character of protective gaps for four types of precarious employment, as follows.

1) **Diminished standard employment relationship**

Precarious work is potentially associated with jobs associated with the ‘standard’ employment relationship, namely full-time and permanent, whether because particular standards have eroded or labour market segmentation generates unequal experience among different workforce groups. Job security standards have diminished, both in the form of statutory rules and conventional practice (e.g. among downsizing public authorities). The right to decent working time also remains contentious in light of the UK’s sustained opt out provisions from the EU 48-hour maximum rule and poor performance in the European ranking of excessive working hours.

Gaps in representation undermine the standard for collective worker voice, especially for low-wage employees for whom union density is in fact higher among part-time than full-time employees. Within the private sector, non-union forums are more widespread than union representation, although union representation on Joint Consultative Committees lends stability and effectiveness.

The introduction of fees to take a case to employment tribunal makes enforcement of standards more costly and more difficult and quite clearly shifts risk from employer to worker, whatever the nature of employment contract. Developments in the inspection regime are mixed with cutting of resources in some areas but more effective targeting of activity in others. Finally, social protection standards remain generally low relative to many European countries. State pensions are low so that decent pensions depend upon employer provision which is far from widespread, particularly in the
private sector. Also, new welfare rules (Universal Credit) risk encouraging employers to reduce guaranteed hours in the knowledge that welfare benefits may top-up lost hours.

2) Less than full-time guaranteed hours

*Part-time work* is well established in the UK and historically has been seen as a way to fit working patterns with other commitments such as childcare and domestic roles. This in turn means that part-time work is typically concentrated among women workers. There is, however, strong evidence that part-time work has become increasingly ‘demand driven’ in that employers design flexible and low hours contracts to follow the contours of demand as opposed to the preferences of workers. The structure of welfare payments means that many second earners are trapped on relatively low hours and low earnings in order to maximise the value of in-work benefits.

*Zero hours contracts* are a particular problem owing to their ambiguous legal status. This means a worker’s entitlement to certain rights and employment conditions is not consistently applied. Also, variability in working patterns may mean that both financial security and issues of 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 earnings (which the welfare system does not necessarily compensate for), and may struggle to access training and career development opportunities which would allow them to progress within firms.

3) Temporary work

*Temporary workers* (including agency workers and fixed-term contract employees) may find themselves excluded from formal rights and entitlements (or even written conditions of employment) by virtue of their classification as ‘worker’ rather than ‘employee’, or due to the limited duration of their employment contract. Employment rights gaps grant the employer considerable freedom to ‘hire and fire’ at will. In addition, even those classified as ‘employees’ may only acquire certain rights (such as equivalent rates of pay or entitlement to maternity pay) after a specified period of continuous employment. There is therefore nothing to prevent an employer ending a temporary or agency contract before the end of qualifying period and then re-hiring the same employee to avoid giving the employer these accrued rights. The evidence suggests that although fixed-term contracts have decreased, this has been offset by an increase in temporary agency and casual work.

4) 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 sub-contractors and their workforces is highly contingent on the steady supply of work packages from higher up the supply chain. More importantly, the long and complex supply chains sometimes obscure the employment relationship and make it difficult to establish and enforce an employer’s social and legal responsibilities for meeting worker rights and employment conditions.

TUPE protections 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. *Bogus self-employment* is another way in which employers can avoid specific obligations or duties by transferring responsibility for terms and conditions such as sick pay and holiday pay onto the individual worker.
The role of social dialogue in closing protective gaps

The notion of ‘social dialogue’ is relatively under-used in UK industrial relations, connoting as it does a European consensus-based tripartite system of state, employer and union joint regulation which does not reflect the more confrontational and fragmented system of voluntarism observed in many sectors and workplaces in Britain. Nevertheless, this report concludes by considering a wider formulation of social dialogue that stretches beyond employer and union interactions to encompass the role of other civil society and campaigning organisations.

Much needed improvements to the effective implementation of standards typically relies on a combination of institutional mechanisms for worker representation and negotiation, enforcement, employer goodwill and supportive economic conditions. The enforcement of standards relies on workers being aware of their rights at work, and the ability of individuals or non-unionised groups to articulate their concerns to managers, or to notify regulatory and enforcement agencies of breaches. However, the UK’s light touch system of labour market regulation along with new obstacles to legal representation (such as charging for employment tribunals) have undoubtedly strengthened the position of employers over employees, who find themselves increasingly tied to employers as social protections are withdrawn.

Against this backdrop, the relative weakness and absence of narrow union-employer social dialogue in many British workplaces means civil society organisations are playing an increasingly important role alongside enforcement agencies in strengthening mechanisms of rights and representation at work. There are also significant opportunities to harness the campaigning and political lobbying power of civil society networks to expose unfair employment practices as well as applying pressure to employers directly over specific work standards such as living wages. The next phase of the research (2015-16) will explore the impact of these wider forms of social dialogue in reducing the extent and severity of precarious work, whilst also identifying opportunities for closer collaborative working between organisations that have an interest in improving employment conditions among the most vulnerable workers.
1. Introduction

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

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

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

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

The challenge is then to identify how forms of social dialogue can play a positive role in narrowing these gaps. Social dialogue in the UK is not appreciated in the way it is in some parts of the European Commission, where it is considered ‘crucial to promote competitiveness and fairness and to enhance
economic prosperity and social well-being’. Collective bargaining, which once ensured most British citizens enjoyed a decent standard of living, today only exists for a minority. Employers are far more likely to be held in check by legal regulations, which since the 1990s have become more extensive in both nature and scope. As Dickens and Hall put it, ‘Voluntarism is dead … Legal regulation of employment relations now plays a central role within the context of considerably weakened collective regulation’ (2010: 317).

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

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

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1 http://ec.europa.eu/social/main.jsp?catId=329&furtherPubs=yes&langId=en
2. Labour market trends: flexible and precarious work

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

Part-time employment accounts for around one in four employees (26%) in the UK and there is no evidence of significant change in the part-time to full-time composition of employment over the last 15 years (figure 1). There has, however, been a slight shift in the gender composition of part-time workers towards more men; in 2000, women accounted for 83% of part-time employees but this dropped to 78% by the first quarter of 2015. In turn, women account for a steadily increasing share of full-time employment – from 36% to 40% during 2000-2015. Temporary employees account for around 6% of all employees and again this share has not changed significantly in the last 15 years; it measured 7% in 2000 and dipped to 5% at the onset of the economic crisis. The share is around one percentage point higher among female employees than male employees owing to women greater likelihood of public sector employment where use of temporary contracts is higher than in the private sector.

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

Source: ONS published Labour Force Survey data, file EMP01 SA, all people aged 16+; authors’ compilation; part-time definition relies on respondents’ self-classification
One of the issues of concern with both part-time and temporary employment is the significant increase during the post-crisis jobs recovery in numbers of people taking up these jobs as a second best opportunity where no full-time or permanent employment was available. The share of part-time employees who reported being unable to find full-time work was one in ten in 2008 (9%, first quarter), but this shot up to 19% mid-way through 2013 and stood at 16% in early 2015. Similarly, shares of temporary workers reporting being unable to find permanent work rose from one in four (25%) in 2008 to two in five in 2013 and one in three by early 2015. Table 1 also provides details by gender. Among part-time employees, men are at least twice as likely to report problems finding full-time work; more than one in four (27%) of the 1.5 million male part-time employees said they would prefer full-time work. The gender divide is less among temporary employees.

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

<table>
<thead>
<tr>
<th></th>
<th>2008</th>
<th></th>
<th>2013</th>
<th></th>
<th>2015</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>All</td>
<td>Male</td>
<td>Female</td>
<td>All</td>
<td>Male</td>
<td>Female</td>
</tr>
<tr>
<td><strong>Part-time employment</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Numbers employed (millions)</td>
<td>7.4</td>
<td>1.7</td>
<td>5.7</td>
<td>8.0</td>
<td>2.0</td>
<td>5.9</td>
</tr>
<tr>
<td>% couldn’t find full-time work</td>
<td>9%</td>
<td>16%</td>
<td>7%</td>
<td>18%</td>
<td>33%</td>
<td>14%</td>
</tr>
<tr>
<td><strong>Temporary work</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Numbers employed</td>
<td>1.4</td>
<td>0.7</td>
<td>0.8</td>
<td>1.6</td>
<td>0.7</td>
<td>0.8</td>
</tr>
<tr>
<td>% couldn’t find full-time work</td>
<td>25%</td>
<td>28%</td>
<td>23%</td>
<td>39%</td>
<td>43%</td>
<td>35%</td>
</tr>
</tbody>
</table>

Note: 1. Includes self employed and employees.
Source: same as figure 1.

Alongside the rise in the share of workers taking up part-time and temporary jobs for want of a better alternative, there has also been a very substantial rise in the share of the UK workforce in self employment (figure 2). By mid-2014 it accounted for what appears to be a historic high of 15% of the workforce. While numbers of employees fell during the economic crisis of 2008-2009, numbers of self employed dipped but quickly started a long-term rapid trajectory of growth, from 3.8 million late 2008 to 4.6 million by early 2014. The rapid growth means that since early 2010, which marked the recessionary trough in total numbers employed (28.8 million, Jan-March 2010), self employment has accounted for almost two in five net jobs (37%), far higher than its actual share of the workforce. Moreover, if we compare 2014 data with the pre-crisis peak employment figures (29.6 million, Mar-May 2008) then the role of self employment appears far greater due to the far larger recessionary collapse in numbers of employees; since spring 2008, self employment has in fact accounted for three in four net jobs (a rise of 754,000 self employed and just 264,000 employees).

Reasons for the growth of self employment are varied, including the rise in the state pension age (leading many older men and women to seek self employment where there are barriers to regular employment), financial (push) pressures on unemployed job-seekers to seek out alternative forms of income, financial (pull) factors during the economic recovery when self employment offers potentially higher income than a regular job, as well as institutional pressures to take up self

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2 According to data that reports trends since 1975 (Tatomir 2015).
employment (since it counts as a performance target for Work Programme providers). Older people are more likely than younger people to take up self employment and indeed Tatomir’s (2015) analysis suggests around half the rise in self employment since 2008 is accounted for by the ageing workforce. Men are twice as likely as women to be self-employed but the rise among women during 2008-2015 outstrips that of men (from 7.6% to 9.8% and from 17.5% to 18.7%, respectively). There is also evidence that the recent rise in self employment is concentrated among low-income workers (Tatomir 2015: chart 15). Relatedly, the share of self-employed working part-time has risen from around 30% in 2008 to 40% in 2015, rising among both men (up to 18%) and women (up to 53%) by early 2015.

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

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

**Underemployment**

The proportion of workers working less than 40 hours who want more hours than their current job offers increased from 7.6% to 10.4% between 2001 and 2014. Workers want on average an extra 11.3 hours per week (up from 10.2 in 2008) the majority of which workers want from their existing job (rather than a second or replacement job). Overemployment has decreased slightly (from 10.2% to 9.6%) which suggests that hours are not being ‘hoarded’ by full-time workers, rather the increase in underemployment reflects the underlying creation of part-time jobs with low hours.

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

4 ONS published Labour Force Survey data, file EMP01 SA, all people aged 16+; authors’ compilation.
Women are more likely to be underemployed than men (11% vs. 8.9%) as are workers aged under 25 (20.6% which is nearly twice that of any other age group). Underemployment is much more likely in low paying and otherwise precarious and low status work: cleaning, personal services and retail. Unsurprisingly part-time workers are significantly more likely to report wanting extra hours than all workers, and the rate has increased markedly since 2001 (18% to 23.2%).

