



Relaunching Collective Bargaining Coverage in Outsourced Services

RECOVER COUNTRY REPORT

Outsourcing and Collective Bargaining in the UK

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SECTION I

OUTSOURCING, COLLECTIVE BARGAINING COVERAGE AND FACILITY MANAGEMENT COMPANIES IN THE UK

The United Kingdom (UK) is often portrayed as a “pioneer” in outsourcing activities in both the private and public sector in Europe not least because systematic outsourcing activities have a long history and are also very common (e.g. de Freytas-Tamura, 2018; Kelly, 2013). One undoubted reason for this is the “liberal” nature of the British industrial relations system, which in its current form dates back to the advent of Thatcherism in the late 1970s (e.g. Brandl and Traxler, 2011; Crouch, 1993; Edwards *et al.*, 1998). This industrial relations system facilitates outsourcing because it is usually based on voluntary collective bargaining between trade unions and management at the company level. As traditional in liberal countries, the state does not only not intervene or become involved in collective bargaining as seen for example in other European countries (e.g. France) but also does not regulate or guide collective bargaining.

As will be discussed in the report, these characteristics of the industrial relations system certainly facilitate outsourcing and in particular have the effect that employees who were covered by a collective agreement prior to outsourcing often lose the protection of the collective agreement soon after their activity was outsourced. Thus the nature of the collective bargaining system in general and in particular the structure and institutional characteristics of collective bargaining, which is predominantly voluntary and characterised by a “collective laissez fair philosophy”, is certainly a factor which, compared to many other countries, facilitates outsourcing which has become widespread both in the private and public sector in the UK (e.g. BEIS, 2018; de Freytas-Tamura, 2018; Eurofound, 2015a; European Commission, 2015; Ewing and Hendy, 2017; TUC, 2015). However, one major trend in the past two decades is the increasing outsourcing of public sector activities to private sector companies. Therefore in this report, two of our case studies will focus explicitly and in detail on outsourcing of public

services to private sector companies and the implications for the collective bargaining coverage of these employees.

In this report, in section 1, we first provide an overview of the nature and characteristics of the British collective bargaining system in order to outline the institutional and organisational structure in which outsourcing takes place and what hinders or facilitates the coverage of employees in outsourced activities under a collective agreement. Within this outline we also present the latest empirical information on the role and relevance of collective bargaining and outsourcing in the UK as well as discuss relevant details on the *facility management* (FM) sector, i.e. on facility management companies (FMC), which will be discussed prominently in the report as this sector is a prime example of outsourced activities and many companies within this sector also make use of outsourcing. In the following section 2, we present the results of our case studies in which we focus on the *Adult Social Care* and *Prisons sectors* as well as on an individual FMC. For all three case studies not only relevant background information including the size and role of the sector within the British economy is given, but also, of course, the characteristics and problems regarding the coverage of employees working in these sectors or companies under a collective agreement. Finally, in section 3, we not only summarize our results but also provide a reflection and draw our conclusions on the option we identified in our study which would enable employees working in companies and sectors which are affected by outsourcing to cover their wages and working conditions by a collective agreement.

1. COLLECTIVE BARGAINING COVERAGE

In the UK, the predominant arena for collective bargaining is the company and representatives of the employee side, i.e. trade unions, negotiate over pay and all other working conditions (e.g. working time, vocational training, remuneration forms and practices, etc.) with the employer side, i.e. the management (e.g. Bechter *et al.*, 2012; European Commission, 2015). This means that the predominant level at which collective bargaining takes place is the company level even though there are some differences

between the private and public sector with respect to the level at which collective bargaining takes place and thus the encompassment and range of collective agreements. While collective bargaining over pay and all other working conditions in the private sector takes place almost exclusively at the company level, sector-level agreements exist in the public sector (Eurofound, 2018). Also, in some parts of the public sector, pay is determined by so-called pay review bodies which make recommendations about pay adjustments (e.g. on yearly intervals) to the government which normally accepts the recommendations.

The fact that collective bargaining is bound to voluntary negotiations between the management and trade unions implies that one side, i.e. especially the employer side, needs to be convinced that there is a benefit to the negotiation compared to making unilateral decisions and/or needs is faced by some pressure (e.g. Sullivan, 2010). This implies that in the UK the management engages in collective bargaining only if a trade union is able to bring the management to the bargaining table. As regards the latter, trade unions in the UK are usually only able to bring the company to engage in collective bargaining if the trade union has enough support from employees in the company (e.g. Clegg, 1976). Thus the greater the trade union density, the more likely the incidence of a collective agreement which then usually affects all employees within the firm or bargaining unit, regardless of whether they are a member of the union or not. Thus, in contrast to other countries in which collective agreements are extended not only to other employees in a company but even beyond, collective bargaining coverage in the UK is fundamentally dependent upon trade union density, which we will argue in the following report plays a pivotal role for (re)covering employees in outsourced services (e.g. Vernon, 2006).

Against the background that trade union membership, i.e. trade union density, is not only pivotal for employees which are (and were) faced with outsourcing but for employees in the UK in general in order to be able to enjoy the benefits of collective agreements, we briefly outline the British trade union system and (recent) developments in trade union density before we proceed to characteristics of the British collective bargaining system.

The current state of Trade Unions in the UK

In the UK, regardless of sector (i.e. private or public) as well as its exposure to outsourcing, trade union membership is voluntary and any closed shop trade union system is illegal in the UK since the Employment Act of 1990 (Eurofound, 2018). The latest data available from BEIS (2018) shows that total trade union membership stood at 6.2 million in 2017 with overall density standing at 23.2%. This was a slight rise in membership levels compared to 2016, but is explained by a significant increase in the overall number of employees this year. The previous year, i.e. 2016, the level of overall trade union members decreased sharply by 275,000 within one year, which is one of the largest falls ever. It should be noted that union density has been in decline for some time, from a peak of 56.3%, or over 13 million employees, in 1979 (BEIS, 2018).

Union density varies considerably by sector. In the UK, 83.4% of UK employees now work in private companies and 16.6% of employees in the public sector, the public sector being defined as central government, local government and public corporations (ONS, 2018). Public sector employment is also in decline, making up under 20% of all employment now, the lowest level for the last 40 years (Cribb *et al.*, 2014) whilst employment numbers in the private sector grow (ONS, 2018).

According to BEIS (2018) the figures for 2017 indicate trade union density in the private sector at 13.5%, falling slightly from 13.9% in 2015 and 14.2% in 2014 as a reflection of employment growth outpacing membership growth. In contrast, in the public sector trade union membership levels fell by 51,000 to 3.54 million, maintaining a long-term trend of decline. Trade union density in the public sector therefore fell from 52.7% to 51.8% in 2017. Regardless of the ups and downs in recent years it is striking that the difference in the density of union membership is consistently above 50%, i.e. at 51.8% in 2017. Thus the differences in trade union density between the private and public sector are substantial.

There are further differences in the degree of unionization with respect to personal and job characteristics. For example, female employees are more likely to join a trade union. According to the latest figures by BEIS (2018) the proportion of female employees who

joined a trade union is around 25.6% while the proportion of male employees is only 20.9%. In addition, a higher proportion (i.e. 24.6%) of UK born employees were members of a trade union compared with employees who were born outside the UK (i.e. 16.3%). Also, employees in professional occupations are more likely to become a member of a trade union than others as density in professional occupations accounts for 37.9% of employees in 2018 but only 20.8% of employees in the UK work in these occupations. Employees in large workplaces, i.e. with more than 50 employees, are also more likely to be in a trade union. As in many other Western European countries membership tends to be skewed to older employees, with 39.8% of members over 50 although this age group only accounts for 28.8% of employees. In summary, trade union membership is in long-term decline in the UK with a much lower percentage of employees in the private sector in a trade union (13.5%) against the public sector (51.8%).

Unions have adopted different strategies to address this membership challenge. The biggest unions in the UK, such as Unite, the largest with 1.4 million members, (Unite, 2018) or Unison with 1.3 million members (Unison, 2018) have retained membership and union density by a series of amalgamations with other unions. Unite for instance, is the product of amalgamations between Amicus and the Transport and General Workers Union in 2007, Amicus being a large private sector union, and itself the result of a merger between the manufacturing, science and finance union and the Amalgamated Engineering and Electrical Union (Unite, 2018). Other trade unions such as Community, which is the largest union in the outsourced part of the justice sector (i.e. prisons, immigrations centres, and tagging of prisoners), was traditionally a union for steel industry workers, but following large-scale redundancies in this sector has re-purposed itself with amalgamations with other Midlands-based unions such as carpet-weavers (Community, 2018). Community also has an ambitious programme to recruit self-employed workers, pairing with a co-working co-operative to provide additional benefits such as desk-space. Increasingly therefore UK trade unions have moved away from particular occupational or sectoral demarcations to retain membership numbers, reflecting sectoral blurring in the economy.

