



## Amicus section

### **Unite Amicus Section response to the DTI Consultation on Measures to Protect Vulnerable Agency Workers April 2007**

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**This response is submitted by Unite Amicus Section. Unite is the UK's largest trade union with 2 million members across the private and public sectors. The union's members work in a range of sectors including manufacturing, financial services, print, media, construction, local government, education, health and not for profit.**

#### **Executive Summary**

- 1.1 Unite Amicus Section welcomes the opportunity to provide a response to this consultation and to provide additional oral evidence if necessary. However, it is the view of Unite Amicus Section that this consultation is too narrow and fails to deal with the multiple negative impacts of the widespread use of agency labour across all sectors in the economy.
- 1.2 Unite Amicus Section will provide evidence in this submission and in the attendant appendices to show that the abuse and misuse of agency labour is now systematic and endemic in the UK labour market.
- 1.3 Unite Amicus Section will show evidence that the temporary agency sector is being used by some employers to undermine established pay and conditions, health & safety, training arrangements etc often achieved through collective bargaining and are being used to replace permanent workers with cheaper and less qualified labour. In addition Unite Amicus Section will show that many agency and temporary workers in the UK are treated unequally in terms of, health and safety, pensions, sick pay, holiday pay, shift and overtime premiums, training and in some cases language ability.
- 1.4 It is estimated that in the EU15 there are 7 million temporary workers and 20,000 employment agencies with an annual turnover in excess of €75million. According to the DTI, the UK has the third highest use of temporary agency labour (2.6% of employment) just slightly behind France (2.7%) and the Netherlands (2.8%).

- 1.5 In absolute terms, the UK has the highest number of temporary agency workers (estimated by the DTI to be 600,000). Temporary agency work is of particular significance in the UK because of the distribution of its use across sectors including the public sector and its role in facilitating a flexible labour market.
- 1.6 These figures, however, neglect to include those working in the informal and black economies and the large numbers of migrant workers housed by their agencies or client employers in agriculture and the hospitality industry.
- 1.7 The UK Government endorses a number of flawed assumptions about temporary agency work. The view of the UK Government is that temporary agency work is considered integral to the flexible labour market model operated in the UK. As well as using temporary agency work to tackle frictional unemployment the UK Government also praises the sector's apparent capacity to fill skills gaps and provide job matching.
- 1.8 Temporary agency work is wrongly lauded by the UK Government as a means of providing employment for demographic and socioeconomic groups who, historically, have found it difficult to find placements in the labour market. In many countries, including the UK, the temporary agency sector is used by employment services as a 'first rung of the ladder' for the unemployed and a source of work experience for younger workers. However, the experience of many Unite Amicus Section members is that agency and temporary work is all that is on offer to many skilled workers who have lost their employment notably in manufacturing.
- 1.9 The assumed macro economic benefits of the widespread use of temporary agency work are not, however, weighed against the long term impacts for the labour market and the welfare of the UK's most vulnerable workers. Many wrong assumptions have been made about the positive effects of temporary agency work, emphasising the benefits of flexibility and choice for those who are engaged in short term assignments.
- 1.10 In reality, temporary agency workers face a number of hardships. Many of those who are on the 'first rung of the employment ladder' either fall off and on with rapid succession or are caught in cycles of insecure, permanent agency or temporary and low paid employment, often significantly lower pay than permanent employees they work alongside. Unite Amicus Section research shows that many agency and temporary workers do not receive:
  - Sick pay
  - Paid holidays
  - Shift premiums or overtime premiums
  - Pensions

- Job control
  - Adequate health and safety coverage
  - Adequate training, skills development or opportunities for advancement or permanent employment.
- 1.11 The temporary agency workforce is often composed of some of society's most vulnerable groups; migrants, older workers and those with lower educational attainment. These groups in particular experience higher instances of exploitation and discrimination based not just on their demographic or educational profile but also on their precarious employment status.
- 1.12 But not all temporary agency workers fit into the Government's profile of a 'vulnerable worker' yet they suffer equally from a lack of rights. Unite Amicus Section is aware of, and will provide evidence to show that with the decline of secure employment in manufacturing and other skilled sectors, workers once employed in these industries are forced to move into successive temporary agency work assignments on lower pay and with inferior terms and conditions. A report by Unite Amicus Section of former Rover and Powertrain workers shows that 12 months on from being made redundant, 11% of the plant's former workers rely on temporary work to provide an income. One respondent to the survey summed up the situation as "all I seem to be offered is low pay, unsociable and long hours".<sup>1</sup>
- 1.13 Workers in other industries such as finance and where sector level agreements are in place, such as the graphical industries are also finding that collectively agreed terms and conditions are being eroded through the improper use of temporary contracts.
- 1.14 All temporary agency workers are vulnerable to the actions of unscrupulous employers because their status as workers rather than employees raises difficulties in lodging grievances. Job security is a major concern for this group of workers as employers are able to dismiss agency workers at short notice and without incurring costs associated with redundancy or severance payments.
- 1.15 The report from the Fourth European Working Conditions Survey concludes that "in terms of pay differences, the survey reveals that occupation, gender and employment status...are the most important determinants. Part time workers, workers on temporary contracts and workers in the agricultural sector are more likely to fall into the lower income categories".<sup>2</sup>
- 1.16 In 2005 the Labour Force Survey found that 55% of temporary workers were earning below median pay. Agency workers are also more likely to have clauses included in their contracts exempting them from the 48 hour maximum working week. In many of the cases that Unite Amicus Section has been made aware of, temporary agency workers have

<sup>1</sup> MG Rover Survey Report, Unite Amicus Section 2006 available from <http://www.amicustheunion.org/pdf/MGRoverSurveyReportJN102.pdf>

<sup>2</sup> Conclusions, Fourth European Working Conditions Survey, 2007

been used to replace core staff, reducing labour costs for employers and effectively diminishing skill levels.

- 1.17 In the absence of a sector or national level dialogue between employers and workers and with only a few collective agreements in place between trade unions and employment agencies, the challenge for the UK government is to balance the benefits of temporary agency work with its obligations to ensure basic employment rights for all workers.
- 1.18 This consultation document is too narrow and does not adequately address the deficit of rights that affect a majority of those engaged in temporary agency work. More and better rights are needed to prevent exploitation and to ensure a level playing field between temporary agency workers in the UK and equivalent workers in the EU. The UK urgently needs to make good on its Warwick commitment to introduce the measures contained in the proposed EU Directive on Temporary and Agency Workers.
- 1.19 Legislative measures must also be backed up by an industrial relations framework that gives trade unions rights to collective bargaining over the use of agency and temporary workers in sectors or in individual workplaces. In some areas unions and employers have reached agreements or have codes of good practice about the use of agency labour where the industry or business experiences fluctuations in demand or where the nature of work is seasonal or cyclical. Examples include parts of the motor industry and in the graphical sector. Unite Amicus Section believes that before being able to engage agency labour employers must be obliged to reach agreements with recognised unions on the following issues:

- The need for the use and purpose of agency and temporary workers
- The number of agency workers to be used
- The duration of temporary work contracts and time limits after which agency workers must be moved onto permanent contracts with equal terms and conditions as equivalent staff
- The use of agency workers in specialised or skilled roles
- Methods for reviewing the use of agency labour in workplaces
- Working conditions and pay
- Training and health and safety arrangements
- Pension provision

Unite Amicus Section recommends that the DTI takes action to rectify the inequality of status and exploitation of agency workers. The first step for government should be to address the following:

- The EU Directive on Temporary and Agency Workers and the Temporary Workers (Prevention of Less Favourable Treatment) Bill
- Licensing and Registration of Employment Agencies

- Enforcement of Agency worker rights and strict penalties for non compliance
- Employment status and the principle of equal treatment
- Permatemps: the restriction of the practice of replacement of core workers with agency staff on permanent/on-going “rolling” assignments and the introduction of limits on the time agency workers can be used before being offered permanent employment or the work reverting to permanent employment.
- The outlawing of “transfer fees”
- Outlawing the supply of temporary agency workers to sites where official industrial action is taking place
- Access to pension rights, training and career development
- Health and safety and wellbeing indicators for temporary agency workers

### **Introductory Comments**

#### **The EU Temporary Agency Workers Directive and the Temporary Agency Workers Bill**

- 2.1 The UK operates a lightly regulated and flexible labour market. Integral to this model is the temporary agency work sector. This sector is also characterised by low levels of trade union representation and influence. Success at Work (March 2006) recognised that the absence of trade union recognition in a sector or industry is an indicator of a high risk of vulnerability.
- 2.2 The trade union movement is an important defence against exploitation and unions are making substantial efforts to organise and gain recognition within the temporary work sector with some success. Unite Amicus Section is committed to reaching agreements with employers on the use of agency labour and has done so at workplace level in the motor industry and through sector level model agreements in the print and paper industry.
- 2.3 Collective agreements are a robust means of protecting and improving the treatment of agency workers. In their absence, however, it is important that there are universal statutory rights for agency workers that protect against exploitation.
- 2.4 In 2004 Labour Party Conference passed the resolution ‘Building Prosperity for all’. The resolution included a commitment to “engage with the commission with a view to reaching an early agreement on the proposed directive”.
- 2.5 The 2004 Warwick Agreement contained a pledge by Labour to protect agency and temporary workers either through adoption of the European Directive or, in the absence of agreement at EU level, introducing new UK legislation. Specifically the pledge commits the UK Government