Figure 3 - over and underemployment rates, 2001-2014


Short-hours working

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

Zero hours contracts

The overall number and share of zero hours contracts is still relatively low, but there has been a sharp expansion since the recession of 2008-09 (an increase of more than 400%, figure 4). It is not so much an issue that workers receive no hours at all or may experience the temporary loss of hours (e.g. owing to temporary employer closures/loss of working hours), but that the average weekly hours can vary significantly from week to week, and that the low average hours for many creates a further risk of low wages (typically 22 hours per week for those on ZHC compared with 32 hours per week for all workers). Younger women are more likely to be on zero hours contracts, as are those in caring, retail and elementary occupations. Just over 40% of those on zero hours contracts want...
additional hours, the majority of which are wanted from workers’ existing jobs (rather than a second or replacement job).

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


**Short tenure working**

The number of fixed-term staff has dropped sharply since 2001 from just under 800,000 to 650,000 (a drop of 17.7%), as has the number of seasonal staff (from 82,000 to 75,000 a drop of 7.7%). Conversely the total numbers of workers in other forms of non-permanent employment has increased: the total number of temporary agency staff has increased by 14.4%; casual staff 4.2% and ‘other’ by 28.8% (figure 5).

**Low paid work**

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

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

The number of young workers who have never had a job is increasing and it appears that it is taking young people longer to successfully transition into work or further study despite the overall rebound in the labour market (BIS presentation to Work and Pensions Select Committee 2015). Skills shortages among young people appear to be less of a concern for employers than may have been the case in the past, but a lack of previous work experience, along with limited personal contacts and references are still significant barriers for many young people looking for their first job (UK Commission for Employment and Skills 2015). It appears that it is still a case that ‘who you know’ is more important than ‘what you know’ when starting out in the labour market. Young workers are also typically taken on at entry level grades and in sectors (construction, retail, hospitality) where the potential for low paid and insecure work is comparatively high (UKCES 2015).


3. Research method

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

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

Table 2 - details of stage 1 interviews with expert informants

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Theme</th>
<th>Interview date &amp; length</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trades Union Congress (TUC)</td>
<td>Migrants, gangmasters, mobilisation strategies</td>
<td>May 2015 60 mins</td>
</tr>
<tr>
<td></td>
<td>Union influence, labour standards</td>
<td>September 2015 60 mins</td>
</tr>
<tr>
<td>Gangmasters’ Licensing Authority</td>
<td>Enforcement</td>
<td>June 2015 60 mins</td>
</tr>
<tr>
<td>Low Pay Commission (LPC)</td>
<td>Compliance, awareness, unpaid work, low-wage work</td>
<td>June 2015 55 mins</td>
</tr>
<tr>
<td>Local Government Association (LGA)</td>
<td>Subcontracting, public sector pay, living wages</td>
<td>May 2015 55 mins (1 interview with 2 managers)</td>
</tr>
<tr>
<td>Arbitration and Conciliation Service (ACAS)</td>
<td>Social dialogue</td>
<td>July 2015 57 mins</td>
</tr>
<tr>
<td>Low Incomes Tax Reform Group</td>
<td>Tax and social security issues facing people in precarious employment</td>
<td>September 2015 50 mins</td>
</tr>
<tr>
<td>Citizens Advice</td>
<td>Benefits, social integration</td>
<td>September 2015 45 mins</td>
</tr>
<tr>
<td>Recruitment &amp; Employment Confederation</td>
<td>Agency work</td>
<td>October 2015 85 mins</td>
</tr>
</tbody>
</table>
The inclusion of a wide plurality of organisations at this stage of the research reflects the underlying fragmentation in the system of worker representation and rights in the UK, along with the challenges faced by existing forms of joint regulation through trade unions and employers associations. The inclusion of Civil Society Organisations (CSOs) allows us to begin to map their involvement and importance in issues of work regulation and employee voice, and also to frame the second stage of the research involving case studies of emerging forms of social dialogue in parts of the labour market most affected by precarious work.

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

Despite the ambition of the incoming UK government of 2010 to create stronger networks of volunteer and civil society organisations under the umbrella of ‘the big society’, the reality of cuts to funding streams and grants and the continued marketization of public services means that very little progress has been made⁷. From the perspective of understanding the wider civil society context, our interviews with organisation such as Citizen’s Advice pointed towards a growing trend of clients seeking help for with issues which were the direct consequence of poor employment standards and weak enforcement of employment rights such as debt and rent arrears resulting from low earning or problems with self-employment. At the same time the capacity of CSOs such as Citizens Advice to provide face-to-face support was made more challenging by a lack of funding and internal restructuring which increasingly directed clients to help and advice line. At the same time voluntary sector support organisations which were expected to pick up some of the ‘slack’ from retreating state institutions (under the banner of the Big Society) were also struggling due to a lack of funds:

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

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4. Protective gaps

This section applies the analytical framework of *Protective Gaps* to explore the character of labour market inclusiveness in the UK. The framework has been jointly developed with other partners in this European project and it forms a common analytical point of reference for all six country reports. Figure 6 represents the four protective gaps associated with regulation, representation, enforcement, and social protection and integration.

*Figure 6- four Protective Gaps in the UK*

<table>
<thead>
<tr>
<th>1. In-work Regulatory gaps</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Minimum standards gaps</strong></td>
</tr>
<tr>
<td>(minimum wages, maximum hours, paid holidays, sick pay, pensions)</td>
</tr>
<tr>
<td><strong>Eligibility gaps</strong></td>
</tr>
<tr>
<td>(employment status/age/length of job/hours or income thresholds)</td>
</tr>
<tr>
<td><strong>Upgrading gaps</strong></td>
</tr>
<tr>
<td>(regulated pay progression in line with cost of living)</td>
</tr>
<tr>
<td><strong>Integration gaps</strong></td>
</tr>
<tr>
<td>(fragmentation due to outsourcing; limited rights to move to stable contracts or change hours)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2. Representation gaps</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Institutional gaps</strong></td>
</tr>
<tr>
<td>(lack of unions, works councils at workplace, social dialogue at sector or supply chain)</td>
</tr>
<tr>
<td><strong>Eligibility gap</strong></td>
</tr>
<tr>
<td>(lack of access to institutions due to employment status/contract/hours/location)</td>
</tr>
<tr>
<td><strong>Involvement gaps</strong></td>
</tr>
<tr>
<td>(lack of organising efforts, or efforts to involve in institutions or access to managers)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3. Enforcement gaps</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Mechanism gaps</strong></td>
</tr>
<tr>
<td>(gaps in access, process, inspections, sanctions, whistleblower protection)</td>
</tr>
<tr>
<td><strong>Awareness gaps</strong></td>
</tr>
<tr>
<td>(gaps in knowledge about rights, gaps in transparency)</td>
</tr>
<tr>
<td><strong>Power gaps</strong></td>
</tr>
<tr>
<td>(fear of loss of job or residency, fear of exclusion from unemployment support, lack of access to employer)</td>
</tr>
<tr>
<td><strong>Coverage gaps</strong></td>
</tr>
<tr>
<td>(extent of unregistered workplaces, informal and illegal employment)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>4. Social protection and integration gaps</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Entitlement gaps</strong></td>
</tr>
<tr>
<td>(length of job/hours or income thresholds)</td>
</tr>
<tr>
<td><strong>Contribution gaps</strong></td>
</tr>
<tr>
<td>(state subsidies - minimum out of work benefits/in-work benefits/employer subsidies)</td>
</tr>
<tr>
<td><strong>Integration gaps</strong></td>
</tr>
<tr>
<td>(access to housing/credit etc linked to employment status and security as well as income)</td>
</tr>
</tbody>
</table>

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

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

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

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

The right-wing coalition government in office during 2010-15 sought to reverse or diminish many dimensions of employment rights, but since many are underpinned by European directives it faced significant constraints. In response, the new Conservative government is currently negotiating opt outs from the EU social charter. One labour market trend that has facilitated the government’s deregulatory agenda is the large rise in numbers of self employed during the post-crisis jobs recovery (section 2 above) who only have very limited employment rights. Overall, the problem of individual employment rights in the UK context is that for many workers they form a ceiling since employers limit provision to what is required by law (Dickens and Hall 2010) and they do not offer realistic protection for highly disadvantaged groups who may be fearful of complaining (Pollert and Charlwood 2009). Table 3 sets out the main individual employment rights provided under the legal framework as of 2010 and changes since then.

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8 In 1991, the Thatcher government negotiated an opt out from the social chapter of the Maastricht Treaty on European Union, although several other EU measures impacted upon British workers’ employment rights, such as equality and discrimination legislation.
<table>
<thead>
<tr>
<th>Rights in place in 2010</th>
<th>Changes since 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>National minimum wage, fixed and monitored by the independent, tripartite Low Pay Commission</td>
<td>First ever legal intervention by government on rate fixing—will legislate to take control of MW rate for workers aged 25+</td>
</tr>
<tr>
<td>Statutory limits on working time (EU)</td>
<td>None yet but government plans to negotiate a complete opt out of Working time directive</td>
</tr>
<tr>
<td>Paid annual leave (EU)</td>
<td>--</td>
</tr>
<tr>
<td>Paid rest break during work time</td>
<td>--</td>
</tr>
<tr>
<td>Protection against dismissal and right to redundancy payment</td>
<td>Reduced consultation period for collective redundancies from 90 to 45 days; reduced eligibility for unfair dismissal from 12+ to 24+ months tenure</td>
</tr>
<tr>
<td>Time off work for trade union duties</td>
<td>New limit for civil servants to 50% of paid work time and overall 0.1% of each department’s paybill</td>
</tr>
<tr>
<td>Maternity leave and pay and right to return to work</td>
<td>--</td>
</tr>
<tr>
<td>Parental leave (EU)</td>
<td>Shared parental leave will now run alongside maternity leave and pay</td>
</tr>
<tr>
<td>Maternity leave and pay and right to return to work</td>
<td>--</td>
</tr>
<tr>
<td>Flexible working (right to request) for parents and carers</td>
<td>Extended to all employees</td>
</tr>
<tr>
<td>Adoption leave and pay</td>
<td>--</td>
</tr>
<tr>
<td>Statutory sick pay</td>
<td>Abolished provisions for employers to claim sick pay back from government</td>
</tr>
<tr>
<td>Equal pay between men and women</td>
<td>Delayed enactment of 2010 provisions to require employers (250+ employees) to publish average gender pay gap</td>
</tr>
<tr>
<td>Equal treatment for part-time workers (EU)</td>
<td>--</td>
</tr>
<tr>
<td>Protection for fixed-term employees (EU)</td>
<td>--</td>
</tr>
<tr>
<td>Protection against discrimination on grounds of race, sex, disability, age, religion/belief or sexual orientation (EU)</td>
<td>Repeals of several elements of legislation under the ‘Red Tape Challenge’ (e.g. customer harassment of employees; pre-tribunal questionnaire procedure; tribunal power to make wider recommendations to the employer to improve practices)</td>
</tr>
<tr>
<td>Preservation of acquired rights on the transfer of undertakings (EU)</td>
<td>New restriction of TUPE transferred rights to 12 months Two-Tier Code abolished (had previously extended TUPE-protected conditions to all workers in contractor firms)</td>
</tr>
<tr>
<td>--</td>
<td>New ‘shares for rights’ rule enables employers to offer company shares to employees in exchange for renouncing workers’ rights – new legal status of ‘employee shareholders’</td>
</tr>
</tbody>
</table>