Trade unions in the UK have also faced a number of legislative changes in recent years

which have affected their ability to handle the effects of outsourcing on their members, particularly the Trade Union Act (2016) and the removal of facility time (2012). Moreover, it is noticeable that trade union or employee views and role were not sought in government reviews on working practices such as the Taylor Review (2017) which addressed employment rights, particularly for the self-employed, and the increasing issue of non-compliance with minimum wage legislation or holiday pay.

However, given that trade union membership is key for collective bargaining in the UK and that there are substantial differences in trade union density across sectors as well as personal and job characteristics not only differences in collective bargaining coverage but also differences in outsourcing can be expected which will be explored in this report.

1.1 Main characteristics of the collective bargaining structure in the UK

In line with the voluntarist nature of the British industrial relations system, collective bargaining is voluntary and consequently collective agreements are voluntary instruments for the regulation of wages and working conditions of employees. However, once the management recognize a trade union and engages with them in collective bargaining, the outcome of the bargaining process, i.e. an agreement over the terms and conditions of wages and working conditions, are then (normally) incorporated into individual contracts of employment that are then legally enforceable (e.g. Eurofound, 2018). Thus, whether any outsourced activities are covered (or not) by a collective agreement depends upon the range and scope of any voluntary collective agreement which already existed and/or upon the voluntary willingness to engage in collective bargaining for the outsourced activity independent of the level at which collective bargaining takes place.

1.1.1. Predominant level of collective bargaining and recent trends

As outlined earlier, since the early 1980s, the most common form of collective bargaining is between a trade union and the management of a company, i.e. collective bargaining

in the UK is predominantly concentrated at company level (e.g. Eurofound, 2018). Even though higher level collective agreements exist, especially in some parts of the public sector, sectoral- or even national-level bargaining is the lowest in Europe and much less common compared to other European countries such as for example in Southern European countries such as Italy and Spain as well as compared to Continental European countries such as for example Austria and Germany (e.g. European Commission, 2015).

The fact that collective agreements refer (predominantly) to the company level and because collective bargaining is completely based on a voluntary interaction between trade unions and the management with little support from the state, implies that collective agreements are not encompassing in the sense that a large number of companies or even a whole sector is covered but rather that the coverage is perforated and relatively low from a national perspective.

1.2 Collective bargaining coverage

1.2.1. Coverage levels and evolution at national level

Collective bargaining coverage, defined as the proportion of employees whose pay and working conditions are affected by a collective agreement between a trade union and the management or by an employers' organisation, was 26% in 2017 (BEIS, 2018) continuing a long-term trend of decline in UK collective bargaining coverage. These are the lowest levels of collective bargaining coverage since the 1960s, i.e. the lowest since systematic statistics on collective bargaining coverage became available.

However, this decline follows the national trend in declining collective bargaining coverage: peaking in the early 1980s with coverage of around 80% of employees, followed by a sharp decline until the mid-1990s when coverage reached around 35% which was then followed by a slower decline which has led to the lowest level yet, of around 26%. Compared with other countries, collective bargaining coverage is relatively low as in countries such as Austria and Belgium almost all employees are covered by a collective agreement but coverage is also significantly higher in countries such as France (around 90%), Italy (around 80%) and Spain (around 50%) coverage.

However, there are also other countries such as Poland (around 15%) in which collective bargaining coverage is currently even lower (e.g. BEIS, 2018; Eurofound, 2015a; European Commission, 2015).

1.2.2. Extension mechanisms

Collective bargaining coverage is low compared with other countries not least because collective bargaining is voluntary and there is little or no support for collective bargaining by the state. There are no extension mechanisms or regulations (so called “*erga omnes extension*”) in the UK which the state provides in other countries (e.g. in France or in Spain) which would imply that collective agreements apply to all companies in the sector so that collective bargaining coverage is higher. Furthermore there are no voluntary extension mechanisms which, for example, are common in Nordic countries such as in Denmark or Sweden (European Commission, 2015; Traxler and Behrens, 2002).

Whilst not strictly speaking an extension mechanism, the “Code of Practice on workforce matters in Public Sector Service contracts” (National Archives, 2005), more commonly known as “the Two-tier code,” was abolished in 2010. The two-tier code was specifically intended to avoid the development of a two-tier workforce and acted to harmonise employees’ terms and conditions, including their trade union recognition and collective bargaining rights, when work was outsourced from the public sector to the private sector. New starters would be employed on terms and conditions “no less favourable” than those existing employees who had been transferred across when the service was first outsourced. Abolition of the code has meant that new starters are often employed on lower wages and poorer terms and conditions than existing employees, further fragmenting workforces (Smith Institute, 2014).

As regards the coverage of outsourced activities, the lack of any obligatory (i.e. legal) or voluntary extension regulations or mechanisms not only imply that coverage is low but also that if any activities are excluded from an agreement or not included anymore, as for example in the case of outsourcing, there are little or no mechanisms to extend an existing agreement to these activities.

1.2.3. Sectoral and occupational differences in collective bargaining coverage

There is a large discrepancy between collective bargaining coverage rates for the public and private sectors, with collective bargaining covering 51.8% of public sector employees in 2017, compared with 13.5% for the private sector (BEIS, 2018). Furthermore, as the 2017 figures show, there are also differences between different sectors of the British economy with sectors such as financial and insurance activities (13.5%), professional, scientific and technical activities (7.8%), and accommodation and food service activities (2.9%) scoring below average and sectors such as for example education (48.1%) and Electricity, gas, steam and air conditioning supply (44.5%) scoring significantly above the national average (BEIS, 2018). Of course, these differences also reflect differences in the ownership (i.e. privately or publicly owned) of the organizations and companies assembled in the different sectors.

In the following case studies we will analyse activities and companies from both sides of the collective bargaining coverage spectrum. While, again in 2017, the Adult Social care sector (part of the human health and social work activities sector) which is characterized by a collective bargaining coverage rate of 38.3% and the prisons sector (part of the public administration and defence including compulsory social security sector) is characterized by a coverage rate of 42.9%, both sectors where collective bargaining coverage rates are relatively high, the coverage rate of our case study of a typical FMC, (usually part of the real estate activities industry) is characterized by a coverage rate of 9.2%, which is low (BEIS, 2018). Again, also for our case studies the differences in the coverage rates are associated with differences in the ownership structure of the companies and organizations involved. However, as will be explained in the report, as outsourcing often leads to a shift in the management of these activities from public sector organizations towards private sector companies, the fact that outsourcing frequently leads to a gap in collective bargaining coverage of the employees involved, also affects the sectoral figures shown above.

1.2.4. Gaps in collective bargaining coverage

Against the background that in the UK collective bargaining is dependent upon the

willingness and ability of the employer side (e.g. usually the management in the private sector) and trade unions to engage in a bargaining process, any coverage gaps depend on the voluntary decision to engage in bargaining. However, this engagement depends very much upon the support a trade union has in terms of its representativeness, i.e. in terms of the number of employees who joined the trade union. Therefore, in the UK, collective bargaining coverage depends very much upon trade union density which is shown (e.g. Van Wanrooy *et al.*, 2013) to be highly correlated in its development in the past decades with collective bargaining coverage. Consequently, gaps in collective bargaining coverage open up whenever there is a lack of trade union representation, i.e. in trade union membership as employees in companies are either not covered by a collective agreement either because they are not members of a trade union or the employer side does not recognize a trade union as a bargaining partner and does not engage in collective bargaining anymore so that no collective agreement is bargained for all employees in the company.

In fact gaps in collective bargaining frequently open up in newly-established companies or workplaces which are often not unionized as an employee representation structure needs to be built up (e.g. Emery, 2015). The latter often applies to outsourced segments of companies for which no trade union representation exists in a sufficiently strong and encompassing way. Either companies do not recognize unions as bargaining partners or even de-recognize trade unions which aim to represent employees in outsourced parts of companies. As will be discussed in the following (i.e. see the overview of the regulation of outsourcing) there are very few legal regulations in the UK which would allow an encompassing and sustainable continuation of collective agreements.