**“To support Temporary Agency Workers Directive and to engage with the Commission with a view to reaching an early agreement on the proposed Directive”.**

- 2.6 Further to this, in Success at Work (March 2006) the Government restated its support for the “underlying principles of the (Temporary Agency Workers) Directive”.
- 2.7 Since 2004 agreement on the European Directive on Agency and Temporary Workers has stalled, in large part due to the opposition of governments in the Germany, Denmark, Ireland and the UK to the qualifying periods proposed for equal treatment. The principles of the Directive should not be forgotten and if there is a continued stasis at European level the UK Government should act to legislate in accordance with the Directive’s principles. It is essential that the UK Government prioritises this issue given that there have been several commitments made to legislate at the domestic level in the event of a failure to progress the Directive.
- 2.8 The Directive’s important principles of non discrimination between temporary agency workers and comparable workers in the user undertaking with regard to pay, working time, breaks and holidays, equal and assured terms and conditions for pregnant women and parents, rights for children and young people and protection against discrimination are not onerous. Furthermore, as the Labour Party Conference resolution of 2004 points out, the Directive will not cover all of the abuses and injustices faced by temporary agency workers.
- 2.9 The principle of equal treatment in terms of pay and terms and conditions should apply from day one to avoid manipulation of any qualifying periods through the use of successive or rolling contracts.
- 2.10 The Private Members’ Bill brought by Paul Farrelly MP addresses the Government’s responsibilities under the Warwick Agreement. The Temporary Agency Workers (Prevention of Less Favourable Treatment) Bill would mean that from day one temporary agency workers would have equality of status with comparable directly employed workers and access to information about opportunities to become a permanent worker in the client organisation.
- 2.11 The Government has made firm commitments to implement the contents of the EU Directive but has so far failed to do so. The Government has effectively obstructed progress at European level and thwarted initiatives such as the Temporary Agency Workers Bill. Unite Amicus Section urges the Government to honour its commitments to agency workers without further delay.

## Licensing and Registration of Employment Agencies

- 3.1 The UK abolished the need to obtain a licence in order to operate as an employment agency in 1994. Most other European countries recognise the need for licensing and registration with the exceptions of Finland, Netherlands, Norway and Sweden.
- 3.2 In Norway and Sweden voluntary agreements are used to regulate the sector in place of statutory instruments. In Finland where the permit scheme was phased out in 1994 agencies must still notify health and safety authorities before they can set up their business. In the Netherlands, a financial warranty scheme operates instead of registration. The UK therefore operates the most deregulated temporary agency sector in Europe.
- 3.3 Unite Amicus Section believes that agencies doing business in the UK must be regulated through reinstating the obligation to operate under a license and abide by industry standards. Positive steps to tackle temporary worker abuse have been taken through the establishment of the Gangmasters Licensing Authority but this only happened after the systematic abuse of agency workers was highlighted through the work of trade unions campaigning on the issue.
- 3.4 Requiring agencies to obtain a licence before setting up business in the UK will prevent exploitation of migrant and vulnerable workers who work in sectors where there is abuse but that are not currently covered by the Gangmasters legislation. Licensing will also ensure that employment agencies abide by their financial and health and safety responsibilities.
- 3.5 A joint declaration made in February 2007 by Eurociett, the European employment agencies confederation, and Union Network International Europa committed both bodies to tackling “unfair competition, illegal, practices and undeclared work...through systems of licensing, certification, inspection or registration schemes”.<sup>3</sup>
- 3.6 Licensing requirements vary across countries in Europe but some schemes require employment businesses to provide funds as a bond to cover taxes and wages in the event of bankruptcy. Other schemes require agencies to declare that temporary agency work is the sole or primary business activity of the firm, thus tackling subsidiary companies and additional services. In France, temporary work agencies must submit regular reports about their activities to the authorities.
- 3.7 A licensing scheme for the UK should include provisions to assure non discrimination and protection of those who make disclosures, minimum standards of health and safety, the enforcement of the minimum

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<sup>3</sup> Extract from the Eurociett/UNI Europa *Joint Declaration within the framework of the 'Flexicurity debate' as launched and defined by the EU Commission* issued on 28.2.07

wage and evidence that the agency can meet its financial obligations in the event of bankruptcy. Similar provisions are already included in the legislation concerning fixed term contracts. Registration of the agency should also include conditions on the use or provision of additional services to work seekers such as accommodation, CV writing, training or loans.

### **Enforcement of temporary agency worker rights and strict penalties for non compliance**

- 4.1 The Employment Agency Standards Inspectorate currently employs 12 field inspectors, some of whom work part time. In 2005/6 the Inspectorate began the year with a significant backlog of cases and identified 80% more infringements (3,256 rising from 1,796) than in the previous year. In addition the Inspectorate's four helpline staff process over 10,000 enquiries and 1,000 complaints per year.<sup>4</sup>
- 4.2 The EAS Inspectorate should receive adequate resources and funding to expand its number of inspectors and to be able to investigate and prosecute the growing number of infringements reported and uncovered.
- 4.3 During 2005/6 the EAS Inspectorate recovered £20,000 of wages that had been illegally withheld. The annual report for this period states that "it is unlikely that the workers would have recovered the money by other means".<sup>5</sup>
- 4.4 The EAS has proved ineffective in enforcing Regulation 7 of the 2003 that prohibits agencies from supplying workers to replace and undermine those taking part in lawful industrial action. The response of the EAS to a complaint does not result in action to prevent the breach in time to avoid the effect of the industrial action being undermined. No agency has ever been prosecuted for breach.
- 4.5 Reforms of the EAS Inspectorate, such as the recommendations contained in the Hampton Review, have favoured a targeted industrial and regional approach. In the absence of sufficient legislative protection for workers in the temporary agency sector, it is important that the Inspectorate retains the duty to conduct inspections of individual workplaces and respond to reported cases of abuse.
- 4.6 The Hampton Review into decreasing the administrative burden on companies discourages the routine inspection element of the work of the EASI and in future the Inspectorate will be moving towards a targeted approach, focussing their work on regions and industries and co-ordinating their work with that of the Gangmasters Licensing Authority and departments such as HMRC (through the Joint Workplace Enforcement Pilot).

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<sup>4</sup> DTI Employment Agency Standards Inspectorate Report 2005/6, March 2007

<sup>5</sup> Ibid pg 11

- 4.7 Joint working between government departments to tackle the intersection of employment legislation breaches is welcomed, especially in cases where agencies have been found to have made deductions from wages that infringe minimum wage regulations or have made threats of deportation to migrant workers.
- 4.8 Trade unions often find themselves acting as a regulator or mediator in disputes concerning agency workers or temporary work agencies. Trade unions also have experience of the broader issues that are being tackled by the Joint Workplace Enforcement Pilot such as making interventions when employers breach health and safety regulations or avoid paying minimum wage rates.
- 4.9 Trade unions should have a role as a regulator of the temporary work sector either through taking part in the Joint Workplace Enforcement Pilot or inputting directly into the EAS Inspectorate.

### **Employment status and the principle of Equal Treatment**

- 5.1 Agency workers in the UK suffer and are denied rights due to the legal basis for the relationship between the worker and those for whom they work. The application of the law has increasingly encouraged agencies and employers to exploit the vulnerability of work seekers. The evidence for this is demonstrated by recent reported cases and the experience of those contemplating redress for ill treatment and discriminatory treatment. One such worker put in a grievance alleging that he was an employee and that he was entitled to cost of living pay rises awarded to those he had worked alongside for three years, but the response was termination of his contract and the law will not even allow him to argue a case before a tribunal. Senior judges have criticised the impact of the law and called for change, but are being ignored. (See below and appendix 2).
- 5.2 The UK law is characterised by a triangular relationship between the agency worker, the temporary work agency and a client employer. The 1973 Employment Agencies Act complicates matters by distinguishing between *employment agencies* which look for work on behalf of clients or for suitable applicants to fill vacancies for employers and *employment businesses* which employ workers who are then supplied to client companies. When an agency worker is 'employed' by an agency they can either be engaged under a contract for services or a contract of employment.
- 5.3 In most of the rest of Europe this triangular employment relationship is more clearly defined. The temporary agency worker is employed by the agency and is hired out to perform work assignments at a client firm.
- 5.4 The temporary work agency is considered to be the legal employer of temporary agency workers in most EU countries, the exception being Ireland where the courts have ruled that temporary agency workers are

employees of the user company and on these grounds have rights to equal pay and benefits.

- 5.5 In Belgium, agency workers have had a right to the same pay other terms and conditions of employment as permanent workers since 1987.
- 5.6 In the Netherlands, where there has otherwise been extensive reform and deregulation of the employment agencies sector, the 'equal wages clause' has remained.
- 5.7 Similarly in Finland, where licensing requirements were phased out in 1994, temporary workers have had the same pension rights, sick pay and annual holidays as permanent employees since 1998.
- 5.8 In France the pay of temporary agency workers is linked to what a post probationary permanent employee with equivalent qualifications would earn in the post. Agency workers in France are also eligible for a form of severance payment at the end of their assignments (10% of total gross pay) a compensation in lieu of paid holidays (a further 10% of total gross pay).
- 5.9 The distinction between workers and employees further serves to undermine the position of temporary agency workers. Under UK law temporary agency workers are not employees of either the employment business or the end-user. Instead their status is comparable with that of independent contractors.
- 5.10 In the UK temporary agency workers do not have rights to equal basic pay, overtime, sickness, maternity and holiday pay, pensions, annual leave, training or protection from unfair dismissal. In its Regulatory Impact Assessment on the EU Agency and Temporary Workers Directive the Government found that there is a 68% gap in pay between permanent and temporary workers.
- 5.11 This contrasts sharply with most of the rest of Europe where agency workers enjoy equal pay, benefits and conditions as comparable staff of the user company despite strictly being classified as employees of the temporary work agency.
- 5.12 It is recommended that the UK adopts the workings of the triangular employment relationship for temporary agency workers as practiced in other European states. This would involve defining temporary agency workers as employees of their agency but in possession of rights to equal treatment with comparable workers in the user undertaking to which they are assigned.
- 5.13 Since it is the client organisations which exercise predominant responsibility for and control over the work programme of the temporary agency worker it is only right that temporary workers in these organisations are in possession of rights commensurate with directly employed staff.