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

**Minimum standards gaps**

While the UK sets minimum statutory standards for a range of employment conditions, some were only introduced relatively recently and most are set at a low level. Minimum standards on wages and working time were only introduced in the late 1990s and represented a significant development of employment rights in the UK. The introduction of a national minimum wage (NMW) in 1999 was a much delayed response to the need for protection against exploitative pay in large areas of the economy where unions had no effective presence. It is generally perceived as having been successful to date both in establishing trust in the procedures of the Low Pay Commission (the independent tripartite body charged with researching, evaluating and fixing the NMW each year) and in gradually uplifting the NMW value against the median wage (Brown 2009). However, it acts as a relatively isolated wage-fixing instrument, particularly in the private sector where there is very limited collective bargaining; as such there is widespread misuse of the NMW by employers as the ‘going rate of pay’ for many low paid jobs (Grimshaw et al. 2014). In terms of its value, the adult rate was
55% of median earnings and 42% of mean earnings in 2014, up from 53% and 40%, respectively, prior to the recession in 2007.9

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

Minimum standards of employment protection, covering unfair dismissal and redundancy compensation, apply after a minimum period of continuous service; this was 12 months as of 2010 but was then extended to 24 months with the government arguing it was a disincentive to hiring. Government has also made seeking redress for unfair dismissal more difficult by introducing fees - 2015 rates were £250 for making a claim and a £950 fee for having the claim heard. Research from the charity Citizens Advice suggests 70% of potentially successful claims are now not going ahead10. Statutory sick pay was modified in 2014 so that employers must foot the total cost. Previously an employer could claim from government the element of pay above 13% of the monthly national insurance contributions for the employee.

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

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

Eligibility gaps

Now that statutory interventions in employment are more important in shaping standards for most workers in the UK than processes of collective bargaining, it is necessary to interrogate potential gaps or failures in legal standard-setting to encompass all workers. It is significant that the NMW,

9 Data for April 2014, all employees, gross hourly pay excluding overtime (ASHE data, own calculations).
working-time rules and anti-discrimination legislation apply to workers, not just employees. For the NMW, this means it covers casual labourers, agency workers, all part-time workers, homeworkers and trainees for example. However, self-employed workers are not covered, despite minimum wage thresholds being incorporated into new benefit rules (see section 4.4). Other excluded categories include workers on government programmes (such as Work Programme job entry schemes or Job Centre work trials), workers aged under 16, students on work placements up to 12 months, armed forces and prisoners. There are separate rates for young workers (aged 16-17 and 18-20) and apprentices. Also, the premium rate announced by government (see below) will only apply to workers aged 25 and over, reflecting a government desire to focus on ‘experienced workers’. It has therefore effectively discharged the Low Pay Commission of its remit in setting a universal minimum wage and reduced their wage-fixing powers to young workers aged 16-24.

Working-time rules have a similarly wide coverage of workers. In practice, however, there is a greater discrepancy between rule-making and rule-enactment since British law allows employers to ask individual employees if they wish to opt out of the 48 hours weekly limit (averaged over 17 weeks); no opt outs are allowed however for road transport workers, airline staff or security workers responsible for vehicles carrying high-value goods. While the share of workers working long hours has fallen since the mid-1990s, the UK still sits near the top of the OECD average – male full-timers work on average 44.2 usual hours per week, the second highest in the EU after Greece11, which suggests use of the 48-hour opt out is widespread. Again, the law does not cover self-employed workers. Also, some sectors are excluded, including security/surveillance, domestic servants and the armed forces, and for trainee doctors the 48-rule is averaged over 26 weeks, not 17. Stricter rules govern 16 and 17 year olds who must not work more than eight hours per day or 40 hours per week.

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

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

12 At the lower earnings limit (£111 pw), the person is treated as if they have paid national insurance. Contributions are only actually paid above the ‘primary earnings threshold’ (£153 pw).
Upgrading gaps
There is no uniform process or formula for upgrading the value of various employment standards, nor is there a consistent trend over recent years. For example, the NMW value has to date been decided by the Low Pay Commission, which represents an independent form of tripartite negotiation. It tends to consider price inflation, average earnings growth and the general state of the labour market, but has at times also pursued the redistributive goal of upgrading the NMW relative to median earnings. Its remit has radically changed in the wake of the July 2015 budget because the government announced it will unilaterally introduce a premium rate, referred to as a ‘national living wage’, from April 2016. This is the first time government has intervened in this way, bypassing the Low Pay Commission. It intends to pass legislation to raise the statutory NMW from the October 2015 hourly rate of £6.70 to £7.20 in April 2016 (a 7.5% rise) and to ‘over £9.00 by 2020’, forecast to be equivalent to 60% of median earnings (an average annual rise of 5.7% up to the end of the current parliament).13

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

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

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

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13 Government documents describe its intervention as setting a ‘premium’ for experienced workers (defined as aged 25+ years) that will provide a ‘national living wage’ (BIS 2016). As many commentators have observed this is political rhetoric. The imposed rate will fall short of the actual living wage, which is set by the Living Wage Foundation; for the period November 2014 – October 2015 it is fixed at £7.85 outside of London and £9.15 in London, considerably higher than the £7.20 announced for 2016-17. It would seem the government has confused the target of fixing the minimum wage at 60% of the median wage (by 2020), as specified in the new remit for the LPC, with the notion of a living wage.
for promotion opportunities; however, part-timers’ right to overtime pay only applies after a full-time hours threshold. Fixed-term workers have the right to a permanent contract after four years of successive fixed-term contracts with the same employer (unless the employer submits objective justification otherwise). Rights for agency workers are more restrictive since they must have worked at least 12 weeks with the same client organisation before enjoying equal treatment on pay, holidays and working time (despite the absence of a waiting period in the terms approved by the European Parliament14). The definition of pay is rather narrow, however. It includes overtime, holiday pay, bonuses and other payment vouchers but excludes sick pay, maternity pay, redundancy pay (where paid above the statutory rate) and bonuses linked to company performance. Also, the 12-week qualifying period can easily be broken where the agency worker is assigned a ‘substantively different role’ or has a break from the hirer for more than six weeks. Moreover, where an agency pays the agency worker between assignments (that is, treats them as an employee), there is no entitlement to equal pay due to the so-called ‘Swedish derogation’ in the Agency Workers Regulations15. The degree of integration is therefore significantly limited in practice.

The recently extended flexible working rules mean there is now greater potential for the integration of job roles between full-time and part-time workers. This is especially beneficial for working parents and, in particular, for mothers returning to paid work. While the rules only establish a right for workers to request flexible working and an obligation on employers to consider the request, a string of court cases have found employers’ refusals to be unjustifiable on grounds of mishandling applications, discriminating against women returning from maternity leave and failing to redesign jobs around part-time or job share working.16 However, several factors may easily undermine positive change. Now that tribunal cases require applicants to pay high-level fees poor management practices are more likely to go unchallenged. Also, now that all employees can request flexible working an employer may claim they cannot help carers as it might be challenged as unfair by non carers. Moreover, employers may agree to working time adjustments but switch job and career paths to ‘mommy tracks’ that damage pay and career prospects (see section 5.2).

A further set of integration gaps arise when an organisation decides to outsource a service to a contractor company. Statutory rules provide some protection. TUPE rules17 protect the in-house workforce by providing continuity of employment and associated terms and conditions. Its application was limited to the private sector in the 1980s, but then widened to the public services following a series of ECJ rulings. There are many gaps associated with this legislation. First, 2014 reforms have restricted the continuity of protection both by widening the reasons justifying employer changes to conditions and limiting protected duration of collectively agreed conditions to 12 months only (section 5.4). Second, pensions were excluded from protection, which was especially important for workers transferring from public to private sector organisations. Third, contractors could always recruit new workers on inferior terms and conditions. For a limited period (2003 to 2010), outsourced services in the National Health Services applied a Two-Tier Code in local joint agreements with contractors had to employ staff on conditions that were ‘overall no less favourable’

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15 The term refers to a request by the Swedish government to enter the clause into the European regulations.
than other staff on TUPE protected conditions. While some agreements still contain the clause it is no longer negotiated in new agreements.

4.2. Representation gaps
There are different types of employment representation in the UK. The Workplace Employment Relations Survey (WERS)\(^{18}\) has identified four overlapping forms: a recognised union, an on-site representative of a non-recognised union, a joint consultation committee and/or stand-alone union representation. However, the relative scarcity of alternatives makes unions by far the most prevalent form and this section will therefore mainly focus on their role. At the same time, rates for unionization and collective bargaining have seen a long-term decline such that a majority of workers is neither represented by a union nor are their working conditions shaped through collective bargaining. Overall, there are few positive legal rights to collective representation per se and this illustrates how a declining union role has not been replaced by greater legislative forms of employment representation in spite of some developments in that direction. One can therefore argue that a large majority of workers, including those on permanent contracts, hold a precarious position in terms of representation compared to many of their counterparts in Europe.

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

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

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

\(^{18}\) The WERS Survey is a major official survey of workplace employment relations among workplaces with five or more employees. The last two surveys were undertaken in 2011 and 2004.
born workers (26% vs. 18%), among those with higher education qualifications than those without formal qualifications (34% vs. 20%), among those in larger workplaces (more than 50 employees) than those in smaller workplaces with less than 50 employees (33% vs. 16%), among full-time than part-time employees (27% vs. 21%), among permanent than temporary employees (26% vs. 15%), and, most strikingly, is higher among public sector than private sector workers (54% vs. 14%) (see Table 4).

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

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

Source: BIS (2015: 25-26)

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

Employers are legally required to engage in collective bargaining over pay, hours and holidays in workplaces where a union has been recognized. The union side to collective bargaining may include several unions who normally will have agreed a shared position in advance. There are no rights of collective bargaining extension. This explains why the decline in unionization has been mirrored in the collective bargaining coverage from 36 per cent in 1996 to 28 per cent in 2013. The respective declines in the private and public sector over these years were from 23 to 15 per cent and from 74 to 61 per cent. Table 5 presents detailed data on collective bargaining across different categories of workers.
In the private sector there has been a strong decentralization of collective bargaining which now tends to be at the level of the company or the individual workplace. In the public sector, national agreements are more common although some public sector employers bargain at the organizational level. Many public sector workers are not covered by collective bargaining but by independent Pay Review Bodies which make recommendations to the government. Where national agreements exist they are not binding, even to members of the employers' organization that has signed the agreement. Collective agreements can be agreed for any period but the majority (91% in 2013) tend to run for one year.

The WERS survey also provides information on the scope of collective bargaining. Managers in organizations with a union present were asked whether they normally negotiate, consult, or inform the union on seven issues: pay, hours, holidays, pensions, training, grievance procedures, and health and safety. Table 6 shows the share of managers who answered that they negotiated on none, some or all of these issues. It illustrates how in 2011 there was no collective bargaining on any of these issues in half the organizations with a union presence. This figure even rises to 62 per cent among private sector organizations in 2011. The share of unionised workplaces which negotiate over the three items covered in the statutory union recognition procedure - pay, hours and holidays - declined from 32 per cent in 2004 to 25 per cent 2011. This fall was particularly strong in the private sector, from 27 to 18 per cent. On the other hand, in almost two thirds (64%) of the public sector in 2011 there was collective bargaining over two issues or more and there was even a rise from 4 to 7 per cent in public sector organizations where all seven issues were covered.