2. THE EXTENSION, REGULATION AND FORMS OF OUTSOURCING

2.1. The regulation of outsourcing in the UK

In the UK the effects of outsourcing on collective bargaining are regulated by the “Transfer of Undertakings (Protection of Employment) Regulations” (TUPE). Basically,

the current regulations were adopted in their original form in the early 1980s by way of implementation of the European Commission (EC) Acquired Rights Directive of 1977. The latter Directive was revised in 1998 and consolidated in 2001 (Deakin and Morris, 2012). The most recent revision of TUPE was made in 2014 and applies to all current and recent outsourcing activities across the private and public sector (ACAS, 2014). Thus the current TUPE regulations apply to all employees and businesses in our two activities and company.

2.1.1. Legal framework regarding outsourced work

The TUPE regulations are the key framework in the UK for protection of employees in private sector companies and public sector organisations faced with outsourcing. As mentioned before, the TUPE regulations were revised several times in the past decades and originate from the EU Acquired Rights Directive (ARD). TUPE aims to ensure the rights of employees to transfer to employment by the new service provider with their contract of employment intact (Eurofound, 2011).

However, the strength and comprehensiveness of the TUPE regulations is problematic. In order to guarantee the rights of employees which are derived from a collective agreement, both labour law experts (e.g. Deakin and Morris, 2012; Ewing and Hendy, 2017) as well as commentators and experts of the socio-political context (e.g. Eurofound, 2011) see the TUPE regulations as not comprehensive and encompassing. The regulations are unable to fully guarantee employees the same rights over a long period over time once they have faced outsourcing and in addition, the regulations do not apply universally but are conditional on a number of factors which can make it hard for outsourced employees to claim the continuation of the rights they were previously offered because of a collective agreement. In fact, from a legal perspective, the key question of whether a collective agreement applies after outsourcing comes down to the question of when there is a transfer, i.e. an outsourcing of an activity, or not.

As regards this key question, the simple approach is to ask and argue in case of a dispute whether the same or similar operations are carried out but in different hands. In order to answer this crucial question, a number of key factors need to be considered including for example whether the economic entity in question retains or becomes an identity as

indicated by the actual continuation or resumption by the new employer of the same business or activity, as well as whether physical assets (including computers, existing stock, plant or machinery) are transferred and is the operation carried out in the same or a similar way. Against the background that these factors are often difficult to define, there is a lot of vagueness in the interpretation which has had the consequence that many employees affected by outsourcing were no longer covered by a collective agreement after the outsourcing. The continued fragmenting of contracts also makes it harder to tell if TUPE applies or not and there is no independent oversight of the process.

However, if TUPE applies, a collective agreement transfers across as if it was made between a trade union and the entity, i.e. the new company, to which it was transferred. Basically, this means that if employees were covered by a collective agreement before and the activity is transferred, i.e. will be outsourced, under the TUPE the agreement will continue to apply until it is changed by the consent of the trade union or the employees. Specifically, the UK regulations regarding outsourcing of activities with respect to collective agreements say that if the transfer or employer recognised a trade union to any extent in respect of the employees transferred, then after the transfer, i.e. after the activity was outsourced, the transferee has to recognise the trade union to the same extent, provided that after the transfer the transferred organised employees maintain an identity distinct from the remainder of the transferee's undertaking (Deakin and Morris, 2012: p. 906). However re-organisation of activities, including restructuring and centralisation are often undertaken by the new company following outsourcing meaning that this distinct identity may no longer remain. Thus, in cases of outsourcing even though the regulations by themselves enable a clear and direct transfer of employees' rights from a collective agreement, the key question remains of whether or not TUPE applies as the entity changed and the new company carries out similar operations but just the hands who operate the business changed. In addition, the rights for employees which are based upon a collective agreement are further "*endangered*" because of the outsourcing because even if the new transferee recognised the trade union voluntarily, there is no guarantee for a sustainable continuation of the collective agreement as the transferee is free to vary the scope of recognition or can even derecognise the trade union in the same way as the transferor could have done (ACAS,

2014; Deakin and Morris, 2012).

In addition, the 2014 TUPE amendments specifically restrict the application to outsourced workers of any sector-wide agreement negotiated by the union after the outsourcing or transfer has taken place (ACAS, 2014). The new employer is not bound by the sector-wide agreement in any way: this again particularly impacts new starters and fragments collective approaches to employees.

The upshot of the above summary and outline of the legal framework is that the existing legal regulations regarding outsourcing of activities in the UK do not enable employees in a universal and comprehensive way to protect and transfer the rights they obtained from a collective agreement in the case that they are affected by outsourcing. Thus the challenge to cover employees by collective agreements which are affected by outsourcing remains on the initiative of either the state who would be able to change the legal framework or by employees themselves via the involvement of trade unions in collective bargaining.

2.1.2. Collective agreements on outsourcing based on social partners' initiatives

Against the background that in the UK collective bargaining takes place predominantly at the company level and given the very fragmented, multi-sectoral nature of outsourcing activities, there are no encompassing, e.g. sectoral, collective agreements providing collective rights for workers in outsourced industries. As outlined before in the context of the TUPE, any existing agreements are predominantly struck and apply to the company rather than at the national or sectoral level, meaning that when ownership or a part of the business is transferred to another company, as in the case of outsourcing, any existing collective agreement is either continued or not. In other words, there is no sectoral or any higher level collective agreement which would apply, independent of the regulations which apply or not because of the TUPE. However, even if TUPE would apply with respect to an existing agreement, as discussed earlier, this agreement can be broken in a number of ways – including management changes, change of location and so on and there are no social partner agreements which would establish a continuation of collective agreements otherwise.

2.2. Main forms of outsourcing

Since outsourcing in the UK not only has a long tradition, but is also widespread, the forms of outsourcing are manifold and include “offshoring”, i.e. moving activities and employment outside the national boundary (e.g. Crino, 2009; Eurofound, 2004; Hummels *et al.*, 2001; Millar, 2002; Wright, 2014). In the following report we will concentrate on outsourcing in its legal dimension which is distinct to “offshoring” which refers to the geographical dimension (Dekker and Koster, 2016; Eurofound, 2004; Varadarajan, 2009). Thus we will refer to business activities which involve the production of either goods or services, purchased by an organisation from an external supplier rather than provided internally. Basically this outsourcing can also be labelled as “subcontracting” but in the globalised British economy which is characterised by continuous and often rapid and dramatic organisational change and restructuring not only of companies but also of whole sectors (including the public sector), determining what is produced internally or externally is difficult, always fuzzy and in constant flux.

In the past decades the British economy has witnessed a myriad of reorganizations of both private companies and public organisations with mergers, demergers, strategic alliances, intra-organisational disaggregation and also public-private partnerships and alliances (e.g. Bach and Stroleny, 2013). As regards the latter, there is a strong trend in the UK that private sector organisations, i.e. companies, are increasingly providing services which were previously provided by public sector organisations (e.g. Bach, 2009). The initial drivers for the outsourcing of public services included a number of factors. First, faith in the power of a small state, second, belief in the efficiency of private sector companies, and third, the need for capital investment in infrastructure (Soames, 2018).

The fact that private sector companies, i.e. private sector employees, took over the production of goods and services which were formerly provided by public sector employees particularly had the implication that the range of public sector collective agreements was reduced in the sense that sectoral collective agreements, i.e. public sector collective agreements, no longer applied to the employees in the private sectors

which were either not covered by a collective agreement or by a different company collective agreement. In the following case studies we will discuss and explore this phenomenon in detail. Thus, outsourcing both in the private and public sector is not only widespread but also multi-dimensional in the sense that it can take very different forms, which makes it difficult not only from a legal perspective to decide if TUPE applies and which collective agreement should apply.

2.3. The extension of outsourcing; number of workers in outsourced activities

Against the background that outsourcing is a multi-dimensional phenomenon and takes on different forms, there is no commonly agreed definition of what outsourcing is and therefore, necessarily, there are no reliable statistical indicators available which would enable us to measure the extent or nature of outsourcing in the UK. Unfortunately, it is not possible, either through British national accounts nor employment statistics nor any other sectoral or occupational statistics to track input and output of businesses and services to identify with sufficient accuracy what segment of business is outsourced or not in terms of how many employees are affected or not.