- 5.14 Further provision should be made for joint and several liability in relation to "three-way relationships" including sub-contracting and agency work. A simple expedient akin to that contained in the Employer's Liability (Defective Equipment) Act 1969 would be sufficient<sup>6</sup>

### **Permatemps, the replacement of core workers with agency staff and transfer fees**

- 6.1 The duration of temporary agency work in the UK is polarised. More than a third of temporary agency worker assignments run for less than three months but 1 in 5 assignments last between 6 months and a year. A further 25% of assignments are of one year or longer.<sup>7</sup>
- 6.2 Permatemps is a term used to describe agency workers who have been working for long periods with one employer, either on an open ended assignment or on successive short term contracts. These workers are often used to replace core staff who have moved on at a significantly lower cost to the employer.
- 6.3 In the Netherlands, the collective agreement covering the temporary agency work sector stipulates that after three and a half years a temporary agency worker has the right to a permanent contract.
- 6.4 In France, the average duration of temporary work assignments is 9.5 days.<sup>8</sup> This is largely because in France firms may not use temporary agency workers for a lengthy period or in posts that are linked to the normal and permanent activity of a company.
- 6.5 In Ireland, as in the UK, there are no limits on the duration of contracts or on the use of rolling contracts. The Irish authorities are, however, empowered to examine instances of repeat contracting to identify if an employer is evading their responsibilities under the unfair dismissal laws.
- 6.6 In the UK there are no provisions against the use of agency workers acting to fill permanent roles for indefinite periods. Unite Amicus Section is aware of a number of examples of temporary agency workers being used to fill permanent positions for indefinite periods. This practice enables employers to pay lower rates to workers performing the same duties as permanent staff without incurring costs

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<sup>6</sup>Employer's Liability (Defective Equipment) Act 1969.

1. (1) Where... (a) an employee suffers personal injury in the course of his employment in consequence of a defect in equipment provided by his employer for the purposes of the employer's business; and (b) the defect is attributable wholly or partly to the fault of a third party (whether identified or not), the injury shall be deemed to be also attributable to negligence on the part of the employer (whether or not he is liable in respect of the injury apart from this subsection), but without prejudice to the law relating to contributory negligence and to any remedy by way of contribution or in contract or otherwise which is available to the employer in respect of the injury.

<sup>7</sup> According to figures from the 2000 Labour Force Survey, quoted in Temporary agency work in the European Union, European Foundation for the Improvement of Living and Working Conditions, 2006

<sup>8</sup> *ibid*

such as pensions, staff training and development, maternity or redundancy pay.

- 6.7 The pay gap between permanent and temporary staff also exists for permatemps, despite the fact that many of these workers will have been with their companies for many years. Unite Amicus Section has received evidence to show that in addition to differences in the hourly rates paid to workers on different contracts, temporary workers receive less annual holiday pay, no sick pay and also miss out on the opportunity to work overtime.
- 6.8 Legislation is required to either place limits on the use of indefinite contracts where they undermine existing terms and conditions and are likely to discriminate against certain groups of workers and to proscribe time limits, after which temporary agency workers must be moved onto permanent contracts.
- 6.9 The Temporary Agency Workers (Prevention of Less Favourable Treatment) Bill contains provisions to make information on vacancies more readily available to agency workers and workers on short term contracts. These are important provisions that tackle the use of permatemps.
- 6.10 In particular there should be a ban on the imposition of 'transfer fees' when an agency worker takes up a permanent position with an employer. These fees are an unnecessary barrier to the movement of agency workers into permanent and secure employment and serve only to provide a lucrative source of revenue for agencies.

### **The supply of temporary agency workers to sites where official industrial action is taking place**

- 7.1 At present, the Conduct Regulations prevent employment agencies from supplying agency workers to carry out duties normally performed by a worker undertaking lawful industrial action or lawful strike action or to replace a worker who has been assigned to do the work normally performed by a worker undertaking lawful industrial action or lawful strike action.
- 7.2 However, if the employment agency has no knowledge of the dispute or has no reasonable grounds for knowing that the first worker is taking industrial action they cannot be held responsible for supplying labour to the employer.
- 7.3 The Regulations should be extended to impose a duty on the potential employer of agency workers to inform the agency of the industrial action and to make it unlawful for the employer to hire agency workers to carry out work normally done by workers involved in lawful industrial action.
- 7.4 If an agency has pre-existing contracts with employers before a strike is called, both the agency and the employer should ensure that the

agency workers supplied on these pre-existing contracts are not used to replace striking workers.

- 7.5 There should also be severe penalties issued against employers which hire agency workers to carry out work normally done by workers involved in lawful industrial action.
- 7.6 Temporary agency workers should also be able to exercise their rights to freedom of association, to information and consultation and participation without the threat of dismissal or contract termination.

### **Access to pension rights, training and career development**

- 8.1 As the market for temporary work expands to meet employer demands for flexibility, the number of temporary agency workers in the UK will further increase. Already a small but significant and growing number of workers are taking on successive temporary work assignments with no prospect of permanent or secure employment.
- 8.2 Temporary agency workers do not currently have equal rights to participate in occupational pension schemes and must rely on the basic state pension to provide for retirement. Supplementing the basic state pension is a considerable concern for temporary agency workers who do not move into permanent employment or are not able to access pension benefits available to their directly employed colleagues.
- 8.3 In Belgium, France, the Netherlands and Germany, employers and trade unions have reached agreements on providing more security in retirement for temporary agency workers by establishing pension schemes that complement the state provision.
- 8.4 The UK must act to protect retiring temporary agency workers from poverty. Government should work to establish a complementary pension scheme for the temporary agency work sector and give rights to temporary agency workers of equal access to occupational pension schemes.
- 8.5 Training, skills development and career progression for temporary agency workers must also be addressed. In other European countries (Belgium, France and the Netherlands) national social funds have been established by trade unions and employers to provide training programmes targeting skills gaps and subsidies to cover university tuition fees for the children of temporary agency workers.
- 8.6 In all European countries there are, however, problems for temporary workers in accessing training. The Fourth European Working Conditions Survey finds that only 23.4% of non permanent

employees receive training funded by their employer compared to 30.8% of permanent employees.<sup>9</sup>

- 8.7 Some governments have realised that temporary agency workers do not have the same opportunities to participate in long term skills development. In 1999 the Spanish Government introduced a law that requires temporary work agencies to invest 1% of their paybill on vocational training. In France a training levy of 2% is applied to temporary work agencies.
- 8.8 The UK aims to develop a high skill knowledge economy as a future comparative advantage. However, the widespread use of underdeveloped temporary agency workers is undermining this goal and eroding the UK's current skills base. Employers are currently unwilling to use their training budgets to upskill temporary workers and agencies are under no obligations to make training available to their clients.
- 8.9 Temporary agency work can also become a vulnerable employment trap whereby individuals experience cycles of unemployment alternating with periods of insecure temporary employment. The lack of opportunities to access training or advancement are harmful to the worker's long term career prospects, making it harder to move into secure, sustained employment.
- 8.10 More investment in training for temporary agency workers is a sensible investment for agencies, employers and the state. Agencies will be able to meet demands for skills and match more workers with vacancies, employers will be able to readily access larger numbers of skilled workers and with better opportunities for education and training workers themselves will have a greater possibility of securing permanent positions.
- 8.11 The UK should consider introducing measures to compel temporary work agencies to assign 1-2% of their budgets for skills development and training for temporary workers. On registering with an agency workers should undergo a training needs analysis and complete literacy and numeracy assessments. A bespoke training programme should follow for each worker.

### **Health and safety and wellbeing indicators for temporary agency workers**

- 9.1 A number of assumptions are made about the benefits to individuals of engaging in temporary agency work. Temporary agency work is believed to be useful to individuals who seek flexible working arrangements and hours, variety and work experience. Temporary

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<sup>9</sup> From the *Fourth European Working Conditions Survey*, European Foundation for the Improvement of Living and Working Conditions 2007

work can also act as a first step back into employment for work seekers.