### Table 5 - collective agreement coverage by employment status (2013)

<table>
<thead>
<tr>
<th></th>
<th>Full-time vs. Part-time</th>
<th>Permanent vs. Temporary</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>All employees</td>
<td>Full-time</td>
</tr>
<tr>
<td>All employees</td>
<td>27.5</td>
<td>29.1</td>
</tr>
<tr>
<td>Male</td>
<td>25.4</td>
<td>26.6</td>
</tr>
<tr>
<td>Female</td>
<td>29.7</td>
<td>32.9</td>
</tr>
<tr>
<td>Member</td>
<td>67.6</td>
<td>69.1</td>
</tr>
<tr>
<td>Non-member</td>
<td>13.6</td>
<td>14.0</td>
</tr>
<tr>
<td>Private sector</td>
<td>15.4</td>
<td>16.9</td>
</tr>
<tr>
<td>Public sector</td>
<td>60.7</td>
<td>64.5</td>
</tr>
<tr>
<td>Less than 50</td>
<td>14.9</td>
<td>15.5</td>
</tr>
<tr>
<td>More than 50</td>
<td>39.0</td>
<td>39.2</td>
</tr>
</tbody>
</table>

Source: BIS (2015: 34)

### Table 6 - scope of collective bargaining where unions are present

<table>
<thead>
<tr>
<th></th>
<th>None</th>
<th>Some</th>
<th>All</th>
</tr>
</thead>
<tbody>
<tr>
<td>All workplaces</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2004</td>
<td>49</td>
<td>47</td>
<td>5</td>
</tr>
<tr>
<td>2011</td>
<td>51</td>
<td>45</td>
<td>4</td>
</tr>
<tr>
<td>Public sector</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2004</td>
<td>35</td>
<td>59</td>
<td>4</td>
</tr>
<tr>
<td>2011</td>
<td>36</td>
<td>57</td>
<td>7</td>
</tr>
<tr>
<td>Private sector</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2004</td>
<td>57</td>
<td>39</td>
<td>5</td>
</tr>
<tr>
<td>2011</td>
<td>62</td>
<td>36</td>
<td>1</td>
</tr>
</tbody>
</table>

Source: WERS (2014: 22)
Recognized trade unions have various rights. This includes the right to information for collective bargaining purposes, on health and safety, and occupational pension schemes. Unions also have the right to be consulted on training and workers have a right to be accompanied by a trade union official (or a fellow worker) where they are required or invited by their employer to attend certain disciplinary or grievance hearings. Industrial action requires a ballot before the union asks members to take or continue taking action. The ballot must be open to all members targeted by the union to take action and must be organized by post. Employers must be given at least one week's notice of the start of the ballot and to be informed about the result as soon as it becomes available. The new Conservative government has published a new Trade Union Bill on 15 July 2015 to further tighten the balloting regulations. If accepted, it would pose two further requirements. First, at least 50 per cent of all members who are eligible to vote must take part in any strike ballot for it to be lawful (currently there is no minimum percentage defined). Secondly, an additional threshold is introduced for so-called 'important public services' (health services, education of those aged under 17, fire services, transport services, border security and nuclear decommissioning) where at least 40 per cent of those eligible to vote must support strike action.

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

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

There are a few other types of employee representation. In 2011, 16 per cent of workplaces that operated in more than one country were covered by a European Works Council (EWC), down from
21 per cent in 2004. And seven per cent of all workplaces in both 2004 and 2011 had 'stand-alone' representatives who were not connected to the trade union and did not operate within a JCC. The WERS study includes these types together with union representation and JCCs in a combined indicator which identifies the presence of any representative arrangement. The percentage of all workplaces with any such arrangement fell from 43 to 35 per cent between 2004 and 2011. However, as the decline was concentrated in small workplaces, the proportion of all employees working in an establishment with any such arrangement was in fact relatively stable.

**Eligibility gaps**

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

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

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

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

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

1. **Exclusion**: unions oppose precarious types of employment and refuse to organise these workers in an attempt both to prevent workers having to accept insecure employment and to protect existing members from increased labour market competition. It involves 'the identification of opposing interests between the hitherto secure and contingent workers and a determination to protect the jobs and pay levels of the former from external threat' (Heery and Abbott: 2000: 158). The response seems logical but unions have often had little success as they lack the
bargaining power to stop these developments nor developed the membership base among contingent workers to argue for better working conditions. The exclusion strategy has become less prevalent over time. The TUC (2008: 67) report on vulnerable employment speaks about ‘a shift in trade union attitudes towards vulnerable workers’ and ‘a growing recognition in the union movement that until now unions have largely failed to reach those in vulnerable employment, and that if they are to offer protection to vulnerable workers new strategies for organising among these groups are necessary’.

2. Servicing: trade union provision of services to members is especially relevant where it targets workers with specific needs. It is an acknowledgement that collective bargaining may be hard to achieve for these workers. At the same time, it can also be considered as legitimization of precarious employment and therefore is a contested strategy within many unions. It may also result in an individualization of services that risks the collective aspects of organisation.

3. Partnership: partnership between labour and management refers to attempts by unions to reduce ‘future risk of precarious work for members through conceding flexible working arrangements in exchange for agreements about future job security’ (Simms 2010: 25). However, it does not necessarily improve the position of contingent workers. Moreover, partnership agreements have been very rare in the UK.

4. Dialogue: this strategy is different in character as it is not directly aimed at the employer. Instead unions try to influence government policy and regulation. A major example concerns the negotiations over the implementation of the Agency Work Directive in the UK (see section 5.3).

5. Mobilisation: this strategy concerns the direct organization of precarious workers and has become a much more dominant approach since the ‘turn to organising’ in the mid-1990s (Simms 2010). The TUC (2008: 5) report of vulnerable employment made the ambition very clear: ‘Unions must act to ensure they represent the interests of vulnerable workers. Unions should organise all workers in workplaces where there is a union presence, whoever employs them and whether their employment is direct or temporary. Unions should also focus on areas of the economy where exploitation is rife and where trade union membership is low. Trade unions should commit to a TUC co-ordinated drive to boost membership among vulnerable workers’. This has been a highly challenging strategy, with little reliable data because of decentralized collective bargaining. Simms (2010) identifies three types of bargaining: by unions whose membership has always included precarious workers and have long sought to bargain on their behalf, by unions where precarious work has emerged among their core membership, and by unions which have expanded membership to include precarious workers. But progress remains difficult in spite of some successful cases.

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

An adjusted classification was provided by Heery (2009). It distinguishes three alternatives to the aforementioned strategy of exclusion: subordination, inclusion and engagement. This classification is more explicit in the way that precarious workers are treated within the union as they refer to both the rules for membership and participation (the internal strategies of representation) and the attempts to regulate the employment relationship (the external strategies of representation). As pointed out by Simms (2010: 26) such a distinction is of crucial importance because of the growing
awareness that 'what happens to new groups of union members after they have been recruited to the union is central to understanding the union’s approach not just to recruiting these workers but to representing them’. In the case of ‘subordination’, unions accept contingent workers but ‘on a secondary basis’ (Heery 2009: 431). In this context, there is often an acknowledgement that these workers may be considered an employment buffer that helps to protect the employment of core members. The attitude of unions changes rather fundamentally under the other two strategies. In the case of ‘inclusion’, unions accept precarious workers as equal members to workers on standard contracts, with the same membership status and rights of participation. Finally, 'engagement' also fully accepts precarious workers as union members but stresses the need for 'tailored systems of representation' that acknowledge the different interests of these workers (Ibid.). This last strategy also differs from 'inclusion' in its acceptance of the legitimacy of contingent work.

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

**Involvement gaps**

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

**4.3. Enforcement gaps**

The UK relies heavily on employment law as the only widespread form of regulation for employment rights and protection. However, there is no systematic monitoring of the extent of enforcement gaps so it is necessary to rely on ad hoc or piecemeal surveys or on reports relating to a specific regulation to estimate the extent and character of enforcement gaps. Here we provide a flavour of this piecemeal evidence. We provide general evidence for all workers and employees when disaggregated data for workforce groups are unavailable, but where general enforcement is low one can anticipate that the problems of enforcement for non-standard workers would be greater. The overall picture is one of significant problems in ensuring that workers and employees on standard and non standard contracts receive the rights to which they are by law entitled. We begin with an
overview of evidence of enforcement of key rights and then turn to assessing the weakness associated with mechanisms, awareness, power and coverage following the schema in figure 6 above.

**Empirical evidence of enforcement gaps**

- **Minimum wage**

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

- **Pregnancy**

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

- **Discrimination**

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

- **Holiday pay**

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

- Unpaid wages

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

- Unfair dismissal

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

- Agency regulations

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

- Health and safety

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

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

- Working time directive

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

- Payment of legal compensation

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

**Enforcement mechanisms gaps**

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

**Employment Tribunals**

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

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

‘And you come back to this same base question of, is there an obligation on the employer to provide work, is there an obligation on them to take it? And it’s quite often on a case by case basis, it’s very hard to say hard and fast rules. If people are paid throughout the summer then that’s fairly obvious, but more and more you get people who their status just isn’t clear, and they go to a tribunal and the tribunal will need to decide, and they’ll have to do it on the particular evidence.’ (EHRC)
Access to tribunals is now dependent on being willing and able to pay fees which are high both in relation to potential settlements and in a context where a high share of compensation payments are not actually paid, certainly without further and potentially expensive avenues through the court system. There are two bands of fees depending on the nature of the case and also two parts to the fee: a fee to issue a complaint and a fee to take the case forward. The higher total fee is currently £1200. The fees were introduced in 2013 and in the first year the number of claims fell by 64%. There is a possibility of remission of fees but eligibility involves two tests – disposable capital and household income. In practice, in the first year only 3,913 cases out of 93,815 complaints were given remission of fees. From the perspective of non standard workers, they not only face the problem of paying a high fee but also that their case may fail on the issue of whether or not an employment contract is deemed to be in place. The tests for fee remission are also household based and any household (which includes non married as well as married partners) that has over £3000 or £4000 (for higher fee) disposable capital (any saving or assets apart from the family home, in practice) will not be eligible for any remission. This means that access to the law is not available on an individual basis even though judgments refer to individuals’ willingness or not to prioritise their case and to adjust their consumption accordingly; for many part-time or flexible workers the decision is likely to rest with their partners not with themselves as it is likely that their partners will be the main breadwinners and have contributed most to disposable capital, given the low pay of many of these potential complainants.

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

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

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

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

In 2014 Citizens Advice (see below) undertook a six week survey of potential tribunal cases brought to the CAB. CAB advisers were asked to assess the strength of the claim; the likelihood it would be taken to the tribunal and provide reasons for their assessment. In 80 per cent of cases advisers assessed the cases as having a Very good, Good or 50/50 chance of success at an employment tribunal but less than a third of these promising cases were likely to be taken forward (less than a quarter of those where the claims was less than £1000). Fees or cost were given as the main reason for not taking cases forward in over 50% of cases not being pursued. Around two fifths were considered potentially eligible for fee remission and 43 per cent were not in employment at the time of contacting the CAB, with 25 per cent claiming benefits consequent upon the alleged complaint against the employer (CAB 2014).
The Advisory Arbitration and Conciliation Service was originally primarily concerned with collective disputes and their conciliation. Their orientation, however, has increasingly focused on individual rights and providing advice and conciliation in relation to these rights. It runs an individual telephone helpline and currently fields one million queries a year, though it could take more if more funding were available. The helpline provides advice within the capacities of the staff and cases are not followed through with further action. Many queries are referred to other agencies- HMRC for the minimum wage and CAB for other employment rights.