For any empirical evidence we must therefore look to some survey data which tries to estimate how much is likely to be outsourced or not. However, it has to be noted when looking at survey data that all the information must be treated with caution as it is not only based on a proximate estimate but also based on a highly subjective assessment of what outsourcing is. As mentioned earlier, there is no commonly agreed definition of what outsourcing is and against the background that the economy and companies are in a constant status of reorganization and restructuring not only of what is produced but also how it is produced, any such assessment of what is outsourced or not might vary substantially among survey respondents. Furthermore it is important to differentiate between full and partial outsourcing and/or how intensive outsourcing is reported in order to be able to make an assessment of the role and relevance of outsourcing. Thus any comparison and assessment of the extent of outsourcing on the basis of survey data is difficult and must be treated and interpreted with caution. Nevertheless, some figures

allow a rough indication of the extent of outsourcing.

One important survey on outsourcing is provided by Eurofound (2015b) which shows that in the UK 23% of companies make use of outsourcing. On the one hand, this figure implies that in around every fourth company the production of goods and services is partially outsourced and indicates a relatively high degree of outsourcing activity. However, on the other hand, when looking at other countries, this figure suggests that outsourcing is much lower than in other countries. In fact the UK is below the average and it appears that in the UK outsourcing is far less common than in the majority of other European countries.

This result seems to contradict the fact that outsourcing has both a long tradition in the UK and is considered very common. However, by taking a closer look at the data and by looking in a critical way at the nature of the survey, the figure becomes more reasonable. First, precisely because outsourcing has such a long history in the UK and parts of companies were already outsourced some time ago, many companies were not aware (and therefore did not report) that their company did outsourcing in the past. Second, because the British economy is characterized by a constant reorganization of companies, the boundary between what is externally provided and what is internally provided has also blurred for a long time and therefore, similar to the first reason, companies were not aware that they did outsourcing. Third, as analysed by Kirchner (2015), is that if a differentiation between partial and full outsourcing is made, the UK ranks highest in terms of how encompassing and “radical” outsourcing is.

More specifically, Kirchner (2015) made a distinction in his assessment of the extent of outsourcing between partial and full outsourcing, defining partial outsourcing as when production is outsourced in companies where production is an onsite activity and full outsourcing as when the outsourced production is not an onsite activity. The distinction is important for an assessment of the role and extent of outsourcing because not all companies are involved in the production of goods and services. In fact many UK companies perform nonproduction tasks or fulfil other functions such as administration or management with the UK economy more reliant on the service sector at 79% of GDP in 2013 than any other major economy (ONS, 2016). Actually the latter are typical FM

tasks which will be discussed in the following report. This means that when companies report no production but the outsourcing of production they are seen to perform full outsourcing. However, when differentiating the Eurofound (2015b) data on the basis of full and partial outsourcing, the UK ranks highest with 49% of all activities being fully outsourced and 51% partially. This indicates that if companies in the UK are outsourcing, in every second case they are making use of full outsourcing, i.e. of a much more radical way of outsourcing, and that possibly they no longer tend to interpret less radical ways of outsourcing as outsourcing anymore.

However, in the following discussion of our case studies we will be able to give some more detailed information on the extent of outsourcing for each of our activities and company studies.

3. FACILITY MANAGEMENT COMPANIES

3.1. Definition of FMC in the UK

FM, as a separate and distinct business activity, is a relatively new and inherently interdisciplinary and cross-sectoral activity and therefore there is no universally agreed definition on what it comprises exactly, i.e. which activities and companies are explicitly included or excluded within the FM sector. However, in order to differentiate and mark this (relatively) new and expanding field of business as a distinct “sector” or business activity, relevant actors in the UK nowadays tend to use the conceptualization of “facility management” according to the International Organisation for Standardization (IOS) definition 41011:2017 which says that Facility Management or Facilities Management includes organisational functions “which integrate people, place and process within the built environment with the purpose of improving the quality of life of people and the productivity of the core business” (IOS, 2017). For the UK, this definition of what facilities management is was seen as useful by relevant actors involved in the above activities and adopted by the British Institute of Facilities Management (BIFM) which is one of the most important professional associations which represents facilities

management companies in the UK. Thus, the FM sector, as well as individual companies in this sector, in the UK can be considered to be primarily devoted to the coordination of space, infrastructure and people in organisations in order to increase their efficacy and productivity. However, FMC do not take care of all activities of (other) organisations but, according to PROEFP (2014), FM companies pursue a wider range of activities that are referred to as noncore functions of other companies. However, as the sector is not only growing and expanding but also subject to continuous innovation and development, it is likely that in the near future the range and scope of activities of facilities companies will increase even further.

3.1.1. The importance of FMC

According to PROEFP (2014), the FM sector has become increasingly important both in the UK and many other European countries as a business activity since the 1970s. In fact the idea of outsourcing non-core activities to FM was adopted by many European companies following the example of American multi-national companies who expanded their business activities into Europe at this time (Roper and Payant, 2014).

The practice of outsourcing non-core activities such as maintenance of buildings, cleaning, catering and security, has become increasingly important in recent decades and more widely adopted over the years by public sector companies throughout the UK not least because of the adoption of the new public management paradigm, which emerged in the UK in the 1980s (e.g. Bach, 2009). All these developments in the private and public sector resulted in a substantially higher demand for the provision of non-core business activities and services and made the FM sector one of the fastest growing sectors. According PROEFP (2014) the FM sector expanded by a yearly rate of 4 to 5 %.

3.1.2. The representation of FMC

As previously discussed, company bargaining rather than sectoral bargaining is the rule in the UK and there are no encompassing employers' organisations in this sector. In contrast to other EU states, UK employers' organisations also have little role to play in collective bargaining (e.g. Marginson, 2015), more often fulfilling lobbying and advice activities rather than acting as encompassing collective bargaining institutions (e.g.

Brandl and Lehr, 2017; Gooberman *et al.*, 2017). This is particularly true in the poorly-defined FM sector which itself is cross-sectoral and highly fragmented.

Nevertheless there are some business organisations which have the potential to address the labour market interests of their members and therefore could be considered as a (potential) employers' organisation in the sense of Brandl and Lehr (2017) in that it does not focus on the product market interests alone of its members. Most notably, the British Services Association (BSA) could act as an employers' organisation but currently considers itself mainly a policy and research organisation primarily aimed at the "Business services sector", sometimes an acronym for outsourced services. It aims to "bring together all those who are interested in delivering efficient, flexible and cost-effective service and infrastructure projects across the private and public sectors" (BSA, 2016).

The organisation membership includes large multinational FM firms such as ISS, Mitie, Serco, Capita, Serco and Sodexo (BSA, 2016). It divides itself into five branches; facilities management; local authorities; construction; ICT and business projects stating that investment in administrative services aids firms to focus on their key skills, improve productivity and produces broad economic benefits (BSA, 2016). BSA suggest that whilst data to define the sector is difficult to come by, that business services represents 8% of the total economy and employs 3.3 million in the UK (BSA, 2016) and thus can be considered a representative organisation for the FM sector in the UK. However, so far, BSA is not involved in collective bargaining in the UK at all and if they are not motivated by the employee side or the government to do so, it is unlikely that there will be an encompassing collective agreement for employees in these companies in the future.

SECTION II. CASE STUDIES: OUTSOURCED ACTIVITIES AND FACILITY MANAGEMENT COMPANY CASE

As outlined earlier, one major trend in the recent past is that UK public sector activities have become increasingly outsourced to private sector companies. Therefore in this report, two of our case studies will focus explicitly and in detail on outsourcing of public services to private sector companies and the implications for collective bargaining coverage of employees. Specifically we will focus in our case studies on *Adult Social Care* and *Prisons* because employees in these sectors are not only faced with outsourcing but also because these sectors and their outsourcing have been discussed increasingly in the media and political debates (e.g. Reilly, 2014; Soames, 2018; TUC, 2016).

However, in recent years the political consensus around the benefits of outsourcing are being questioned by the media, voters and government, with concerns over the efficiency of outsourcing and its effects on employees' terms and conditions as well as rising wage inequality (e.g. Goldsmidt and Schmieder, 2017). Very recently, the long tradition of outsourcing became highly visible in the media because of the collapse of one of the largest outsourcing companies, i.e. Carillion, who supplied many public services including prison maintenance, hospital construction, hospital cleaning, catering and other activities (House of Commons, 2018) In fact the collapse of this company has highlighted how unprofitable and potentially unstable the constructed market for outsourcing of UK public services is and the implications for employees in terms of stable working conditions which can be provided by collective agreements. For example, TUPE provides no protection for workers who work on outsourced contracts in cases of bankruptcy, as happened with Carillion (TUC, 2018).