- 9.2 In reality, diversity of work and flexibility are a lower priority for temporary agency workers than finding permanent employment. A survey by CIETT<sup>10</sup>, the private employment agencies federation, in 2002 looked at the motives of workers in the sector and found that the main reason for engaging in temporary agency work was the desire to find a permanent position. Many agency workers may have already attempted to find a permanent position, without success and rely on the temporary agency sector to provide quick access to an income.
- 9.3 The flexibility associated with temporary agency work is not always considered a benefit for those working in the sector. Temporary agency workers demonstrate lower levels of job satisfaction, job demands and job control. In addition temporary agency workers report low levels of autonomy at work.
- 9.4 It is assumed that temporary agency workers can control the amount and the kind of work they take on. This is not necessarily the case. Temporary agency workers on average have lower levels of educational attainment than permanent workers and therefore can only exercise limited choices about the assignments that they can perform.
- 9.5 In its report on *Temporary Work in the European Union* the European Foundation for the Improvement of Living and Working Conditions finds that “the main reasons behind the dissatisfaction of temporary agency workers are the insecurity inherent in this form of employment and the fact that temporary agency work may often be taken up involuntarily”.<sup>11</sup>
- 9.6 Temporary agency work is often associated with insecurity and low pay. In addition, agency workers are likely to have worse health than permanent workers, in some cases as a result of stress associated with continually moving between assignments and not being in receipt of a steady income.
- 9.7 Temporary agency workers are less likely to be well informed about health and safety risks in their workplace. Results from The Fourth European Working Conditions Survey show that “workers on indefinite contracts consider themselves to be better informed about risks than those with a less permanent attachment to their main job”.<sup>12</sup> According to this report, temporary workers are the least well informed group about workplace risks.

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<sup>10</sup> *The Rationale of Agency Work*, CIETT 2002

<sup>11</sup> From *Temporary Agency Work in the European Union*, European Foundation for the Improvement of Living and Working Conditions, 2006

<sup>12</sup> Pg 34 and fig 3.11, Fourth European Working Conditions Survey, 2007

## **Responses to Consultation Questions**

### **A. Charges for services and provisions of loans**

#### **Strengthening the Conduct Regulations – the right to withdraw**

- **Is there a need for a notice period?**
- **Is a notice period of 5 days adequate or would 10 days or longer be more appropriate?**
- **Should there be different notice periods for different services and if so, which services and for how long?**
- **Should there be different notice periods for different services and if so, which services and for how long?**

A.1. Unite Amicus Section is of the view that the proposed changes concerning the right to withdraw from services are insufficient and will confer only nominal rights to temporary agency workers. Furthermore, this consultation omits proposals to enforce rights and to impose sanctions on non compliant agencies and their subsidiaries.

A.2. In the Initial Regulatory Assessment subsequent to Success at Work (March 2006) the Government advocated the inclusion of a “right of withdrawal from any service after the work seeker has taken the job, subject to a notice period and requiring the worker not to suffer any detriment for exercising the right to withdraw.”

A.3. It will be difficult for a worker to prove that they have suffered detriment under the proposed amended regulations as they do not have a robust employment relationship with their agency or client employer. Agencies and the workers on their books are not subject to any mutuality of obligation. It is therefore possible that an agency worker could be denied future placements as a result of withdrawing from a service. This is because agencies are not under any obligation to successfully find assignments for workers.

A.4. The most effective means of ensuring that workers do not suffer detriment with regard to services is to establish a living wage for all workers so that individuals are not dependent on agencies or their subsidiaries for basic goods such as accommodation or transport. Until then there should be severe penalties against the victimisation of workers who withdraw from services. The notice period for withdrawing from a service should be set at no more than 5 days.

A.5. The consultation fails to address how these rights will be enforced. The Initial Regulatory Assessment for Success at Work (March 2006) identifies the Employment Agency Standards Inspectorate as the body responsible for investigating and prosecuting breaches of the legislation.

A.9. The EAS Inspectorate is under resourced and requires more staff to deal with the increase in infringements. Routine inspections of companies should also continue and should not be wholly replaced with the targeting of regions and industries.

### **Providing clearer guidance working through targeted intermediaries**

- **What would be the most appropriate groups to help circulate such information?**
- **Would you/your organisation be happy to distribute information?**

A.10 Success at Work (March 2006) stated that the Government “will explore whether it would be possible to deal with associated companies” (pg 18) who supply additional services such as transport, accommodation and safety equipment to temporary agency workers.

A.11 Success at Work (March 2006) also stated that the Government “will consider whether we could strengthen existing legislation by...preventing loan repayments being deducted from wages by a UK agency without the express consent of the work seeker”.

A.12 It is disappointing that this consultation proposes nothing more than supplying information to prospective migrant workers in their home countries. Managing the expectations of this group of workers with regard to costs and standards of living in the UK is undoubtedly a useful exercise and one that trade unions including Unite Amicus Section will wish to be involved in, however, this approach avoids the question of how to tackle associated companies and loan repayments here in the UK.

A.13 Unite Amicus Section recommends that funding is made available through channels such as the Union Modernisation Fund to enable trade unions to work in transnational partnerships with sister unions in other countries to inform potential migrant workers about life in the UK and forewarn of potential dangers. Trade unions can also have a role to play in regulating agencies and their associated companies to prevent the exploitation of agency workers. Unite Amicus Section is aware of, and has intervened in examples of agency workers falling victim to unscrupulous service providers.

A.14 In one case Unite Amicus Section intervened after receiving reports of migrant workers from Southern African ‘hot-bedding’. The workers had been supplied by an agency to a data processing firm in Northampton for data preparation work. The reports indicated that in their accommodation, up to 5 workers would share just one bed. The workers took turns at sleeping while those who shared the bed with them were out at work. In addition, the workers had no access to communal facilities such as kitchens, lounge areas or laundry. Unite Amicus Section intervened when it had been reported that workers were being bussed to and from work each day and that some individuals had been sleeping in the staff canteen.

- A.15 Unite Amicus Section approached the agency involved and the client employer with details of the workers' living conditions. The agency and the employer both stated that they were unaware of what was going on and began investigations. The reports of hot-bedding and the lack of facilities were confirmed and it was found that the workers had been taken in by landlords offering low rent. The workers' precarious status as migrants and temporary agency staff had made them easy targets for these landlords.
- A.16 In cases where employers and agencies are unaware of abuses by service providers union officials and reps are a useful source of information about what is going on at ground level. Unions should therefore have access to and input into bodies such as the EAS Inspectorate investigating abuse of agency workers.

## **B. Simplify information provisions for short term assignments**

- **Is 5 working days a reasonable definition of a short term contract?**
  - **Do you consider the period of notice should be longer or shorter and if so why?**
- B.1. Unite Amicus Section does not support the proposal to exclude short term assignments from the regulations concerning the provision of information. Currently the regulations enable all temporary agency workers and their client employers to receive essential information regarding assignments. The regulations as they stand outline clearly the information obligations on agencies and do not present an undue administrative burden.
- B.2. The effect of an exemption for short term assignments from the requirements to provide information would be to diminish existing legal rights for temporary agency workers. The exemption will also allow agencies to use the definition of a short term contract to place a temporary agency worker with the same client employer in successive placements and therefore avoid the information requirements.
- B.3. Disputes that are likely to result from the confusion over which assignments are considered short term will present more of an administrative burden for agencies, temporary agency workers and client employers than will be gained from removing the obligation to provide basic information.

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## Amicus section

### Appendix 1

#### **Unite Amicus Section Case Studies: The abuse and misuse of agency workers**

The following case studies serve to illustrate the points made in the Unite Amicus Section submission and detail instances of:

- Unequal pay, terms and conditions for temporary and agency workers
- The replacement of permanent staff with temporary and agency workers
- The undermining of union negotiated pay rates, terms and conditions by employers using temporary and agency staff
- Health and safety concerns reported by Unite Amicus Section officers and workplace representatives
- The erosion of workplace and industry skills levels through the use of under qualified agency workers
- Unfair deductions for substandard accommodation, transport and other costs
- Threats being made to agency staff and unsound management/supervisory practices
- The misuse of rolling and consecutive contracts as a means of denying employment rights and permanent positions to agency workers
- Differences in benefits available to temporary and permanent staff
- Abuse of migrant workers

#### **A&P Shipbuilders, Tyneside**

##### Pay rates

Permanent Staff: Basic rate of £15.21 an hour

Temporary agency workers: £10.20

In addition to earning substantially less basic pay, agency workers at A&P also lose out on overtime, cannot join the company pension scheme and can have their contracts terminated with one day's notice.

A&P have a 55% share holding in a Polish employment agency that supplies labour to its business. A major subcontractor, Taylor Marine Services also uses migrant labour in all grades excluding managers and supervisors.

#### **Appledore Shipbuilders Ltd, Devon**

The Matchtech Group, an agency based in Fareham supplies workers to this business. Unite Amicus Section is aware that agency workers at this site are being paid less than full time permanent employees despite doing exactly the same work. In some cases apprentices are being paid more than fully qualified skilled craftsmen at Appledore because they have transferred from DML, which pays better rates.

Unite Amicus Section is pursuing this issue and has balloted members at the site over possible industrial action over pay parity.

### **Astrum, Stanhope, Co. Durham**

Polish workers are supplied by an agency (BEM of Gateshead) to this workplace. Hourly rates for permanent and temporary workers are similar but agency workers miss out on piece rates of (on average) £2.35 and hour and overtime.

#### Pay rates

Permanent staff: £7.34 an hour basic pay plus piece rates and overtime are available  
Temporary agency workers: £7 an hour

In addition the agency concerned acts as landlord to the workers, taking rent directly from their pay. The workers are tied to contracts that ensure that they will have great difficulty in obtaining alternative work. An accommodation deposit must be paid back on a weekly basis and workers are threatened with eviction if their employment is terminated.