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

Citizens Advice

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

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

Gangmasters’ Licensing Authority

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

24 https://www.citizensadvice.org.uk/Global/Migrated_Documents/corporate/annual-report-201314-web-1-.pdf
manage a licensing scheme that regulates agencies, labour providers and gangmasters in the above mentioned sectors to ensure they meet the statutory employment standards (health and safety, pay, working time, accommodation, transport and training). Without the GLA license, the labour provider cannot operate legally in the sector.

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

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

HMRC (for minimum wage enforcement)

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

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

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

**EHRC and GEO**

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

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

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

**Box 1 EHRC legal case concerning the rights of disabled workers working for agencies**

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

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

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

Source: EHRC 2013
Enforcement awareness gaps

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

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

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

Enforcement power gaps

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

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

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

Moreover, the power of exploitative employers has arguably increased since 2010 in light of the government’s ‘red tape challenge’ on government agencies, which has reduced funding in the name
of ‘lighter touch regulation’. Funding to the GLA is estimated to have been cut by one fifth during 2010-15.

**Enforcement coverage gaps**

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

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

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

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

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

### 4.4. Social protection and integration gaps

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

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

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

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

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

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

- Employee/worker/self-employed distinctions

Contract status may affect eligibility for social protection because people in different employment statuses pay different types of national insurance contributions. Employees pay Class 1 and the self employed class 2; the latter provides access to the same benefits as class 1 with the exception of contribution-based Jobseekers’ allowance. Self-employed persons are also not eligible for auto enrolment workplace pensions. Those who may be in an ambiguous position- that is workers who are neither direct employees or self employed -may in practice pay either class 1 or class 2
contributions; for example those on zero hours contracts or working for a temporary agency may be treated as employees when on shift and pay class 1 but may not be treated as employees for purposes of employment rights due to lack of continuity. However for access to social protection it is the class of contributions together with the continuity of contributions that matters (see below). The low and flat rate level of state pensions means that many rely on occupational or personal pensions. Over half (52%) of employees contribute to an additional pension either on an individual basis or via their employer but only 31 per cent of self-employed people do so (Resolution Foundation 2014a). In general those in precarious work are less likely to have access to employer occupational pensions or to have the funds to take out an individual private pension.

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

*Income thresholds*

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

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

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

*Continuity and duration thresholds*

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

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

*In-work benefits*

Eligibility for in work benefits (tax credits) currently is subject to various hours thresholds: for single parents and those aged over 60 it is 16 hours per week; for singles and couples without children 30 hours; for couples with children at least 24 hours in total; and for couples with only one partner working at least 16 hours. The self employed are eligible but from April 2015 to meet the hours
thresholds they will must have earned at least the national minimum wage times the minimum hours of work needed for eligibility.

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

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

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

**Migrant/posted work/ non migrant distinctions**

Migrants from the EEA who have the right to reside as a jobseeker are not eligible for income related benefits for a period of three months and even when eligible can only claim benefits for 91 days. Since 2014 all EEA nationals who enter as jobseekers have not been eligible for housing benefits. Support for EEA nationals who become unemployed from a job in the UK is limited to six months. To gain recognition as a worker, which provides rights to claim benefits, EEA nationals have to demonstrate that they have been earning above the primary threshold for national insurance, around £155 a week (2014-15).
Universal credit is available to British citizens and to EEA nationals who have either had significant work in the UK and have the right to reside or have a permanent right to reside. It is only available to non EEA migrants who are not subject to immigration controls and pass an habitual residence test. Some visas state ‘no recourse to public funds’. There are exceptions e.g. for domestic abuse.

**Box 2 Universal Credit**

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

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

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

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

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

**Contribution gaps**

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

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

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

**Integration gaps**

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

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

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

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

Figure 7 displays the four employment forms and types of contracts under investigation. A key distinction running throughout this section is between ‘employees’ (either full or part-time who are generally accorded full rights and protections) and ‘workers’ such as those engaged through an agency or a casual contract who are typically excluded from certain conditions such as a notice period, maternity leave, and protections from unfair dismissal.

*Figure 7 - four employment forms at risk of precariousness*

| i. Diminished 'standard' employment contract | • permanent contract  
• full-time (plus overtime hours/ shiftwork)  
• part-time work (when the outcome of rights to reduce hours)  
• reduced hours working (with rights to return to full-time) |
| ii. Variable hours below full-time | • part-time work  
• zero hours contracts |
| iii. Temporary work | • fixed-term contracts  
• temporary agency work  
• internships, casuals |
| iv. Cost-driven subcontracted work | • subcontracted employees  
• false self-employed |

5.1 Diminished standard employment relationship

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

i) Employment rights gaps

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

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

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

However, several areas of rights for the SER employee have diminished. Employment protection was weakened in 2010 by extending the period of continuous employment necessary for rights to redundancy protection and to claim unfair dismissal. Moreover, while public sector employers may have sought to avoid the practice of compulsory redundancy in the past, the scale of post-2010 austerity spending cuts has changed behaviour and whittled away job security norms enjoyed by the SER workforce. There is evidence, for example, of the practice of collective dismissal and re-engagement onto inferior terms and conditions of employment in parts of the local government sector (Johnson 2015). In the case of working time, SER workers still face only weak protection given the UK option for individual opt out. The evidence suggests that while the directive has brought significant improvement in the number of days of annual leave taken in practice, it has only had a small effect in reducing long working hours. Full-time employees rank top of the European league table for the longest average weekly hours (42.4 versus the EU27 average of 40.4) (Green 2013: 48
and top among European countries listed in OECD data on the share of employees working 50 or more hours per week — a 13% share in the UK (OECD Better Life Index 2015).

ii) **Representation gaps**

Channels of access to forms of representation in the UK have changed significantly in the last generation (Heery et al. 2012a, 2012b). SER employees are nowadays likely to lean on a multitude of civil society, equality and campaigning organisations, as well as trade unions and non-union bodies within their workplace, in order to defend their fair treatment at work. Union representation and collective bargaining coverage remain, on average, at a higher level among full-time and permanent employees compared to other employment forms but exhibit the same downwards trends since the 1980s. As a proportion of all employees, union density has fallen from one in three to one in four over the last two decades (from 32% to 25%, 1995-2014). It stands at twice the share among full-time employees in permanent employment (27%) compared to part-time employees in temporary employment (13%). But this pattern of stronger union representation for full-time employees does not always hold. For employees in low-wage jobs, union density is in fact higher among part-time than full-time employees (14% and 12%, respectively), explained by the significantly higher union density among women in low paid jobs compared to men (see table 4).

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

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

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29 http://www.oecdbetterlifeindex.org/topics/work-life-balance/

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

iii) Enforcement gaps

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

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

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

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

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

iv) Social protection and inclusion gaps

Several policy reforms in recent years heighten the risk that employees in full-time, permanent jobs fall out of standard social security protection. Analysis of these risks depends in part on type of employer (e.g. small/large size), worker (e.g. migrant/home) and type of job (e.g. level of pay). A first major change concerns the likelihood that an employer provides a pension as a standard employment condition. New auto-enrolment rules apply to large firms from 2012 and firms of all sizes from 2017, under the Pensions Act 2008. A 2013 survey found one third (32%) of private sector employers offering some form of pension scheme and one third (35%) of private sector employees were active members of a company pension scheme and/or benefited from employer contributions. While low, the 2013 level is higher than 2011 and appears to mark the beginning of a reversal of a downward trend in pension coverage recorded in prior surveys (Forth and Stokes 2014). There nevertheless remain major gaps in provision. Half of existing occupational schemes are closed to new members. Small firms tend not to provide pensions; 81% of non providers were employers with less than five employees (op. cit.: 35). And a growing share of employers complain that pension provision is too costly.33

A second trend affecting the quality of the SER is the risk that employers may be less likely to treat full-time working hours as guaranteed in the context of new welfare policy reforms. Universal credit rules (when and if implemented across the country) will abolish the minimum working hours eligibility that applied for tax credits (16 hours, 24 hours, 30 hours depending on claimant conditions of age, single/couple, dependent). Although conditionality rules will exert pressure on minimum wage workers to sustain 35 hours or more a week (section 4.4), employers may be likely to practice increased hours flexibility in the knowledge that welfare benefits will top up lost hours on a month-by-month basis. One of the architects of universal credit argues that a key benefit for employers is that abolishing the hours rule will mean ‘employees can be much more flexible’34—which of course risks being interpreted as encouraging a less stable approach to full-time working hours, as much as encouraging employees to work more than the fixed 16, 24 or 30 hour thresholds.

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

5.2 Less than full-time guaranteed hours

Employment on contracts that guarantee less than full-time hours include both jobs that provide for regular and guaranteed hours and those where the number of hours may vary frequently,

33 Forth and Stokes (2014: 36) report 22% of employers stating this reason in 2013, up from 15% in 2009.
sometimes from zero guaranteed hours as in the increasingly discussed category of zero hours contracts. We divide the types of jobs for the purposes of this discussion into part-time work and zero hours contracts, while recognising the potential for overlap between the two categories: many part-timers may see their hours vary to meet demand fluctuations and many zhc staff may work part-time on a regular basis (or indeed full-time or over).

**Institutional factors that explain the relatively high incidence and peculiar form**

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

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

**Table 7 – the factors shaping the presence and form of part time work**

<table>
<thead>
<tr>
<th>Part-time work</th>
<th>The industrial system</th>
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</thead>
<tbody>
<tr>
<td><strong>Legal and fiscal</strong></td>
<td><strong>Demand</strong></td>
</tr>
<tr>
<td>Due to the exclusion of low paid part-time work from national insurance contributions, part-time work often has an ambiguous character of neither being illegal nor included formally within tax and social security systems due to income falling below the relevant thresholds. Part-time work in service sectors such as retail often did not attract premiums for unsocial hours and was thereby used to substitute for full-time work (over time the premiums for full-time workers have been eroded). Since 2002 there have been new rights to request flexible working which has been associated with more opportunities to reduce hours in a full-time job.</td>
<td>Part-time work is found in service sectors and has been used extensively to match employment to demand across the day, week, season etc.</td>
</tr>
<tr>
<td><strong>Voluntarist</strong></td>
<td><strong>Industrial structure</strong></td>
</tr>
<tr>
<td>Part-time work has been generally accepted by trade unions and has therefore been found both in unionized and non unionised environments.</td>
<td>High concentration in the service sector in the UK led to early use of part-time to match labour to demand. The public sector provides more opportunities for part-time work to meet employee needs but also increasingly uses part-time also to meet demand without unsocial hours premiums.</td>
</tr>
<tr>
<td><strong>Employer policy and competition</strong></td>
<td><strong>Employer policy and competition</strong></td>
</tr>
<tr>
<td>Part-time work is associated both with lean service provision and with employer recognition of work life balance issues. Part-time work may be both stable and unstable; when stable it is still often</td>
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</table>
The recent rise in the use of **zero hours contracts** has been documented in section 2 (figure 4). This increase does not relate to any change in regulations but may instead suggest both that employers in the context of recession and further support from a government towards flexible labour markets may be making more active use of existing opportunities to reduce their commitments to employees and that recent publicity has made more staff aware of these contracts and the fact that they may be on such a contract.