1. OUTSOURCED ACTIVITY 1: ADULT SOCIAL CARE

1.1. Introduction

Our first case study will focus on the role of outsourcing and the effect on collective bargaining coverage in the British adult social care sector. The rationale behind choice of this sector is that it has witnessed significant outsourcing over recent decades and therefore it not only shows the transformation of the sector because of outsourcing but also because this sector is becoming increasingly important in terms of its relevance to the British economy and society. In fact, care for elderly people is another sector, or activity, which is increasing in size in terms of the number of employees which are involved. However, the sector is also highly visible in public and political debate, because of intense pressure on the sector to cut costs. This pressure leads local authorities, the public sector organisations which provide the service, to cut costs by outsourcing not only non-core activities which are related to the care of elderly people, but also by outsourcing the activity itself. However, this trend in outsourcing activities not only has implications for the support, care and treatment elderly people need, with the compassion, respect and dignity they deserve (e.g. DHSC, 2013), but also on the coverage of employees working in this sector under a collective agreement and consequently, their terms and conditions of employment.

In the following case study we focus on collective agreements and outsourcing for employees working in adult social home care which refers to the personal and practical care provided for older adults within their home who are unable to manage everyday care such as eating or washing due to physical or mental disabilities or illnesses. The distinction between care provided in residential homes and domiciliary care i.e. that care given in people's own homes is important as care at home is a growing part of the care market and is considered cheaper and preferable to residential care (NAO, 2018; Skills for Care, 2017). Its growth has also been accelerated by the outsourcing of care from public sector local authorities to private firms due to cost-cutting (Hussein, 2017).

This activity was selected for study for a number of reasons. First, this sector has seen a major transformation over recent decades from being a service provided by the public

sector, i.e. UK local authorities, where employees are covered by a collective agreement to one predominantly outsourced to private companies, with no collective agreement framework in place. Local authority employees are part of a collective bargaining agreement, the National Joint Council (NJC, 2018), the so-called “Green Book” which sets a framework for pay levels, “the spine”, which benchmarks pay and outlines in detail all terms and conditions for local authority employees. Prior to outsourcing, adult home care workers were directly covered by this collective agreement but when care is outsourced, these employees lose this protection, significantly affecting their terms and conditions of employment (Smith Institute, 2014; TUC, 2015).

Second, the need for this activity is expected to increase significantly in the near future due to a variety of long-term demographic changes such as improved life expectancy due to improved healthcare (meaning a larger older population with more complex medical needs) and changes in family size and structure which have also increased the number of people who require this support worldwide (ILO, 2018). Provision of this activity is thus a long-term societal necessity requiring long-term planning including training and protection for the increased number of employees there will be in this sector.

Yet the provision of adult social care by the state has permitted significant changes in society including increased employment opportunities for women, for both sexes the ability to move away from family for work and a reduced need for children to provide for one in old age. The removal of this provision therefore has profound societal impacts, but particularly for women (Hayes, 2017). To address this need, it is increasingly recognised worldwide that legislative change and sectoral collective bargaining are required to attract and protect employees in this sector (ILO, 2018).

Third the adult social care sector, particularly since 2010 and following the economic crisis of 2008, has suffered significant cuts due to austerity measures (ADASS, 2018; LGA, 2017) Adult social Care is provided by local authorities, financed by central government who provide approximately 85% of local authority funding, but budgets have fallen by 37% in real terms between 2010 to 2015 (NAO, 2014). Local authorities are required by the Care Act 2014 to provide a range of care services, i.e. to create a

market for care in their area, to provide information and to focus on preventing people's care needs from becoming worse (DHSC, 2016).

Fourth, this activity has increased political relevance in the UK because of its knock-on effect on the UK's National Health Service (NHS) (Guardian, 2016). The NHS is a "free at the point of need" service funded entirely by the UK government, but the adult social care sector is completely administratively and financially separate. Media stories on "bedblockers", i.e. increased numbers of elderly patients who cannot be discharged from hospital because there is no care available impacts hospital capacity and operation waiting times (e.g. Guardian, 2016). Local authorities who provide adult social care are thus under pressure to improve services at a time of both increased demand and central government austerity which limits their resources. A more integrated service which addresses both health and care is thus required. This integration is a long-standing UK political issue requiring long-term cross party commitment and a significant increase in funding. However, given that the latter is lacking, local authorities try to address the challenges by making increasing use of private sector companies to arrange care for elderly patients, i.e. by outsourcing.

Yet from an employment perspective this integration of health and care services is problematic in the UK given the contrasting employment conditions covering employees in the NHS and the care sector. NHS workers are employed under the national, collectively agreed "Agenda for Change" pay framework which provides clear definitions of roles and agreed wage rates (Nuffield Trust, 2018). Like other public sector workers, the 1.2 million NHS employees have been held to a wage freeze since 2010 but have recently been awarded a collectively agreed pay rise of 6.5% over the next 3 years, increasing the lowest full-time salary by 15% (BBC, 2018). The care sector however lacks any sectoral agreement or defined occupational standards and as most adult social care is now outsourced, pay is instead frequently based on tender contracts.

The reduction in public sector provided services also means that less elderly people are receiving publicly funded adult social care (Kings Fund, 2016). This unmet care need then falls either on unpaid carers, often older women and other family members, or for those elderly without family support or financial means to pay for care, declining levels

of health and increased death rates. Withdrawing from this state responsibility and leaving care to the market and private firms, puts the burden back either on private citizens to care or privately-employed employees who lack sectoral collective bargaining to protect their terms and conditions.

Against this background for our detailed case study of the adult social care sector we have conducted interviews with a selected sample of stakeholders including two representatives of a local authority who commission social care, one public sector provider, one private sector provider and three trade union representatives who work specifically in this sector across the public and private sphere. As adult social care is provided at the local authority level, there is a degree of variation across the UK, so to allow us to compare the circumstances surrounding terms and conditions of employees in outsourced services we focused on one local authority which includes a mix of both public and private provision (Cresswell, 2008). This comparison is not possible in many local authorities in the UK because of the shrinking share of public sector provision (approximately 10%).

We also draw on a further range of six interviews at the national level to inform and supplement our findings and a range of documentary sources, some of which our interviewees kindly signposted which are referenced in the text (Prior, 2003). Although the interviewee sample size is small, by interviewing both commissioners, providers and employee representatives in one geographical area we sought to obtain a rounded picture of the interaction between the public and private sectors and understand in more depth the effects of outsourcing on employees' terms and conditions in this sector (Cresswell, 2008). Use of a purposive sampling strategy (i.e. choosing which interviewees are most relevant in our judgement) is an established technique to gain information which allows us to use a relatively small number of interviews who are particularly informative and relevant to the research aim (Saunders, 2012).

1.2. Outsourced workers in Adult Social Care

1.2.1. Employment structure and role of Adult Social Care in the UK

The paid adult social care activity has a workforce of approximately 1.58 million workers (NAO, 2018; Skills for Care, 2017) across the public, private and charity sectors as illustrated in Table 1. As the table shows, the majority of adult social care is now provided by the independent i.e. outsourced sector.

Table 1. Employee structure in care sector in the UK.

Care employment	All sectors	Local authority	Independent
Total jobs	1,578,000	112,000	1,230,000
Full-time	51%	48%	52%
Part-time	37%	48%	36%
Neither of these	12%	4%	12%

Source: Skills for care (2017), NAO (2018).

In addition there are an estimated 145,000 personal assistants, directly employed by self-funders and a further 91,000 care workers within the NHS. The number of workers employed directly by local authorities now amounts to approximately 9% (2016) versus approximately 90% in 1990 (NAO, 2018; Skills for Care, 2017; TUC, 2015). Of these, approximately 505,000 employees work in home care, up from 425,000 in 2012 (Skills for Care, 2017), reflecting a shift away from residential care to that provided at home.

The home care workforce is predominantly female, nationally 84% (Skills for Care, 2017) with private employers estimating male workers at 10%. The average age of home care employees is 43. A turnover rate of 32% was noted for home care workers (NAO, 2018), increasing from 28% in 2016 (Skills for Care, 2017) but this varies widely: one home care employer interviewed estimated employee turnover at 55% per annum.

The contribution of non-UK citizens to this workforce is considerable but uneven: estimates suggest that 60% of carers in London were born outside the UK (Humphries

et al., 2016). There is some evidence of increasing payments below the statutory minimum wage of “cash in hand” work, meaning non-compliance with minimum wage legislation (Humphries *et al.*, 2016; Hussein , 2017).