### **ATCO, Eastern England**

ATCO uses the agency Adecco to supply its 150 agency workers. The total company workforce is 511. Differences in rates of pay are substantial.

#### Pay rates

Permanent staff: £7.38  
Temporary agency workers: £5.62

Agency workers at ATCO are entitled to the statutory holiday entitlement of 20 days, in contrast to their permanently employed colleagues who have 25 days leave. Agency staff are often sent home without pay for days at a time if work demands are not sufficient.

### **British Nuclear Fuels**

BNF employs several thousand agency workers nationwide. In some cases temporary staff have been working for the company for almost ten years at the same site. While temporary and agency staff are expected to perform the same duties and are in the main treated the same as permanent employees, they do not receive the cost of living pay rises given to permanent staff or receive them at a significantly reduced amount.

One Unite Amicus Section member who had been working for BNF for 3 years submitted a grievance because of the non payment of pay rises. The member alleged that he was an employee and that he was therefore entitled to the same cost of living pay rises. Upon receiving notice of the grievance BNF told the member that the contract he was working on was ending and his employment was terminated.

The union sought to bring a claim on the member's behalf for unlawful deduction from wages and unfair dismissal in light of the decisions of the Court of Appeal in *Dacas v. Brook Street Bureau* and *Cable and Wireless v. Muscat*, however these rulings were subsequently narrowed by decisions of the EAT in *James v. Greenwich Council*, *Craigie v London Borough of Haringey* and *Heatherwood and Wexham Park Hospitals NHS Trust v. Kulubowila & others*. These rulings narrowed the scope for

the Tribunal to find that the member was an employee and he was therefore advised to withdraw the claim.

### **BMW, Hams Hall**

Temporary staff makes up more than two thirds of the 500 or more shop floor workers at this site. At BMW temporary workers are able to access overtime but basic pay is less and certain benefits are limited to permanent staff. Some agency staff are paid up to £5 an hour less than their equivalent permanently employed colleagues. One temporary worker at the plant alleges that in the canteen there are two price lists, one for permanent staff and another for temporary workers. Prices in the canteen are higher for temporary staff.

After 6 months temporary staff are eligible to apply for a permanent position at BMW, however, most candidates are told that they do not make the grade, despite performing exactly the same daily duties as permanent staff. Some temporary workers have over 5 years experience with the company.

### **Capita**

Capita call centres, like many other call centres, use large numbers of agency staff. Unite Amicus Section members who have transferred over to Capita through TUPE arrangements have witnessed the hiring and firing at will of agency workers.

One of the union's shop stewards reports that last year Capita recruited an additional 50% staff initially to cope with a peak in call volumes and then to respond to an anticipated increase in call volumes related to the launch of Microsoft Vista. As a result the call centre ended up very seriously overstaffed.

Capita decided to change shift patterns (shift patterns had previously been changed as recently as June 2006). The changes came into effect in April 2007 with little consultation and with only 7 weeks notice. Half of the agency staff informed Capita (with the support of their agency) that they refused to work the new shift patterns.

As a result, all of the agency staff used by Capita were dismissed with a week's notice. The shop steward at Capita believes that the company uses regular shift changes to frustrate agency workers and to force them into leaving the company.

### **Clays (part of St. Ives), Bungay, Suffolk.**

This company uses around 20 agency workers per week, supplied by the Infinity agency. The company normally applies the terms of the agreement reached between Unite Amicus Section and BPIF. Agency workers are entitled to 20 days holiday, compared to 26 days for permanent staff and do not have access to the company sick pay scheme.

#### Pay rates

Permanent staff: £6.39 an hour

Temporary agency workers: £5.59 an hour

The agency concerned is also involved in supplying workers with accommodation and transport. In some cases workers have to pay back considerable debts to the agency to cover their transportation costs from Hungary to the UK.

### **Coca Cola Enterprises Ltd, Wakefield**

Coca Cola has recently engaged an employment agency known as Right Direction UK specifically to recruit Polish workers to do 'quality checking' work at £7 per hour. This is significantly below the pay rates for equivalent workers organised by Unite Amicus Section on site. Agency workers also miss out on a 38% shift allowance.

The company is also making significant savings by avoiding paying for pension contributions, sick pay, profit sharing and holiday pay terms that have been negotiated by the union.

#### Pay rates

Permanent staff: £12.13 an hour

Temporary agency workers: £7

### **Construction (general)**

The national collective agreements negotiated between the employers associations and trade unions typically include but are not limited to:

- Overtime rates of time and a half and double time
- Call out, supervisory, and 2<sup>nd</sup> tier bonus payment provisions
- Guaranteed working weeks of 37.5 to 38 hours
- Industry welfare combined benefits schemes incorporating industry sick pay, life and accident insurance, occupational and medical health care, disability benefits and pension schemes
- Industry wide holiday pay provision
- 30 to 33 days paid holiday
- Personal Protective Equipment supplied
- Skills registration schemes supplied at no cost to the employee
- Access to both company and industry level grievance procedures

In contrast agency workers:

- Have no limit on their weekly working hours. The opt out of the Working Time Directive is often incorporated into the contract for services
- Receive contracts for zero hours
- Do not receive holiday pay or have it 'rolled up' into their hourly rate to disguise non payment
- Do not receive overtime premiums
- Are not eligible for welfare benefits
- Have minimal employment rights due to being falsely classed as 'self employed'

The growth of the use of short term agency labour has also caused a reduction in bone fide trainee and apprenticeship intakes.

Many migrant construction workers are paid well below accepted industry rates and will have hidden costs deducted from their pay for accommodation and transport.

### **CORUS Engineering Steels, Rotherham Works**

The agencies involved in supplying labour to this CORUS site are Cracrow, Premier and Kinetic. Agency employees are taken on for both general labour purposes and for specialist tasks.

Specialist and craft contractors are paid the same rates as CORUS craft workers but lose out on lucrative overtime payments, sick pay, shift premiums, holiday entitlement and Bank Holidays.

The Unite Amicus Section Steward at the site comments in his report ***“I have made a complaint that the contractors I work with on a regular basis should receive the same overtime remuneration as CORUS craft...if someone is doing the same jobs as me, he should be paid the same as me”***.

### **CORUS, Teeside**

Independent contractors and agency staff make up a significant element of the CORUS Teeside workforce. One of the main suppliers of agency labour, Marske Site Services, has been engaging craftsmen on zero hours and services only contracts. These workers are then treated as self employed workers and lose their employment rights.

It is estimated that over 100 workers at this company are classed as self employed. Many workers are unaware of their precarious status until they have been dismissed. Two riggers who had been employed on the CORUS site for almost 4 years were told that they did not qualify for statutory notice or redundancy payments due to the nature of their contracts.

The Unite Amicus Section representative at CORUS estimates that the use of these contracts mean that agency workers are paid £5,000 less than directly employed CORUS employees.

### **Dawn Pack, Llanelli**

Dawn Pac (Part of the Dawn Foods Group), is based in Llanelli South Wales. It is estimated that the number of agency workers engaged at the company is between 500 and 600

Dawn Pac use an agency called CSA who supply Polish migrant workers to fulfil production elements of their business. Over the past three years the demographic of workers at Dawn Pac has changed from being a predominantly local workforce to virtually all agency employees. There has been an attendant erosion of terms and conditions.

Agency workers at this company are employed on zero hour contracts, are paid the minimum wage, have travel and accommodation deducted from their wages (even if travel is not used) and they work excessive hours (often over 12-14 hours a day). Most of these agency workers do not receive overtime payments.

Most if not all of the agency workers do not receive any holiday pay as the agency restructured their shifts in line with their zero hour contract.

The agency houses the workers they supply in HMOs and in many of their buildings they "hot bed". This agency has been referred to the GLA for investigation.

### **Delphi Diesel Systems, Sudbury**

184 agency workers are employed on this site and are supplied by the Meridian Agency based in Birmingham.

All Agency workers are employed to do a semi-skilled job. The union believes that the company abuse them by promising a full-time contract if they perform every task the company ask of them, even if it is beyond the terms of their contract. The chances of an agency worker being taken on permanently are also threatened if he/she takes any time off due to sickness.

The Agency and company use a 'three strikes and you are out' policy on discipline. The union has a temporary workers agreement which limits the number of agency workers on site to 50 and compels the company to offer a full-time contract after 12 months served. The company now ignore this agreement and insist on engaging as many temporary workers as they like for as long as they like.

The union has had a failure to agree with the company and are now going to ballot the members on whether to take industrial action on this matter.

The only part of the agreement that the company continue honour is the clause that states agency workers get the same hourly rate and shift pay as the core hourly paid workforce. Agency staff are also able to receive overtime rates.

Unite Amicus Section at Sudbury consider that all Agency workers should have full time contracts as they are not doing seasonal work or helping with temporary increases in production. The work they are carrying out is equivalent to that done by a permanent worker.

### **Delphi Automotives, Luton**

The agency Adecco supplies around 40 workers to Delphi in Luton. These agency workers perform the same duties as directly employed staff but are paid around a third less and receive a third less holiday entitlement.

#### Pay rates

Permanent staff: £8.50 an hour on average

Temporary agency workers: £5.50 - £6 an hour

#### Holidays

Permanent staff: 35 days

Temporary agency workers: 20 days

Agency staff are also used to replace departing staff who would have been receiving union negotiated rates of pay and benefits. When Rover closed down, Delphi made a number of temporary contract workers redundant. These staff were replaced by agency workers on lesser terms and conditions.