*Table 8 – the factors shaping the presence and form of zero hours contracts*

<table>
<thead>
<tr>
<th>Zero hours contracts</th>
<th>The industrial system</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Legal and fiscal</strong></td>
<td><strong>Demand</strong></td>
</tr>
<tr>
<td>There is no regulation with respect to minimum guaranteed working hours in the UK nor any minimum length of shift requirements. This provides the legal basis for offering zero hours contracts though there are problems in determining whether this is an employment relationship as it does not fit with the notion of mutual obligations to provide and carry out work. However the work is very much directed by the employer and the workers are often dependent on the employer as a single source of work (particularly if they are required by exclusion clauses only to work for one employer- or w if they are constrained by what ACAS calls effective exclusivity where the workers would expect to lose their job or a result of future work opportunities if they were not available when asked to work. In most cases ZHC staff are workers – that is they are not independent self employed staff- but there are issues which can only be resolved on an individual case basis as to whether they are employers or workers. In</td>
<td>ZHCs are used extensively to match employment to demand across the day, week, season etc.</td>
</tr>
<tr>
<td></td>
<td><strong>Industrial structure</strong></td>
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<tr>
<td></td>
<td>ZHCs are found primarily in the service sector in the UK and in those where demand is variable such as retail, hospitality and social care</td>
</tr>
<tr>
<td></td>
<td><strong>Employer policy and competition</strong></td>
</tr>
<tr>
<td></td>
<td>ZHCs are almost universal in private sector domiciliary social care and are linked to the commissioning practices of local authorities who provide low fees linked only to time spent in clients’ houses and with no guarantees of volumes. Providers use ZHCs in part to legitimise numerous unpaid breaks within the working day and the non payment of travel time. Among other service sector companies the use is variable dependent upon company policy; some use ZHCs only for a minority of staff to manage variations in demand,</td>
</tr>
</tbody>
</table>
practice many ZHC staff are treated as employees when undertaking work but then the work ends because there is no obligation to provide more work they may not be deemed to have a continuing employment relationship. This lack of continuity combined with the risks of earnings falling below the lower earnings thresholds means that ZHC staff are at risk of not being eligible for many employment benefits — though this does not affect rights to the NMW or to holiday pay. Surveys have revealed considerable confusion however over whether these staff are entitled to certain rights. Employers may also reduce hours in the run up to redundancy or to maternity leave to reduce or eliminate eligibility for benefits.

For one group of ZHC staff— domiciliary care workers— these contracts are used in part because of the fragmented and variable nature of the work but NMW regulations require that travel time between jobs is paid for. However this is widely not complied with and the definition of whether travel is taking place in work time or outside of work time is not clearly defined.

<table>
<thead>
<tr>
<th>Labour market conditions</th>
<th>Social reproduction and income maintenance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Labour demand conditions</strong></td>
<td><strong>Supply of labour for ZHC</strong></td>
</tr>
<tr>
<td>High rates of unemployment in the recession may have increased the use of ZHCs.</td>
<td>The supply of labour for ZHC is affected by the state of labour demand and by practices in the sector. Thus social care workers have few alternatives if they want to remain in social care. However where alternatives do exist— such as in cleaning, hospitality, catering, there appears to be more recourse to either migrants or student labour by companies staffing their whole workforces on ZHCs. Where ZHC is a possible route to a permanent contract there is wider pool of available labour. The government and employers stress how the flexibility suits some people— but this is confusing employer-oriented flexibility with employee-oriented flexibility— as ACAS points out ZHCs often work on effective exclusivity clauses so that refusing a shift may risk loss of employment. The arrangement may appear mutually convenient when there are good interpersonal relations but if these break down the employee has no guarantees of continuing or convenient work or compensation for loss of work. In some cases those who request flexible working for work life balance reasons are asked to move to a ZHC.</td>
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</table>

**Protective gaps**

i) **Employment rights gaps**

The main cause of exclusion from basic employment rights for part-timers is low earnings; that is when access to employment rights is linked to social protection where weekly earnings limits apply for contributions which in turn determine access to benefits such as sick pay, paid maternity leave...
(that is at a higher rate than the maternity allowance) and auto-enrolment into pensions saving scheme. Access to basic employment rights such as unfair dismissal and redundancy used to be for part-timers with 16 hours of work but this was challenged in the European Court of Justice and found to be indirectly discriminatory by sex so that thresholds were removed for unfair dismissal and redundancy. Some part-timers work variable hours, with only minimum guaranteed contractual hours; this could result in lower entitlements to redundancy pay and even holiday pay if employers reduce hours for the relevant time periods over which benefits are calculated.

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

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

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

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

Standard employment relationships have traditionally been expected to entail regular and predictable working times which some may characterise as rigid working time. Part-time work may create a deviation from the SER but in two different ways. Where part-time work is designed to meet employee needs it may be considered to offer some advantages over the ‘rigid’ work patterns associated with the SER. However not all part-time work fits this mould; in other contexts part-time work may be used to provide employers with flexible scheduling and may be more involved in unsocial and apparently non family friendly working time (though the practice of parents working shifts with respect to wage work and child care is quite common in the UK so no all unsocial hours can be deemed not to fit with family schedules). However in general where working time schedules are driven by the employer they may be less compatible whit work life arrangements than when working time is fixed or rigid. In Eurofound’s company survey the UK had a particularly low share of companies reporting that the main factor in their use of part-time was employees’ wishes at just
over 30% compared to over 60% for the Netherlands. The other organisations were fairly equally divided between those that said the main purpose was to meet company objectives and those that said both employee needs and company needs were equally important.

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

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

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

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

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

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

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

\[ \text{ii) Representation gaps} \]

\textbf{Part-timers} are less likely to be trade union members than full-timers (20.6% compared to 26.6%) (BIS 2014\textsuperscript{35}). However the main determinants of trade union membership are being employed in the public sector: 45.4% of part-timers in the public sector are union compared to only 15.7% of full-timers in the private sector. Nevertheless there is a lower per cent of part-timers than full-timers in union membership in both sectors. Part-timers are also less likely to be covered by a collective bargaining agreement (23.1% compared to 29.1\%) but again the main differences are sectoral with 51.7\% of part-timers covered in the public sector compared to 16.9\% of full-timers in the private sector. The vulnerability of part-timers to lack of representation is very high in the private sector where only 10.0\% are trade union members and only 10.9\% covered by a collective agreement. Alternative forms of voice and representation such as the living wage movement -as discussed above- do have a greater impact on part-timers than full-timers due the concentration of part-time work at close to the national minimum wage.

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

\textsuperscript{35} \url{https://www.gov.uk/government/statistics/trade-union-statistics-2014}
organisations have recognised the need to accept some changes. The CIPD (HR professionals association) suggests that under good practice employers should pay travel costs and one hour’s pay. However the main employers’ body the CBI (2014) only conceded that a regulation requiring, for example, two hours compensation for a cancelled shift might be preferable than required notice periods without explicitly recommending this change

iii) Enforcement gaps

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

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

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

There are major problems of enforcement of employment rights for zero hours contracts staff due to ambiguity over their employment status, lack of awareness of rights, the weakened position of ZHC staff and the ability of employers to manipulate the employment relationship to minimise rights for example to redundancy pay or maternity leave even for staff who were regular and continuous workers before the issue of redundancy or maternity arose. Use of zero hours contracts also increases the risk of not being paid the National Minimum Wage (NMW) for all work-related time if
employers fail to pay for travel time or for other work-related time specified under the NMW regulations, such as training time or time spent on-call, at, or near premises. An investigation by Her Majesty’s Revenue and Customs (HMRC, 2013) into the care sector found that underpayment of wages under the NMW regulations was high (48% non-compliance rate) (HRMC, 2013). Work for the Low Pay Commission also pointed to the risk of underpayment of NMW if travel time was not funded (Bessa et al, 2013). Underpayment of holiday pay is also highly likely if one takes into account low awareness of rights to holiday pay among both employers and ZHC staff (CIPD 2013). There were even higher rates of respondents saying that there were no rights to unfair dismissal protection, redundancy and statutory maternity leave but while this may be true for individuals, there seems to be a low awareness that ZHC staff may be eligible if treated as an employee and given regular work; in short it is practice not the contract that matters in law but this appears not to be widely known and so rights are highly unlikely to be enforced if no-one is really aware of their existence.

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

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

iv) Social protection and integration gaps

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

Zero hours contracts staff not only face major problems of meeting income, hours and duration thresholds for access to benefits but they also face ambiguity over whether they have a job and how that job relates to the social benefit system. For example if a ZHC worker is not offered any work it is not clear at what point they can say they are unemployed rather than being treated as someone who has voluntarily quit. Moreover if expected to look for additional work under the UC claimant commitment system, it is not clear if they can turn down additional work if they think it might lead them to lose their current job. Currently the unemployed claiming benefits are not required to accept a zero hours contract job (FOI3022, 2013; House of Commons, 2014), but this means that many jobs being created are not currently available to those who are in need of a job and also claiming benefits. The government has now made clear that under UC, benefit claimants will be
expected to take a ZHC job and according to a Freedom of Information request the Department for Work and Pensions has said that if a claimant were to refuse a particular vacancy then they would need to look into the circumstances of the case and consider whether they had a good reason before deciding whether a sanction applies. The implication is that a zero hours contract would no longer be considered a good reason. This new benefit system might encourage employers to offer more flexible hours jobs as those employed will be partially compensated for hours reduction by increased benefits.

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

5.3 Temporary work
Temporary employment in the UK predominantly concerns fixed-term contracts and temporary agency workers, as well as zero-hours contacts discussed above. There tends to be less detailed data on temporary than other forms of employment and very little data on casual employment and apprenticeships. However, the available data and case studies suggest that workers on temporary contracts are likely to have low pay, both because of low hourly wages and a lack of hours, low National Insurance Contributions (NICs) insufficient to claim full social security payments in terms of pensions\(^\text{36}\), contribution-based Jobseeker’s Allowance (JSA), and maternity leave and pay. The TUC report on vulnerable employment (TUC 2008) found in 2008 that around 41 per cent of temporary workers were low-paid (defined as £6.50 per hour).

The LFS estimated that in the first quarter of 2015 there were 1.69 million workers on temporary contracts, 6.4 per cent of total employment. This share has been relatively stable between 5.4 and 7.9 per cent in the period since March-May 1992. The WERS survey also finds no indication that firms have changed their use of temporary contracts with 25 per cent of workplaces in 2011 using temporary contracts compared to 22 per cent in 2004. However, this overall stability may mask important underlying changes between industries and employment types with, for example, a decline in Education and a rise in Manufacturing. As discussed in section 2, there has been a general shift away from fixed-term work and an increasing use of temporary agency and casual workers (figure 5).