As regards quality assurance and the qualifications of the employees working in the sector, estimates of educational levels vary: nationally 37% of home care workers lack any recognised qualification (Humphries *et al.*, 2016,). An interviewed employer in the outsourced, i.e. private, sector advised that the vast majority of employees in his firm had no recognised educational qualifications at all. In contrast, a public sector employer suggested that improved academic qualifications were necessary for documentation and quality assurance. Moreover, whilst many older employees lacked academic qualifications, employees working for local authorities were required to undertake on-going training taking account of changing medical and complex needs, particularly care for those with dementia, Alzheimers or mental illness. Both employers and employee representatives advised that the lack of professional status and specific training, in contrast to nursing, which requires professional registration, meant that the sector was not regarded as a viable long-term career and employees’ work was not respected (Hayes, 2017; Hussein, 2017; TUC, 2015).

1.2.2. The development and transformation of work in Adult Social Care over time

The most important change in the care sector was the transfer of direct provision for long-term care from local authorities to over 20,000 independent organisations, (UKHCA, 2016) including large corporations, small businesses and charities (Humphries *et al.*, 2016). In the home care market, there are an estimated 8,800 registered services (Skills for Care, 2017). Thus whilst in the 1990s, most care staff were directly employed by local authorities, this is now estimated to be only around 4% of the total with just 112,000 directly employed by local authorities (Skills for Care, 2017). There are marked differences between those covered by a collective agreement and those not (TUC, 2015) Local authority home care workers earn an average of £9.52 per hour but those in the independent sector only £7.92 (Skills for Care, 2017). Moreover, there are significant differences between travel allowances and equipment provision, with unions

reporting “horror stories” of workers in independent providers having to buy their own protective equipment in order to do their jobs (Hayes, 2017; Hussein, 2017). In fact, this change has amounted to a de facto outsourcing of care for elderly people (TUC, 2015). Care provision has also shifted from that mostly supplied in residential homes, to one supplied to people in their own home, following changes in belief that this benefits the elderly more but also the lower cost of care in the home. This change has also been pushed by the Care Act 2014 which places more emphasis on prevention in order to reduce more expensive, long-term residential care needs. Outsourcing of the simplest part of the service, the home care part, was seen as good value for money as it was easier to manage than that involving complex needs. Funding has fallen in real terms by 28.6% between 2010-11 and 2017-18 (NAO, 2018) meaning that councils have declining resources to pay for care. Despite one-off payments from central government announced to address this shortfall, there is a lack of long-term provision and planning (LGA, 2018; NAO, 2018). An employer explained that:

All councils, this is going back a few years now, used to provide a lot of social care themselves, but it became very expensive for them to do, because they paid them too much so it gets outsourced to people like ourselves, to enable us to recruit people who are willing to do it for much less. (HR manager)

From being directly employed by local authorities therefore and covered by public sector collective agreements, care workers are now more likely to work for companies providing care under contract to local authorities with either company collective agreements or no collective agreement at all (TUC, 2015). Care jobs have changed over the last decades however with the average complexity of need increasing, and carers are often now required to complete clinical tasks including dressings, medication, and care for dementia sufferers – tasks previously completed by an NHS community nurse (Humphries *et al.*, 2016).

This means that the provision for UK elderly is thus highly variable, and increasingly provided by a very fragmented, more poorly trained workforce. Rather than being covered by a collective agreement through the local authority green book, pay is now normally negotiated at a company level and usually at a minimum wage level.

1.2.3. The provision of Adult Social Care and its role for the British economy and society

Local authorities retain the legal responsibility to provide care, but this is now mainly done by outsourcing work through competitive tendering to a mix of private firms. The decision to outsource this work was explained in terms of austerity, and historically also explained as due to central government pushes for local authorities to outsource work. Although most providers are small firms, local markets may be more concentrated. The homecare market is estimated as worth £8.5 billion, with the TUC (2015) estimating that 87% of publicly funded domiciliary care is now provided by the independent sector (i.e. outsourced), compared to 5% in 1993. The TUC also notes that a number of larger players are controlled by private equity firms who work on an expansion model to increase market share through acquisitions with the aim to later sell on, suggesting that 6 of the largest 10 providers have a majority share by a private equity firm (TUC, 2015). More recently however, several sources suggested that despite the growing demand and low barriers to entry for these firms, there were several firms looking to leave the sector because of cost-pressures.

In practice, local authorities outsource care to private companies by providing a set amount of cash. Private firms then bid for this work, then pay workers in terms of the contract. The UK Home Care Association (UKHCA) recommended £16.70 as the minimum sustainable price for homecare in 2016-17, but over 80% of local authorities are paying less than this per hour (NAO, 2018). For employees this means they are not covered by a collective agreement which defines earnings and working conditions for them. Whilst most earn around the minimum hourly rate, due to deductions for travel time, uniforms, and training, not all employees may actually earn the minimum wage (Hussein, 2017; NAO, 2018). Some 56% of home care workers are on zero hour contracts in which they do not have a guaranteed number of hours per week.

The 2014 Care Act (DHSC, 2016) which sets minimum standards for care also suggested that individuals should directly employ carers themselves. Although a growing part of the workforce, in the selected case study area of North-East England there was very limited evidence of people directly employing carers, with both employer and employee

representatives ascribing this low uptake to lower average incomes and a local culture that was uncomfortable with “employing others”.

There is some evidence of consolidation and takeovers in the sector with many smaller apparently independent home health care firms actually part of much larger companies. For example, a large Spanish FM company, CLECE, owns a number of health care firms; and there is evidence of some concentration to larger firms. This matters because the local authority retains a duty under the Care Act 2014 to underwrite and monitor the risk of local services failing. Basically, the recent trend of consolidation and takeovers of smaller companies by bigger companies would enable to establish more comprehensive company collective agreements if these companies could be motivated to engage in collective bargaining. However, the latter depends very much upon the representativeness of workers in the sector, i.e. on the strength of trade unions in terms of support by their members.

1.3. Representation of workers and employers in Adult Social Care

1.3.1. Characteristics of social partners’ organisations in Adult Social Care

There is very limited trade union representation in this sector. This is particularly striking since there has been a race to the bottom in recent decades in terms of wages and working conditions with most employees on or within 5% of the minimum wage, and an estimated 10-13% paid less than the minimum wage (Hussein, 2017). Despite this continuous deterioration in levels of pay and conditions there has never been a strike by home health care workers.

There is no specialist trade union covering care workers, but membership is concentrated in those general unions such as Unison and Unite (discussed before) as well as the GMB, a major trade union in UK public sector local authorities. Membership is estimated at approximately 25% across the workforce, but concentrated in local authority employees (Hussein, 2017).

On the employer side, there is no encompassing and representative employers' organisation but home health care firms must be registered with and inspected by the Care Quality Commission (CQC). The United Kingdom Home Care Association (UKHCA) acts as a professional association and has approximately 2000 members, out of an estimated 20,000 firms in the sector (UKHCA, 2016). Local authorities, the outsourcers of the care work, are part of the Local Government Association (LGA) and have repeatedly highlighted to central government that levels of funding are insufficient to maintain quality of care and that long-term planning is required (LGA, 2017). The "marketised" approach in which care is outsourced to private firms is particularly vulnerable, and requires local authorities to retain a degree of expertise in-house in case of market failure.

Against the background of limited sector-wide organisations, there is very little evidence of interactions between employers and employees at all. Employers in outsourced care services appeared to largely ignore trade unions, since contracts from local authorities were at a set rate dependent on the area. The following quote from an interview with an employer explains:

No, no. it'd be pointless anyway (to join a trade union) because the vast majority of our business is from the council and the council pay a rate that's set every year so what could you do? You could come to us and say you want an extra quid an hour but the money isn't there to do it, so... pointless. (Employer)

Union membership was so low that often firms did not recognise the union and union involvement instead was seen primarily in terms of representation in cases of disciplinaries, and therefore, perhaps unfairly, as tied to poorly performing employees.