Many agency and temporary workers have also worked at Delphi for over three years without becoming permanent. The company issues temporary staff with contracts of 3 or 6 months at a time with breaks of one to two weeks between each contract. This ensures that agency workers do not gain employment rights.

### **Finance Sector**

Unite Amicus Section representatives within the finance and banking sectors report that in many cases temporary agency workers will appear to be paid more (in terms of basic pay) than permanent staff. However, temporary staff do not enjoy the wider employment packages offered to permanent staff and receive no sick pay, no access to profit sharing or bonus schemes and fewer holidays.

The use of temporary staff can be particularly heavy in areas of high turnover such as call centres, processing centres. The use of 'try and buy' and 'temp to perm' schemes, that is, the use of permatemps, is commonplace.

There is a concern within the banking sector that there is a general move away from secure employment. One senior manager at Lloyds TSB stated to a union official that there was an aspiration to have 10% of staff on temporary contracts.

### **Firstan, Bar Hill, Cambridgeshire**

A number of Portuguese workers were discovered by the union to be working in the print finishing works at Firstan of Bar Hill, a well known packaging company in the area. The workers were all bussed in from Thetford. They were on considerably lower rates of pay than the permanent core staff.

The permanent workers and the Branch Organiser went about trying to organise the agency staff. There was one worker in particular who had some English and agreed to become an activist. The union discovered that the Portuguese workers were all living in lodgings that were connected to their employment as agency workers.

When the agency discovered that the Portuguese activist was organising people into the union and had set up meetings off site they told her she no longer had anywhere to live and that she had to go back to Portugal, as she was homeless.

All further organising attempts were then thwarted as the other agency workers became worried about their jobs and their lodgings.

### **GKN Autostructures, Hadley Telford**

GKN is a supplier to automotive companies such as Ford, Land Rover and Toyota. At the Telford site there are 650 core workers and an additional 250 agency workers. Agency workers do receive holiday pay but hourly rates are dramatically below those paid to permanent staff.

#### Pay rates

Permanent staff: £11 an hour plus £51 shift premium

Temporary agency workers: £7.18 an hour, £8.34 an hour for welders.

GKN own part of the Wynnwith agency that supplies workers to the Telford site. Ex senior GKN managers run the agency and it is used to supply workers at reduced rates, therefore undermining union negotiated pay rates.

Unite Amicus Section took on a successful unfair dismissal case at the site for an agency worker who suffered a heart attack at the age of 27 and was subsequently told over the phone that he was to be dismissed. The company believed they were able to dismiss and replace him because of the short notice periods applicable to agency workers. In this case the worker was dismissed with 2 days notice, with no right to appeal. The ensuing Employment Tribunal case was won on the basis of disability discrimination.

### **Harper Collins Publishers, Glasgow**

Last year 10 agency staff started in this company and Unite Amicus Section members were told that this was only short-term for a couple of weeks. Three months later there were 50 agency staff and 40 other employees were paid off as they were on union terms and conditions, which were considerably higher than the agency staff.

There are currently 105 agency workers at this company, most of who are bussed to the company from Liverpool. At its peak there was 120 agency staff.

### Pay rates

The rate for agency staff is £6.25 per hour or £6.75 on night shift. Harper Collins employees are on a day shift of £8.00 per hour, late shift of £8.00 per hour + £50 shift premium. The night shift rate is £8.00 per hour + £90 shift premium. There is an overtime rate of time and half minimum or double time after 4 hours and double time on a Sunday.

Agency workers enjoy none of these premiums.

The Harper Collins staff have been told there will be no more overtime available to them as the excess will be taken up by agency workers as they are considerably cheaper. The management have also stated to union officials that temporary workers are more productive. In turn, agency workers have been told they must be flexible between all shifts.

As a result of the above there has been a considerable reduction in earnings by the permanent staff and a reduction in permanent staff numbers.

### **Honda, Swindon**

Earlier this year Honda announced that due to growth in sales for the Honda Civic they would be recruiting an additional 700 employees at the Swindon manufacturing plant. 800 workers have since been taken on to meet demand. At the same time Unite Amicus Section discovered that Honda had changed its recruitment policy for new starters.

Previously new recruits were employed for a 6 month probationary period which could be extended if the new starter had not reached the expected standard. This policy resulted in a high turnover for Honda which was undesirable for the company.

Instead of tackling the problem of turnover Honda decided to have all new recruits supplied as temporary workers through an agency (Best Connection). Agency workers are also paid significantly less than Honda employees and have a third less holiday entitlement.

### Pay rates

Permanent staff: £9.62 an hour starter rate

Temporary agency workers: £7.92 an hour

### Holidays

Permanent staff: 33 days

Temporary agency workers: 20 days

Unite Amicus Section has been working through the Honda Company council in an effort to get the company to reconsider this policy.

### **Hotel workers, North Wales\***

Unite Amicus Section representatives have recently met with 8 Polish and Spanish migrant workers employed in a North Wales hotel who had been recruited by agencies specialising in bringing over migrant workers for the hospitality trade.

The Polish workers were each charged £600 by their agency to be able to come and work at the hotel and also had to pay their own travel expenses. The Spanish workers were charged €300 and were also expected to cover their own travel expenses.

The workers have been engaged for 12 months, with no contracts of employment and are paid minimum wage rates. During busy periods workers are expected to be flexible and often exceed normal shift hours, bringing their hourly rates below the minimum wage.

Accommodation is provided by the hotel which has raised a number of additional concerns. The hotel takes a deposit from each worker for their accommodation which can be arbitrarily withheld. Workers are expected to give 6 weeks notice if they intend to leave and if this is breached, the accommodation deposit is withheld. The hotel also claims the right to search the workers rooms at any time.

In some cases workers are only given a week's notice before termination of employment. The workers are in a very vulnerable position if they wish to lodge a grievance as they are dependent on the hotel for their accommodation.

\*Specific details of this case have been withheld to protect the workers involved who spoke to a Unite representative in confidence and in fear of losing their jobs and accommodation.

#### **Kiln 4 Construction Project, Castle Cement, Padeswood, Buckley**

Despite the best efforts of Unite Amicus Section to have this project come under the National Agreement for Engineering & Construction Industry (NAECI), the client, Castle Cement, a subsidiary of the Heidelberg Group (Germany), awarded the design elements to FL Schmidt (Denmark). They in turn appointed as managing contractor for steel erection, mechanical erection, ducting and E&I work, a Belgian contractor, Pirson Montage, who had previously worked for the Heidelberg Group.

Pirson Montage awarded the steel fabrication to Harry Peers Steelwork Ltd who was not awarded the final erection contract. UK contractors were given an opportunity to bid for the main erection packages, but none were successful.

During the NAECI facilitation meeting concerns were raised with regard to Health & Safety, namely:-

- Health & Safety standards
- Safety passports
- Language difficulties
- Equity of Pay and conditions of employment
- Employment of local craft persons

Pirson Montage UK is part of a large Belgian owned organisation and employed a large proportion of migrant labour, predominately German & Belgian.

The project at peak carried an estimated 70% migrant labour and 30% UK labour. After commencement of the Erection phase in January 2004, both Unite Amicus Section and GMB members expressed concerns and these were raised in a series of meetings with Pirson Montage. The issues raised concerned:

- Rates of pay: UK workers were being paid less than the National Agreement and migrant workers were engaged under local country of origin arrangements.
- The fact that there were no contracts of employment issued and that the company had failed to provide pay records.

- Health & Safety issues including PPE. There was also no structured Health & Safety committee.
- High turnover of skilled industry trained employees due to rates of pay and safety standards. Another major reason for the high turnover of UK labour was mainly due to no recognised structure including elected trade union and health and safety representatives.

The unions were successful in introducing better Health & Safety standards on site, however a Belgium Construction worker, Mr Marc Village, a 45 year old mechanical construction worker fell 35ft, from a 230ft-high platform, to his death.

The continued use throughout this project of agency and migrant labour and substandard health and safety measures undermined the very principles of NAECI.

### **Knorr Bremse, Bristol**

The temporary workers engaged at this motor components company are supplied directly by the local Job Centre Plus on a short term basis to cover increased business volumes. Temporary workers are unclear as to whether they are able to access permanent employment at the site due to variable business demands. The best hope that they have of gaining a permanent position is if they maintain high performance or are able to replace a full time employee who retires.

These workers are able to access overtime premiums, but at a reduced rate.

#### Pay rates

Permanent staff: £8.95 an hour

Temporary staff: £7 an hour

### **Network Rail**

Essential engineering work in safety critical areas of the Rail Network is increasingly being concentrated at night on the weekend periods.

The requirement for contractors to supply engineers just for the weekend coupled with Network Rail's actions in awarding and cancelling contracts, has led to Unite Amicus Section members being offered "Zero Hours" contracts.

Elec-Track Installations (ETI), a non-union contractor, with a depot in Middlewich, Cheshire, offered two Unite Amicus Section members such a contract after losing a Network Rail contract. The two members concerned both declined to accept and left the company under redundancy packages.

The impact of the above is made much worse when members who have been displaced or made redundant obtain full time re-employment outside (or inside) the Rail industry. They often work weekends for Network Rail, employed via agencies which rarely monitor the hours that the workers they use have accrued.

Often workers will have to perform hours beyond the Hidden recommendations and the Rail & Other Guided Systems regulations. The ROGS were introduced by the Office of the Rail Regulator, 2006 and deal with fatigue in safety critical areas.