There has been much debate about the importance of temporary work in the labour market, especially when involuntary, and the implications for workers. As pointed out by Resolution Foundation (2015b: 6), ‘[r]elatively small groups of workers (compared to the overall workforce) are affected in each case. For example, only 4 per cent of workers are involuntarily part-time, only 2 per cent are involuntarily temporary employees and only 2 per cent are on a zero hours contact (with some overlap between these groups). But the implication is that a sizeable minority are facing particularly acute forms of insecurity’. In this context, the Resolution Foundation makes a difference between the breadth and the depth of insecurity with the former remaining relatively stable while the latter has risen substantially for a significant minority of workers. The TUC (2014b) has pointed out how the increased use of zero-hours and agency workers has made it particularly difficult for young workers to find a permanent job. Table 9 presents the share of different age groups among

\(^{36}\) There is an alternative means-tested Pension Credit.
permanent, zero-hour contract, agency and temporary workers in 2014. It shows how, for example, younger workers are markedly over-represented among zero hours contracts and temporary workers.

**Table 9 - the distribution of permanent, zero-hour contract, agency and temporary workers by age 2014 (percentage)**

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


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

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

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

A second aspect that affects many temporary workers concerns the existence of rights that are not acquired at the first day of employment. Several rights only exist after a qualification period such as the right to claim unfair dismissal which requires a minimum of two years of service. Another example concerns statutory maternity pay which requires that a woman must have been

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37 Including fixed-term, seasonal and casual workers
continuously employed by the same employer for at least 26 weeks into the 15th week before the baby is due and earn an amount which at least equals the lower earnings limit (£102/week in 2011-12) (Simms 2010). Few temporary workers will qualify for these rights.

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

Table 10 - reasons given by agency workers for doing temporary work by age, 2014 (percentage)

<table>
<thead>
<tr>
<th>Age Group</th>
<th>Contract Included</th>
<th>Contract for Probationary Period</th>
<th>Could not Find Permanent Job</th>
<th>Did not Want Permanent Job</th>
<th>Some Other Reason</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>16-19 yrs</td>
<td></td>
<td></td>
<td>38.6</td>
<td>23.8</td>
<td>37.7</td>
<td>100</td>
</tr>
<tr>
<td>20-24 yrs</td>
<td>0.0</td>
<td>1.4</td>
<td>80.6</td>
<td>2.9</td>
<td>13.8</td>
<td></td>
</tr>
<tr>
<td>25-29 yrs</td>
<td>1.3</td>
<td>1.3</td>
<td>64.1</td>
<td>6.6</td>
<td>28.0</td>
<td></td>
</tr>
<tr>
<td>30-34 yrs</td>
<td>5.8</td>
<td>2.0</td>
<td>60.3</td>
<td>11.7</td>
<td>20.7</td>
<td></td>
</tr>
<tr>
<td>35-39 yrs</td>
<td>3.0</td>
<td>1.9</td>
<td>54.4</td>
<td>18.9</td>
<td>21.7</td>
<td></td>
</tr>
<tr>
<td>40-44 yrs</td>
<td>7.1</td>
<td>0.0</td>
<td>57.4</td>
<td>8.3</td>
<td>25.4</td>
<td></td>
</tr>
<tr>
<td>45-49 yrs</td>
<td>0.0</td>
<td>0.0</td>
<td>71.6</td>
<td>13.7</td>
<td>14.7</td>
<td></td>
</tr>
<tr>
<td>50-54 yrs</td>
<td>0.0</td>
<td>0.0</td>
<td>64.9</td>
<td>20.1</td>
<td>15.4</td>
<td></td>
</tr>
<tr>
<td>55-59 yrs</td>
<td>3.7</td>
<td>0.0</td>
<td>68.5</td>
<td>5.4</td>
<td>26.2</td>
<td></td>
</tr>
<tr>
<td>60-64 yrs</td>
<td>7.0</td>
<td>0.0</td>
<td>26.9</td>
<td>53.6</td>
<td>15.8</td>
<td></td>
</tr>
<tr>
<td>65-69 yrs</td>
<td></td>
<td></td>
<td>21.0</td>
<td>59.8</td>
<td>12.2</td>
<td></td>
</tr>
<tr>
<td>70+ yrs</td>
<td></td>
<td></td>
<td>0.0</td>
<td>100</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


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

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

5.3.1 Temporary agency work

The number of agency workers has been very hard to estimate with any reliability. Forde and Slater (2014) using LFS data calculated that there were around 320,000 agency workers, 1.27 per cent of the employed workforce in the winter of 2012 and the highest share since figures were first collated in 1981. However, LFS data undercounts the number of agency workers. The main industry body, the Recruitment and Employment Confederation estimates that at any given day in the UK recruiters
place 1.1 million people into temporary work assignments. The huge discrepancy in the data mainly exists as many temporary workers will not work for the full reference week so are unlikely to be captured by the LFS sampling procedure. The proportion of workplaces that made use of agency workers has also been rather stable, 12 percent of workplaces in 2004 and 11 per cent of workplaces in 2011, although there are differences across industries (e.g. the share of workplaces in the health and social work sector with agency workers declined from 18% to 10%).

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

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

The regulatory guidance also includes several stipulations against avoidance strategies such as the movement of workers around a series of roles within the same firm or around different subsidiaries within the same organisation. However, many problems have been brought forward in relation to
the Swedish derogation. For example, an agency may invent jobs as it does not have to pay the employee if a new job is found within one week. Agencies can also not force workers to sign a pay between assignments contract although it can be conditional to be offered work. A ‘zero hours’ contract does not count as a derogation contract ‘although it seems from the BIS guidance that contracts of greater than “one hour” per week may provide a sufficient amount of mutuality of obligation to meet the requirements of the derogation contract (BIS, 2011)’ (Forde and Slater 2014: 15). Enforcement is also considered very weak as it requires that workers take their case to an Employment Tribunal. Workers also had very little knowledge about the implications of the regulations and in particular on issues such as the Swedish deregulation. Forde and Slater (2014: 42-3) therefore conclude that ‘despite the difficulties getting these regulations into force and the support given by unions to the process, it seems unlikely that they will dramatically change the most precarious end of agency work’.

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

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

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

Table 11 – the factors shaping the presence and form of temporary agency work

Temporary agency work

64
**Labour market regulation**

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### Legal and fiscal

Most agency workers will be considered as 'worker' and therefore miss out on those rights reserved for 'employees' such as a written specification of conditions, the right to grievance and disciplinary procedures, statutory minimum notice periods, rights to maternity leave and to return to the same or an equivalent job, protection from dismissal on grounds of pregnancy or maternity pay, and protection from unfair dismissal on grounds of trade union membership or activities.

Agency workers are unlikely to qualify for rights that only exist after a qualification period such as the right to claim unfair dismissal or statutory maternity pay.

The Agency Workers Regulations require that agency workers achieve equal treatment with their directly employed counterparts after 12 weeks of service. This relates to issues of pay and basic employment rights such as holidays, working time and maternity rights but does not include the right to claim unfair dismissal etc. in accordance with the status as 'worker'. This requirements does not apply to agency workers with ongoing contract of employment with a Temporary Work Agency and payment between assignments (the Swedish Derogation or 'Pay between Assignments' (PBA) model).

### Voluntarist

Unions such as GMB, Unite and Unison have been able to negotiate recognition agreements with certain agencies.

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**The industrial system**

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### Demand

There is important ambiguity on the number of agency workers with a huge difference between the LFS data (around 320,000 agency workers in the winter of 2012) and the estimates by the Recruitment and Employment Confederation (around 1.1 million people placed into temporary work assignments each day). However, the number of agency workers appears to have been rather stable since 2000.

### Industrial structure

Agency employment is an important form of employment in manufacturing (17% of total employment) and real estate and business services (21%), Subsequent industries in order of importance are Health (13%), Education (9%), Transport (9%), and Wholesale and retail (7%) (Forde and Slater 2010).

### Employer policy and competition

Some employers use agencies as full substitutes for internal staff and expect agencies therefore to take over their recruitment and selection functions. In other cases agency workers are only used to supplement directly recruited staff (e.g. to provide cover or are used for trial periods for selection of more permanent staff). Some firms combine the long-term use of agency workers on derogation contracts with agency workers on 'standard' contracts for short-term fluctuations (Forde and Slater 2014).

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**Labour market conditions**

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### Labour demand conditions

Data from the LFS shows that 35%of all temporary workers were employed as such because they could not find a permanent job. However, the TUC (2014b) shows that a large majority of agency workers between 20 and 59 work temporary because they could not find a permanent job, up to over 80% for those between 20 and 24 years.

### Recruitment, screening and training systems

The Agency Worker Regulations include no requirements regarding training even though they are included in the Agency Worker Directive.

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**Social reproduction and income maintenance**

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### Household income

A small but significant group tends to frequently move in and out of temporary work and thus stuck in this low-pay, no-pay cycle.

### Supply of labour

Agency employment is relatively prevalent among young workers, with the 20-24 year group responsible for 20.2% of all agency workers but only 9.8% of all workers. The groups from 25-29 and 30-34 also tend to be overrepresented among agency workers. However most (81% of 20-14 year olds) do not want a temporary job so the main reason is a lack of more permanent vacancies. In industries regulated by the GLA the vast majority
of workers (98%) is from other EU countries [Interview GLA].

5.3.2. Fixed-term contracts
A fixed-term contract lasts for a specified time or will end when a specified task or event has been completed. Workers who have a contract with an agency rather than the organization they work for or who work as student or in an apprenticeship are not considered as fixed-term employees. Figure 5 shows that the number employed on of fixed-term contracts has been in decline since 2000.

Table 12 – the factors shaping the presence and form of fixed-term contracts

<table>
<thead>
<tr>
<th>Fixed-term contracts</th>
<th>Labour market regulation</th>
<th>The industrial system</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Legal and fiscal</strong></td>
<td>Fixed-term employees are entitled to equal conditions and rights to those doing the same or a similar job on an open-ended/permanent contract such as a written specification of conditions and the same protections around notice periods and maternity pay. They are also entitled to information regarding any permanent vacancies and protection against unfavourable treatment. However, an ‘objective justification’ may allow for less favourable treatment.</td>
<td></td>
</tr>
<tr>
<td><strong>Voluntarist</strong></td>
<td>Fixed-term contract employees are less likely to qualify for rights that only exist after a qualification period such as the right to claim unfair dismissal or statutory maternity pay.</td>
<td></td>
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<tr>
<td></td>
<td>Most fixed term contract employees would be covered by collective agreements at the company or workplace, where these exist. -</td>
<td></td>
</tr>
<tr>
<td><strong>Labour market conditions</strong></td>
<td><strong>Social reproduction and income maintenance</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Labour demand conditions</strong></td>
<td><strong>Supply of labour</strong></td>
<td></td>
</tr>
<tr>
<td>LFS data show that 35% of all temporary workers were employed as such because they could not find a permanent job. However, the TUC (2014b) data on agency workers and zero-hour contracts suggest that these percentages may be much higher, especially among certain age groups.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Recruitment, screening and training systems</strong></td>
<td>Temporary employment is particularly prevalent among young workers. Those aged 19-19 Those aged 16-19 and 20-24 constitute respectively 3.2% and 9.8% of the working population but 11.9% and 18.7% of all temporary workers (not including agency workers).</td>
<td></td>
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<tr>
<td>Employer use of fixed-term contracts can be a valuable tool in screening employee performance prior to transferring to a permanent contract.</td>
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</tbody>
</table>
Employers are required to treat fixed-term employees equally to those doing the same or a similar job on an open-ended contract and fixed-term employees are entitled to the same pay and conditions, the same or equivalent benefits, information regarding any permanent vacancies, and protection against unfavourable treatment. However, less favourable treatment may be objectively justified when there is a good business reason for doing so, known as ‘objective justification’. Fixed-term contracts will normally end when they reach the agreed end date and the employer does not have to give any notice. If the work ends before the agreed end date and the contract allows the worker to be dismissed then the employer should give the appropriate notice period. The law defines minimum notice periods of 1 week if the employee has worked continuously for at least 1 month and 1 week for each year if the employee has worked continuously for two years or more. But the contract can state longer periods. Employees must hand in their notice one week in advance if they have worked continuously for a month or more but the contract may once more state a longer period. If nothing is written in the contract on early dismissal, the employer may be in breach of contract. Fixed-term employees can also qualify for some additional rights. If they work for the same employer for two years or more, they have the same redundancy rights as permanent employees, and after four or more years they automatically become a permanent employee, unless the employer has a good business reason not to do so, or a collective agreement removes the automatic right.