1.3.2. Challenges for social partner actors in Adult Social Care

As the sector is very heterogeneous in terms of different companies and service providers and different types of employees working in the sector, also union membership is heterogeneous. Basically, trade union density is higher in traditional public sector organizations which provide the care service but by the many different private companies involved, the high turnover, often part-time workers with family

commitments restricted to a particular locale and limited geographic movement and other employment possibilities in their area trade union density also varies substantially. It is also difficult for trade unions to motivate workers to join a trade union which represents the interests of employees in a specific domain as employees often work alone, for small firms, and work part-time and thus there is a lack of identification with companies and the sector per se. Furthermore, the high turnover and churn of employees within the sector, means that many employees move in and out of care work, sometimes alternating with retail work or absences to cover school holidays or other family responsibilities. Because they often work alone there are very limited opportunities to share information and develop trust with other employees or outside organisations such as trade unions. These factors limit the capability to recruit and organise effectively. The close personal nature of the work within people's homes also means that employees face particular responsibilities which may complicate the traditional employee-employer relationship, making any kind of industrial action difficult. Since care work is therefore not seen as a long-term "career", many employees do not see the need to invest in a trade union membership. A recent report from the National Audit Office (2018) also described adult care provision as "a Cinderella service", (i.e. a poor sister to the NHS) with not enough workers, increased turnover and vacancies, poorly paid, poor training with the report noting a lack of strategy, and a failure to oversee workforce planning.

Against this background and the obstacles regarding any sectoral regulations and collective bargaining, Hayes (2017: p. 4) suggests that workers in this sector are considered "inferior labour market constituents", creating "institutionalised humiliation" and calls for a sectoral agreement to cover this sector. However, whether such a sectoral agreement can be established depends very much upon state authorities who would be able to provide the necessary legal framework. At least, state authorities could try to guarantee that wages for home health care workers are benchmarked against NHS employees or local authority workers. This means that in particular, this would suggest that local and central government could play an important role in order to increase working conditions in the sector, in addition to employers and trade unions.

1.3.3. Strategies deployed by social partners in order to solve coverage problems

As outlined earlier it is very difficult for trade unions to solve coverage problems, i.e. if employees are transferred to another company, because of the above complexity and heterogeneity of the sector. In fact the sheer number of private care firms, i.e. around 20,000 (UKHCA, 2016), which exist at the moment and the rapid fluctuation of staff in this sector massively complicates any initiative by trade unions to establish sector-wide wages and working conditions via collective bargaining. The abolition of the two-tier code had also directly affected these employees since collective agreements could not be extended from the local authority to the outsourced private firm.

There are a number of factors which make sector wide collective bargaining very difficult. More specifically, younger workers in the sector are more individualised, expect to have individual contracts and are not used to working communally. Therefore they didn't seem to see this as an issue and need to organize collectively. Also, trade unions appeared split between first resisting outsourcing and then looking at ways to build collective agreements into the procurement process, either through commitments to collective bargaining, recognition agreements or through commitments to national living wage.

Furthermore, trade union representatives felt that outsourcing challenged their ways of organising around a workplace – formerly it was one workplace, one trade union, but now many workplaces, with competition with others. Also, the presence of staff on different wages and conditions was seen as not of their making but meant that many younger employees saw no advantage to joining a trade union as its function was to protect older workers terms and conditions.

Therefore, trade unions argued that the best way to raise working conditions of employees in the sector and to bring them under a collective agreement is to re-insource care services back into the public sector in order to develop long-term care plans, pointing out that the private sector has no incentive to reduce the need for care. Unions often sought to do this by exercising political influence at the local and national level, drawing out the wider implications of outsourcing in terms of removing income from

the local economy and contributions to inequality and the gender pay gap because of the high number of women working in this sector.

2. OUTSOURCED ACTIVITY 2: PRISONS

2.1. Introduction

Our second case study will focus on the role of outsourcing and the effect on collective bargaining coverage in the British prison sector. The idea behind the selection of the second activity is similar to the elderly care sector as this sector is also characterized by substantial outsourcing activity but, different to the elderly care sector, has not such a long history but given the size of the sector, i.e. fewer employees work in the sector, not much media and political attention was given to the sector.

The prisons sector in the UK includes not only custodial institutions, i.e. prisons which hold convicted prisoners, but also other associated services such as probation, the use of prisoner electronic tagging/monitoring in the community and transportation (e.g. from prison to court). Whilst only the state has the ultimate sanction of imprisoning citizens increasingly in the UK over recent decades this activity has been delegated to non-state actors, i.e. outsourced to private companies, introducing a profit element to this previously public sector service. We focus in our analysis however on prisons in particular as the core activity within this sector.

The prison sector is interesting for a number of reasons. The UK with approximately 85,000 prisoners has the highest imprisonment rate for men in Western Europe (Prison Reform Trust, 2017), almost doubling from approximately 45,000 in 1991. The continued rise in the number of prisoners has produced considerable overcrowding which impacts prison officers' role significantly. This sector also illustrates how outsourcing has evolved. Initially in the 1990s whole prisons were outsourced to be run by individual companies, but since 2010 outsourcing has moved more to the external provision of selected services across both public and private prisons, such as buildings maintenance, catering, probation and prisoner transport. Fragmenting the services across the sector

affects both management and employee representatives complicating the establishment of bargaining units and employee representation.

This sector has also attracted significant media attention due to increased levels of violence in prisons, with assaults on officers up 25% in one year (NOMS, 2017; Guardian, 2017). Incidents of prisoner self-harm have also increased, with overcrowding of prisoners, and falls in the number of experienced staff contributing to the problem (Guardian, 2017; Prison Reform Trust, 2017). The number of prisoner on prisoner assaults is also increasing, meaning that 1 in 4 prisoners was recorded as assaulting another prisoner. The levels of violence make for an increasingly dangerous role for prison officers with the Prison Officers Association (POA), the major trade union emphasising that their representation and collective bargaining is not just about pay, but about creating a safe environment for both their members to work in and prisoners to be held in.

Austerity has hit this sector particularly hard since 2008. The Home Office has suffered an approximate 25% cut in funding since 2010, which has led to a fall of approximately 25% in the number of prison officers whilst prisoner numbers have continued to rise (Institute for Government, 2017). The increased levels of violence appear to correlate with the increased number of prisoners, producing significant overcrowding and the reduced number of prison officers in the service. The increased numbers, and higher levels of prisoner violence, self-harm, use of drugs and rising levels of mental illness negatively impact employees' terms and conditions of employment and their job roles. However, prison officers fall under special regulations and industrial action is restricted which makes the working conditions of prison officers especially vulnerable to cost cutting strategies by public authorities and therefore the need to regulate their working conditions via collective agreements is a priority.

Although this sector illustrates many themes which make it ideal for this study, including good data availability from central government statistics, particularly as the state is the direct employer, data acquisition is compromised by a number of factors. First prison officers are constrained in the information that they can publically disclose. Second the Home Office is particularly sensitive over law and order issues because they

are highly politicised. Lastly reporting on the Home Office has become increasingly difficult over the last twenty years with access to prisons or ministers becoming increasingly difficult (Guardian, 2018).

The sector also reflects political influences and changing long-term demographic patterns which have impacted prison officer's roles. Changes in sentencing guidelines particularly under the 1990s Conservative government, traditionally seen as the party of law and order, increased the number and length of prison sentences, causing a marked rise in the prison population (TUC, 2015). This increase coincided with a change in societal attitude towards the role of prisons, moving away from the idea of prison as a place of rehabilitation and education to enable prisoners to be able to return to society as contributing citizens, towards one more of punishment and incarceration, with minimal attention to rehabilitation (Institute for Government, 2012) This change in the purpose of prisons significantly affects the role and duties of prison officers.