One example is COYLE RAIL, an agency which is based in Kent, which employs rail workers on the weekend who are in full time employment Monday to Friday. This practice is widespread, according to Unite Amicus Section representatives.

Given the nature of the Rail industry and the safety critical areas such practice could cause a serious incident.

### **Norwich Union, Eastern England**

Full time agency workers at Norwich Union are paid lower rates for doing the same job as permanent staff. They are only entitled to 17 days holiday per year and do not get access to bonus schemes available to permanent staff. Overtime is offered to these workers but payments are often miscalculated or received late.

Agency worker pay is not included in any pay review schemes pursued by the company.

Furthermore, agency workers surveyed by Unite Amicus Section working for Norwich Union felt that they had not received adequate health and safety or fire procedures training.

There have also been reports of permanent workers who leave being replaced by permatemps who are engaged for long periods of time without prospects of gaining a permanent contract. Agency workers are generally not informed about the duration of their contracts.

### **Perkins Engines, Eastern England**

In the early nineties Perkins Engines, now part of Caterpillar, reached an agreement with the union about the use of agency workers. At that time it was agreed that the company could use up to 48 Temporary workers for a 6 month period. The employer stated that they would be paying the workers a training rate for that period and if there was a need to extend the period the temporary workers would stay on this rate.

The situation now is that the use of temporary labour is prolific with periods in which over 500 agency staff are employed through the Parkhouse agency. Currently there are 950 permanent staff at Perkins and a further 450 agency workers.

Temporary workers are employed with minimum holiday entitlements, no pension and no sick pay. Some agency staff have worked at the company for over 5 years. The union has had some success over the years in helping temporary workers achieve permanent status but this has mainly been through early retirement packages.

On the company's Eastfield site there are other businesses within Caterpillar such as Caterpillar Logistics and Perkins/Shiburu, both of which employ workers through Parkhouse. At both sites agency workers make up a third of the workforce (50 out of 150 workers on each site). These workers are subject to the same pay, terms and conditions as the Perkins agency staff.

Complaints have been made by Unite Amicus Section over a number of years and there have been some success in achieving retirement/recruitment packages. There have been other pressures arising from the fact that the number of available temporary workers in Peterborough has been decreasing. This is because workers have been leaving companies when they realise they cannot not get a permanent job and move on elsewhere.

The union argued that this situation was unsustainable as the company were wasting significant amounts of money on training. The company did take this on board and at

one point recruited a further 100 agency workers over a 3 month period, many of whom have been attracted from Eastern Europe.

The Unite Amicus Section representative reports that in the last year two serious issues have come to light. Firstly, Perkins refused to pay temporary workers the annual increase (they did after pressure some 3 months after). Secondly, Cat logistics are refusing to pay the agreed pay rise of 5.1% which is the second part of a 2 year deal, arguing that the current rate they receive is competitive for temp workers.

### **Polestar Varnicoat, Polestar Chantry and Polestar Petty**

Polestar is the main client of the New Recruits employment agency. Agency workers are often offered up to 60 hours work a week which is far in excess of permanent staff hours. Permanent staff are contracted to work 36 hours per week. In contrast, temporary agency staff receive zero hours contracts with no minimum notice period. Rates of pay are also vastly different for temporary and permanent staff.

#### Pay rates

Permanent staff: £10.39 an hour on average

Temporary agency workers: £5.35 an hour or £6 an hour nightshift

Permanent staff are entitled to 13 weeks full sick pay followed by 13 weeks at half pay and are able to take part in the pension scheme. Temporary staff have no such cover but the company does offer an insurance scheme priced at £2.50 per week. This gives cover of up to £100,000 in the event of death or loss of limb while at work.

Union Learning Representatives at Polestar have been very proactive in monitoring the training that new temporary workers receive. Induction sessions have been very poorly run despite assurances from the company that they would be of a high quality.

Union representatives on site report that there have been some serious accidents involving agency workers. In one case a temporary worker caught his hand in a strapper machine. After the worker sought legal advice he was sacked by his agency without pay or compensation. This worker has not been able to find work since.

### **Public Sector: Leicestershire County and Rutland PCT**

A number of Health Visitors are on rolling temporary contracts which are for lengthy periods. Some RGNs have been on temporary contracts for over 18 months. Due to job freezes and vacancy control within the PCT these jobs are not being declared permanent.

### **Quebecor World, Corby, Northants**

Quebecor World employed over 800 workers at its height. Over the years the company has introduced temps and casuals, mainly in the unskilled areas and the use of temporary staff became more widespread.

As Quebecor's fortunes came and went many full time permanent positions were lost to redundancy but a nucleus of temps always remained or soon returned. Quebecor, have, for a number of years, employed only one agency, Actrion, who operate all over the country in the printing industry. This company has an office on the Quebecor site and works very closely with the Quebecor management to organise the supply of labour.

The supplied agency workers are reluctant to join the union or question their terms and conditions for fear of not being asked to work. Not only do they suffer worse terms and conditions but they are often bullied and abused.

#### Pay rates

At a recent visit to the company the Unite Amicus Section officer established that Actrion supply staff in most, if not all, production areas. Temps work on all of the shift patterns including weekends. If they work 12 hour days they earn £6.80 an hour. This is £2.40 an hour lower than the very lowest comparable rate of £9.20 an hour. If they work nights it's even worse – they get only 20p an hour more. Agency workers receive no sick pay or pension contributions and only statutory holiday entitlement.

Whilst the number of permanent employees at the company has halved in recent years, the number of temporary workers has remained stable and increased drastically at peak times. Full-timers feel undermined by the use of this labour both financially and industrially. Now there are around ninety temps at Quebecor.

The Unite Amicus Section officer who deals with this site comments that ***“Without legislation it has proved impossible to stop the march of this kind of employment practice. It undermines the permanent employee and exploits the temp. The unscrupulous employers and agencies are the only winners”.***

#### **Rolls-Royce Plc, Sunderland**

Rolls Royce in Sunderland employs 22 agency workers, through a number of agencies and has a total workforce of 450.

There are a number of good practices established by this employer for the treatment of agency workers. Agency workers at this site are given an initial 12 month contract with the prospect of permanent employment once this has expired. Workers are engaged on the same rates of pay and on the same shift system as permanent employees.

However, agency workers do not receive sick pay or access to the company pension scheme. The Unite Amicus Section officer responsible for the site also reports that the ***“biggest abuse is management asking or telling a person to do something that is outside their contractual terms and then saying, “Do you want a job here?”. We have raised this issue with management on a number of occasions and it does seem to have reduced but there is little else we can do...”***

#### **Sheffield Incinerator**

At the Sheffield Incinerator, a French contractor, CNIM, appointed a Belgian structural steel contractor who in turn appointed a South Yorkshire based sub contractor, Elrod Construction, to supply workers. These workers were engaged on a CIS4/PAYE basis on a maximum hourly rate of £9.50 an hour, below agreed industry rates.

Unite Amicus Section was successful in a Whistle Blowing Employment Tribunal Claim for one of the union's members at the site.

CNIM also appointed a sister company, MES Engineering, to employ 80-100 workers for 15-18 months on a PAYE basis on £9.00 plus £40 per night lodge allowance, again below nationally agreed rates. The union successfully took on nearly 50 claims for grievances and loss of pay for these workers.

### **Sheffield Forgemasters Engineering, Tinsley, Sheffield.**

The Unite Amicus Section steward at SFG Ltd reports that in addition to discrepancies in pay, the need to accrue holidays and no access to overtime, there are serious concerns about health and safety on site. A number of Polish agency workers are currently employed, some of whom speak fluent English. The other workers have difficulty in understanding essential health and safety information communicated in training sessions. The shop steward is currently pursuing the issue.

#### Pay rates

Permanent staff: £9.40 an hour, 37 hour week

Temporary agency workers: £7.50 an hour, 40 hour week

#### Holidays

Permanent staff: 33 days/year

Temporary agency workers: 20 days accrued at 1.66 days/month

### **St Ives, Andover**

Unite Amicus Section has on site union recognition with this company and operates under a collective agreement. Out of a workforce of 108, an estimated 25 workers (although this varies with demand) are agency workers supplied by Quick Pac Ltd.

The workplace representatives report that when agency workers were originally taken on they were expected to work 15 hour days. After complaints were made by union reps, the employer reduced this to 12 hours. The agency workers were also bussed in and out from North London which is an additional 3 hour journey. When working on successive days and following shifts with bus journeys, those workers who could speak English often reported feeling ill and exhausted.

There are also reports from workplace representatives of degrading practices. When agency workers first arrived at the Andover site they were given a plastic cup. Every time an individual worker completed a bundle, a dried pea was put in the cup. Every so often a supervisor would come along, count the number of dried peas in the worker's cup and demand that they work faster.

Workplace representatives also raised a number of health and safety concerns. The agency workers being used by the employer in the main did not have a sufficient grasp of English to understand fire drill procedures or other health and safety information.

### **TBS – Random House**

TBS is a book distribution company that is owned by Random House, which is in turn part of the Bertelsmann group. At this company there are significant differences in pay rates between permanent and temporary staff:

#### Pay rates

Permanent staff: £8 an hour basic rate and £12 an hour night shift

Temporary agency workers: £5.45 basic rate and £6.50 an hour night shift

Night shift pay for temporary workers is nearly half of that paid to permanent staff. As permanent staff have left the company they have not been replaced. Workers engaged on temporary contracts are used instead. Up to 50 permanent workers have been replaced in this way, saving the company from paying unionised rates.