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

**5.3.3 Other temporary workers: apprentices, casual workers**

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

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

**5.4 Subcontracted work: subcontracted employees and self-employed workers**

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

i. Institutional factors explaining presence and form

Table 13 describes how features of Britain’s production system shape employment experienced by subcontracted employees. TUPE rules (see section 4) play a critical role in underpinning minimum standards but as we explore below only for a fraction of subcontracted employees and in an increasingly narrow and circumscribed manner. While cost pressures typically mean the subcontracted employee experiences job insecurity and limited pay prospects, in some situations client organisations may take on an interesting role in pressing contractors to improve job quality, often in response to trade union campaigns. Examples include the promotion of living wages along the supply chain, requiring health and safety training and/or ensuring minimum qualifications. While there continue to be concerns in the UK that such provisions may contravene the European procurement directive, HR provisions that contribute to ‘social value’ or are defined as ‘socially sustainable sourcing’ are seen as feasible (Druker and White 2013; Koukiadaki 2014; Wright and Brown 2013).

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

*Table 13 - the factors shaping the presence and form of subcontracted employees in the UK*

<table>
<thead>
<tr>
<th>Subcontracted employees</th>
<th>Labour market regulation</th>
<th>The industrial system</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Legal and fiscal</strong></td>
<td>TUPE rules establish an important principle of employment continuity for workers whose activity is outsourced to an external contractor organization. However, loop holes mean that transferred workers may experience changes in working time, job tasks, and training and career opportunities. Also, a 2014</td>
<td><strong>Demand</strong> Outsourcing is triggered by a range of factors that may include cost pressures, but also the need to access specialist skills, technologies and management capabilities, as well as pressures to access labour more flexibly and to avoid trade</td>
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</table>
amendment means TUPE will apply to a narrower range of cases (the work must be ‘fundamentally the same’ after transfer) and conditions protected under a collective agreement (of the client) can be changed after 12 months. There is no legal protection for other subcontracted employees not TUPE transferred.

Fiscal conditions are very important in driving the outsourcing of public services where public authorities use outsourcing to cut costs with the knowledge that the incidence of low-wage work is higher and union protection lower among private services firms than in the public sector.

**Voluntarist**

Unions unsuccessfully resisted the outsourcing of public services in the 1980s and 1990s, but did win a new government ‘Two-Tier Code’ in 2003 designed to extend conditions in local government and NHS collective agreements to contractors. It was abolished in 2010.

<table>
<thead>
<tr>
<th>Labour market conditions</th>
<th>Social reproduction and income maintenance</th>
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</thead>
<tbody>
<tr>
<td><strong>Labour demand conditions</strong></td>
<td><strong>Household income</strong></td>
</tr>
<tr>
<td>As more and more organisations have outsourced activities, there has been an expansion of specialist business services outsourcing firms in many areas of services provision. Some organisations may require contractors to meet minimum job quality criteria (e.g. living wage).</td>
<td>It is in the area of subcontracted work where the UK’s living wage campaign had its initial successes, arguing that wealthy client organisations (London banks) ought to pay contractors enough to fund living wages for their staff.</td>
</tr>
<tr>
<td><strong>Recruitment, screening and training systems</strong></td>
<td><strong>Supply of labour</strong></td>
</tr>
<tr>
<td>Subcontracted employees divide between those who enjoy some form of protected terms and conditions under TUPE rules and those who don’t. In low-wage services, the latter are typically on inferior conditions. Where subcontracted employees work on the client site they may be screened for jobs in the client or enjoy shared training provision.</td>
<td>Labour supply spans the entire range of workforce groups, although with concentrated segments in particular activities and regions–e.g. migrant workers in low-wage services in London.</td>
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</tbody>
</table>

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

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

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

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

Table 14 - factors shaping the presence and form of false self-employed workers in the UK

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

**Recruitment, screening and training systems**

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

**Supply of labour**

Labour supply spans the entire range of workforce groups, but has especially large concentrations of migrant workers owing to visa entry and sponsorship conditions.

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### ii. Protective gaps

#### 1) Employment rights gaps

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

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

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

The second employment rights gap concerns the fact that TUPE legislation only protects one part of the subcontracted workforce –namely, those who transfer. Other employees of the contractor organisation along with all new recruits are excluded until the moment when they are also the target of a staff transfer process. Case-study research on low-wage outsourced services points to systematically inferior conditions among unprotected subcontracted employees (e.g. Escott and Whitfield 1995; Rubery and Earnshaw 2005; Unison 2000; Whitfield 2002). The reason is largely institutional: contractor organisations are less likely to be covered by a collective agreement than the client organisation, which generates opportunities for contractors to worsen employment conditions. Moreover, fragmented protection results in multiple sets of terms and conditions being generated over time as contractors win a series of contracts and inherit new cohorts of transferring...
staff (Hebson et al. 2003). Trade unions campaigned successfully for stronger protection for subcontracted employees providing outsourced public services, resulting in the New Labour government introducing a Two-Tier Code in 2003 (see section 4.1). The Code encouraged contractors to extend public sector client’s terms and conditions to all subcontracted employees working on the specific site, thereby creating equal conditions between TUPE and non-TUPE protected staff. However, the Code was abolished in 2010.

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

UK research and union campaigns have mostly focused on the construction sector, which is well known for its fragmentation and displacement of employer responsibilities - such that main contractors manage the project and finances but pass employer responsibilities down the chain to gangmasters, agencies and the false self employed (Harvey 2001). The main union for the sector, UCATT, has long campaigned against false self employment, arguing that businesses register workers as self employed to avoid both tax/social security costs and legal obligations and ought instead to recognise them as employees (see evidence of employer behaviour in MacKenzie et al. 2010). False self employment in the industry is widespread: Behling and Harvey (2015: table 4) estimate that around half of all self employed, approximately one in four of all construction workers, are false self employed. Today UCATT describes it as ‘the biggest employment rights challenge in the industry’ and an ‘immoral’ practice.38

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

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

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

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

\[ ii) \text{ Representation gaps} \]

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

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

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

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

Because ‘union representation is often coterminous with employment’ (Heery et al. 2004: 23), the false self employed face significant representation gaps. Union campaigns to better represent false self-employed workers have been particularly vocal in the construction sector, notably through efforts since the late 1990s by the construction union UCATT (Boeheim and Muehlberger 2006). However, the largest trade union, Unite, in its response to the government’s HMRC consultation on
reforms, warned that the practice of false self employment was spreading to other sectors (although the document provides no illustrations)\(^39\). The union for media workers, BECTU\(^40\), has a long tradition for organising freelance workers (around 40% of its members –Heery et al. 2004), a subset of whom are likely to be false self employed. In response to union campaigns, especially the highlighting of lost tax revenues, in 2014 the government set out clearer criteria for the treatment of persons as employed by the agency or payroll company (‘onshore employment intermediaries’). UCATT responded that this was a first step but a better policy would require that ‘if a worker satisfies the conditions to be in receipt of “employment income”, then he or she should be acknowledged to be an employee and gain all of the entitlements and obligations which an employee has’.\(^41\)

**iii) Enforcement gaps**

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

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

Gaps in enforcing legal regulations of employment status are significant, leaving many workers with **false self employment** status exposed to exploitation. One problem is the dwindling level of public resources invested in site inspections. For the construction industry, for example, the number of employer compliance reviews opened where employment status was shown as a risk fell from 1,205 in 2009/10 to just 433 in 2011/12.\(^42\) Time and again, research on the construction sector expresses an exasperated sense of alarm at the persistent and large-scale enforcement problem.

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

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\(^40\) Broadcasting, Entertainment, Cinematograph and Theatre Union


\(^42\) HMRC response to UCATT Freedom of Information Request: 30.08.12 (cited in Elliott: 1).
the tolerance of it by employers and taxation authorities alike is a demonstration of how entrenched and normalised tax evasion and deprivation of employment rights have become (Harvey and Behling 2008: 20).

**iv) Social protection and integration gaps**

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

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

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

First, a note about the term social dialogue is needed. From a British perspective, the term is very much associated with the language of the European Commission and has not to date entered into the common vocabulary of employment relations. Narrowly conceived, social dialogue may be defined as any form of consultation, negotiation or dispute between employer and trade union. More broadly, however, it may be construed as encompassing a wider range of organisations, influences and institutional pathways that better captures current employment relations developments in the UK. Figure 8 suggests an extended, broader notion of social dialogue that embraces civil society organisations, state inspectorate agencies and other bodies. This approach is very much in keeping with Heery’s (2011: 90) call for greater appreciation of the ‘fusion’ of regulatory forms that characterise the UK’s ‘post-voluntarist system of interest representation’.

Figure 8 - narrow and wide forms of social dialogue in the UK
Civil society organisations (CSOs) provide a range of services to people in employment, sponsor high-profile legal cases and lobby for improved legal rights. In the UK, therefore, they increasingly offer an alternative, non-union channel that can support workers’ interests. Examples include Citizens Advice, Stonewall, Citizens UK, Age Concern, Carers UK and the Living Wage Foundation, among others. Research by Heery and colleagues (Heery et al. 2012a, 2012b) provides three reasons for their increasing activity in improving employment conditions. First, CSOs are responding to employment problems and demands for workplace equality by their constituents (e.g. Citizens Advice response to in-work poverty or Stonewall’s workplace equality index). Second, they are filling a gap caused by the decline of unions and collective bargaining. Third CSOs have emerged ‘in the shadow of the law’, acting to interpret, mediate and enforce compliance with many new pieces of legislation in relation to both employment and welfare systems. Now that benefit payments are not confined to those fully out of work but are common for those in employment but low paid, the incomes of the precariously employed depend not only on wages but also on their interactions with the tax and benefits systems, thereby providing a major role for CSOs with this type of expertise.

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

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

In many respects, these considerations mirror those concerning the inter-relationship between legal rules (a key feature shaping our wider conceptualisation of social dialogue in figure 8) and employer-union social dialogue (Colling 2010; Dickens and Hall 2010). The collapse of voluntarist industrial relations in the UK in the 1980s and rising juridification of the employment relationship has generated considerable debate and recurrent questions for research (see Heery 2011 for a valuable review). For the purposes of our second stage of case-study research, these questions can be
expanded to encompass the interactions between statutory regulations affecting both employment and welfare rights on the one hand and, the actions and effectiveness of a wider range of union and non-union organisations on the other. This generates several questions and issues for enquiry:

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

Overall, it is hoped the next stage of research will contribute to a wider intellectual and policy agenda that seeks to understand and shape the ongoing transformation of employment relations in the UK. This report has charted many of the most significant challenges facing the goal of an inclusive labour market. The next step is to investigate how progress can be achieved through both narrow and wide forms of social dialogue.
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