Over the last 5 years the union has been trying to reach a recruitment agreement whereby the company commits to replacing all departing staff.

In addition agency staff receive irregular and unreliable income. This is because they will often be called in to work a full day and then sent home if work slows down. Agency workers are also excluded from Christmas bonuses and profit sharing schemes. They are also expected to buy their own safety shoes for warehouse working, even though it is company policy to wear them.

### **Trinity Mirror Printing Newcastle Ltd**

The majority of agency staff supplied to TMP are African migrant workers. Agency workers are engaged on a casual basis and there is often no continuity of staff numbers from one week to the next. Health and safety representatives on site have raised a number of concerns including the fact that agency workers receive no induction or health and safety training when they begin work. Agency workers also have to supply their own PPE and some have been working without proper safety footwear.

Many of the agency workers used by TMP are holding down more than one job or are working to support their studies. In some cases agency workers will cover a nightshift after having been studying during the day or working elsewhere.

### **Trinity Mirror Printing, Watford**

Actrion supplies agency workers to Trinity Mirror Printing in Watford. The rates of pay are similar to those for workers at Quebecor (see earlier case study).

At TMP there has been investment in new presses to compete with the new News International plant nearby. As a consequence people are being retrained on the new equipment. Workers who are surplus to requirements and without the skills may face compulsory redundancy.

Permanent employees had expected to be given priority for training but this has not necessarily been the case. Permanent, skilled workers have had to carry on running existing equipment to produce newspapers while unskilled temporary workers and casuals have been offered training opportunities on the new machines. The use of casual labour in this case is effectively undermining the long term job security of permanent unionised employees.

There have also been a number of health and safety concerns principally regarding language difficulties as the number of Eastern European workers has increased.

In many instances it would appear that some employers and middle managers delight in playing these groups off against each other. The Unite Amicus Section officer responsible for this site has been told that some members have been told 'what to do' if they don't like it (the use of agency workers) and that temps and casuals are not only cheaper and also work harder.

### **Unipart Logistics, Broughton**

Unipart Logistics is a supplier to Airbus UK. Out of a workforce of 160, an estimated 50 workers are supplied on agency contracts. The majority of these agency workers are from Poland and housed in accommodation supplied by the Director of the agency.

The Unite Amicus Section Regional Officer presiding over this site believes that while these workers “work the same hours and many have been taken into (the) core (workforce), they are taken advantage of”.

### **Unisys, Northampton.**

A number of Southern African workers had recently been supplied by the Right4Staff Agency for data processing work in Unisys. Reports made to the Unite Amicus Section representative indicated that in their accommodation, up to 5 workers would share just one bed.

The workers took turns at sleeping while those who shared the bed with them were out at work. In addition, the workers had no access to communal facilities such as kitchens, lounge areas or laundry. Amicus intervened when it had been reported that workers were being bussed to and from work each day and that some individuals had been sleeping in the staff canteen.

Amicus approached Right4Staff and Unisys with details of the workers’ living conditions. The agency and the employer both stated that they were unaware of what was going on and began investigating.

The reports of hot-bedding and the lack of facilities were confirmed and it was found that the workers had been taken in by landlords offering low rent. The Unite Amicus Section representative believes that the workers’ precarious status as migrants and temporary agency staff had made them easy targets for these landlords.

### **WH Smith, Swindon**

This site is a Distribution Centre for the WH Smith. 129 agency staff are currently employed at the centre and this number can rise to well over 300 during peak times. There are substantial discrepancies in rates paid to permanent and temporary workers.

#### Pay Rates

Permanent staff: £7.90

Temporary agency staff: £5.90

#### Overtime

Permanent Staff: Time and a half or double time as appropriate

Temporary agency workers: No premium for overtime

In addition the Unite Amicus Section representative for this site adds that ***“Some of these agency staff have over 4 years service with the company. Where we have temps employed by the company, we have always been able to secure permanent terms and conditions after the initial training period, but with agencies, there no regulation, no point of contact, and no ability for us to deal with all of the above issues”.***

### **William Gibbons and Sons, Willenhall**

This company is in the printing industry. Over 40 agency workers are used on site and are of a number of nationalities. Most agency staff are either Polish or French speaking North African migrants.

While some temporary staff have been taken on permanently, many have been working for the company for over a year, doing the same job as union staff, but on

lower rates of pay. The Unite Amicus Section representative at the site suspects that on some occasions, workers have been paid less than the minimum wage.

The Unite representative however, also finds that it can be difficult to prove that abuses are taking place: “agency workers are scared and have been told if they speak about their terms and conditions they will be fired plus they do not mix with permanent staff”.

Polish workers at the company are supplied by an agency that is run by an ex employee of William Gibbons. The union understands that workers are recruited in Poland and then charged large sums of money for transit to the UK. Polish workers are housed in agency managed accommodation and are brought to the worksite in vans each day. Many agency workers work 12 hour shifts up to 5 or 6 days per week.

## Appendix 2

### Evidence of the abuse of agency workers from the cases.

#### 1. Judicial calls for urgent legislative protection

In the UK in particular the problem is such that workers may never be sure, even after obtaining legal advice from an expert in the field, whether they are employed by an agency, or sub-contractor, by the end user of their services, or none of them. In *Johnson v Montgomery Underwood* in 2001<sup>13</sup> the Court of Appeal asked Parliament to intervene.

In December 2006, in another case the President of the UK Employment Appeal Tribunal said: ***“We should not leave this case without repeating the observations made by many courts in the past that many agency workers are highly vulnerable and need to be protected from the abuse of economic power by the end users...A careful analysis of both the problems and the solutions, with legislative protection where necessary, is urgently required.”***<sup>14</sup>

#### 2. Cases demonstrating abuse by businesses and the vulnerability of workers in a practical setting – four appeal cases in 6 months

The most recent case we are aware of encapsulates the problem.

#### **Heatherwood & Wexham Park Hospitals NHS Trust v Kulubowila & ors UKEAT/0633/06/LA 29 March 2007**

Mr. Kulubowila is a medical electronic equipment maintenance technician/engineer. He learned from a friend, employed by the Trust, that if he wished, as he did, to work at Wexham Park Hospital he should go through an agency, Short Term, to whom he submitted his CV. Without meeting anyone at Short Term he was directed by telephone to report for work at the hospital, which is maintained by the Trust. He did so, reporting to a Mr Hill who was his “line manager” and an employee of the Trust. He commenced work on 10 October 2003. In November 2003 he signed a written contract with Short Term headed Terms of Engagement of Temporary Workers, which required him to co-operate with the Trust’s staff and accept the direction, supervision and instruction of any responsible person in the Trusts organisation.

In early 2006 the Trust ran short of money in its annual budget. It did not pay Short Term for the Claimant’s services. Accordingly Short Term withdrew his services and the assignment ended on 2 February 2006. His application to the an employment tribunal succeeded, but on appeal the Judge concluded he was employed by no-one and the tribunal did not even have jurisdiction to hear his case.

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<sup>13</sup> *Johnson v Montgomery Underwood* [2001] IRLR 269

<sup>14</sup> *James v Greenwich Council* EAT 18 Dec 2006 UKEAT/0006/06 paragraph 61

The other three in the last 6 months are:

Astbury v Gist (UKEAT/0619/06) 28 March 2007

Craigie v LB of Haringey (UKEAT/0556/06/JOJ) 12 January 2007.

James v Greenwich Borough Council (UKEAT/0006/06) 18 December 2006

There are numerous others in the recent past <sup>15</sup>

### **3. The tip of the iceberg**

These reported cases are the smallest part of the tip of an iceberg in terms of numbers of individuals facing problems.

Take this recent report from one of our lawyers:

**“RJ had a claim in the Manchester Tribunal (case number 2405170/2006). He worked for British Nuclear Fuels. He and his colleagues had worked for them at the same site for several years. He had worked there 3 years but some of his colleagues, who had also started work via an agency, had worked there almost 10 years. They were effectively treated the same in every way as employees. However the employees received a cost of living pay rise every year which was around the rate of inflation. The agency workers either did not receive any increase, or received a significantly reduced amount.**

**When the client put in a grievance alleging that he was an employee and that he was entitled to the same cost of living pay rises, he was told that the contract he was working on was ending and his employment was terminated.**

**Although initially I brought a claim on his behalf for Unlawful Deduction from Wages and Unfair Dismissal in light of the decisions of the Court of Appeal in *Dacas v Brook Street Bureau*, and *Cable and Wireless v Muscat*, unfortunately these were followed by the decisions of the EAT in *James v Greenwich Council*, *Craigie v London Borough of Haringey* and *Heatherwood and Wexham Park Hospitals NHS Trust v Kulubowilia & Others*, the combined effect of which so narrowed the scope for the Tribunal to find that the client was an employee that I had to advise him to withdraw the claim prior to a Pre Hearing Review to decide his employee status.**

**I am told that employer employs several thousand agency workers across the country, who are in a similar position to that of my client.”**

Of course, now those in a position like RJ will be advised not to lodge an employment tribunal application at all.

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<sup>15</sup> RNLI v Bushaway [2005] UKEAT 0719/04, and Bunce v Potsworth Ltd (t/a Skyblue) [2005] IRLR 557 to name but two.