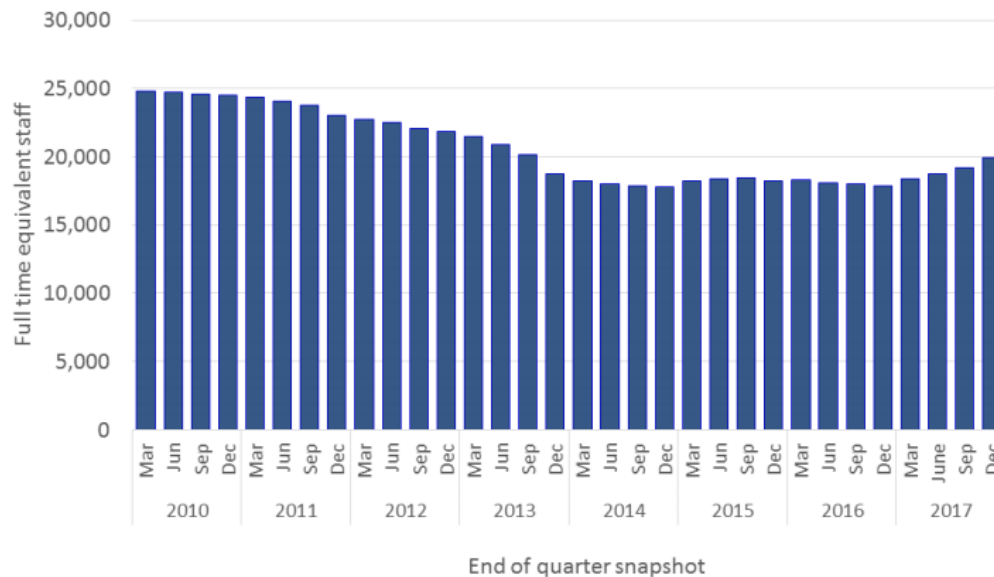
The prisons case study draws upon seven interviews undertaken with stakeholders in this sector including four trade union representatives representing employees in both the public and private sector, two employees and one private company. The commissioning outsourcer in this case is the state and it was not possible to interview a senior civil servant or government minister but we have drawn on publicly available information in the form of government statistics and Parliamentary information and statements to understand this viewpoint (Prior, 2003). We have also drawn on a further six interviews at the national level to inform and supplement our understandings of this sector which are particularly relevant as this is a national service. Although the interview sample size is limited, by interviewing both employee representatives across the public and private sector we obtain a depth of understanding (Creswell, 2008; Saunders, 2012) on the effects of outsourcing on employees in this sector who are frequently prevented from speaking publicly due to the terms and conditions of their employment.

2.1.1. Employment structure and the role of the prison sector in the UK

There are currently approximately 19,000 prison officers working within the 127 public sector prisons (Ministry of Justice, 2018). This is a significant reduction of approximately 24% since 2010 when around 25,000 prison officers were in post (Ministry of Justice,

2018). Figure 1 shows the reduction in prison officers since 2010 together with the increase since 2014 after recruitment campaigns were launched (Ministry of Justice, 2018). Prisoner numbers over this time have remained relatively stable.

Figure 1. Number of UK public sector prison officers.



Note: Number of prison officers shown (i.e. front line prison officer staff) in post March 2010 to June 2017. *Source:* Ministry of Justice (2018).

Recruitment campaigns have seen an increase in staff of 11.4% in a year, but many of the newer recruits are not staying and there is an annual leaving rate of 9.7%. The rapid staff turnover means that almost 34% of officers have less than 3 years experience whilst the proportion of officers with more than 10 years experience is 54.7% which suggests a bifurcated workforce (Ministry of Justice, 2018). The significant staff turnover rate suggests that many prison officers are unhappy in their role and represents a significant inefficiency.

Establishing the exact number of private sector prison officers is challenging, but was approximately 6000 in 2017, working in the 14 private sector prisons (Ministry of Justice, 2017). On the grounds of commercial confidentiality, private firms are not required by statute or contract law to provide information on the number of their employees. The Ministry of Justice is also not obliged by law to provide this information: a Freedom of Information request released the required number. Employee representatives argued

that as personnel costs were a major part of the service, private firms needed to reduce prison staff as much as possible in order to maximise profits. Benchmarking of staffing levels therefore led to pressure on the public sector to also reduce its staffing numbers.

Across the whole public sector prison service 47.3% of staff are female and 8.2% of staff are from Black, Asian and Minority Ethnic (BAME) backgrounds (NOMS, 2017) but establishing these proportions within front line prison staff is not possible. Trade union representatives advised that whilst 90% of prisoners are male, the increasing proportion of female prison officers raised operational issues because they are unable to supervise some activities alone (e.g. searches).

Establishing age and educational levels of prison staff from official statistics is also challenging. No formal academic qualifications are required by the public sector prison service. Candidates must simply be, first, over 18 years, second, have the right to work in the UK and third, be reasonably fit and have good eyesight (HMPS, 2018). In addition, to work in a high security prison requires residency for a minimum of three years. Private sector employers recruitment also emphasised personal qualities assessed by on-line application and interview rather than academic qualifications e.g. Sodexo (2018). Union representatives suggested that the current minimum recruitment age of 18 was inappropriate because applicants were too young at this age to have acquired the essential social and life skills necessary for the job.

Against this background of a reduced number of employees, the role of a prison officer has become increasingly dangerous over recent decades. Ministry of Justice (2016) figures compared 2012 to 2016 and found assaults on staff rose by 99% and the number of prisoner self-harm incidents were up by 57%. Prisoner to staff ratios in public sector prisons have increased significantly from 2.9:1 in 2009 to 3.9:1 in 2016; staff ratios in private sector prisons could not be supplied at this time by the relevant minister (Hansard, 2016). An earlier parliamentary reply noted that the ratio of prisoners to officers in public sector prisons in 2010 was 1:3.03 and for private prisons was 1:3.78 (Hansard, 2010). It seems likely therefore that the higher ratio of prisoners to officers in private sector prisons has at least been retained.

The increased violence is ascribed to a variety of causes interacting with each other, to produce a more volatile and stressful environment. Overcrowding was a particular concern together with increased levels of mental illness (Prison Reform Trust, 2017) A related factor was greater use of new psychoactive compounds (NPC)s or synthetic drugs within prisons, which are favoured by prisoners as they are harder to detect through compulsory drug tests than e.g. cannabis and offer an escape from the boredom of prison. Drugs were entering prisons by a variety of routes including possible corrupt prison officers. Lower staffing levels meant that supervised time outside cells for prisoners was reduced, further increasing stress and the potential for drug use and violence. Employee representatives were agreed that the decline in the number of officers had led to an increase in the amount of violence in prisons, making their roles significantly more dangerous and stressful (BBC, 2017).

2.1.2. The development and transformation of work in the prison sector over time

Outsourcing in UK prisons has increased significantly since the early 1990s. Prisons were initially outsourced to accommodate construction of new prisons so outsourcing was done on a prison by prison basis. More recently, the outsourcing model has shifted to outsourcing on an activity business across both the public and private sector and including maintenance, catering, education, and health services (TUC, 2016). This fragmenting of services means that public and private workers may work together for different companies within the same workplace, fragmenting the workforce considerably. Outsourcing has also had a significant influence on the management of public sector prisons due to the benchmarking of public against private prisons, primarily for cost comparison, which has often negatively impacted workers terms and conditions.

Establishing exactly how many workers are in this sector is challenging because of the variety of firms and contracts involved. There are now, i.e. in 2017, 14 wholly private prisons (out of 131 total) employing 6000 prison officers and holding approximately 19% of the prison population (Prison Reform Trust, 2017; Institute for Government, 2012). This has risen from 17% of prisoners in 2014 (Grimwood, 2014). There are three firms

involved in the private prisons sector: Serco and G4S run five prisons each and G4S who run four prisons (HMPS, 2017) meaning the market is reliant on a small number of players.

Due to the change in the nature of outsourcing however, there are also many other firms, large and small, providing supporting prison services. For example, maintenance across the public and private sector, is awarded to a private firm across a region to include a number of prisons. Catering is often tendered on an annual basis, for an individual prison contract, across both the public and private sector or provided in-house by one of the larger FM firms such as Serco. Formerly these employees working within prisons would have been classified as public sector prison officers, but due to outsourcing, their activity is no longer considered “core” and they are no longer classified as prison officers.

As mentioned earlier outsourcing of prisons began in the 1990s, initially driven by the politically driven intention to further privatize the British economy, following privatisation of the water industry, and to be “tough on crime” (TUC, 2015). This caused a significant increase in the number and length of custodial sentences. An increase in the prison population meant that new prisons needed to be built and at a time of spending cuts, this was done through the Private Finance Initiative (PFI) under the Labour government, using private firms to both build and run new prisons. Ten new prisons were financed, designed, built and operated on contracts of 25 years or more including HMP Wolds (1992) (TUC, 2015). Other services in this sector were outsourced at this time including electronic monitoring of prisoners under curfew.

Outsourcing then slowed as a number of successful public sector bids to run prisons were made with the active cooperation of the POA and their agreement to reduce staffing levels (Institute for Government, 2012). Private sector bids were given fresh impetus following the Carter review in 2003 which recommended greater use of competition in the prison sector (Institute for Government, 2012). A civil service reorganisation in 2004 to create the National Offender Management Service emphasised the separation of commissioning and provider services to further enable outsourcing of activities. The reorganisation also encouraged the benchmarking of key performance

measures between the public and private sector, presenting a challenge to public sector prison management to make similar savings to private sector providers.

The outsourcing surge picked up again after 2010 and the introduction of significant austerity measures by the coalition government (Grimwood, 2014; Institute for Government, 2012; TUC, 2015). HMP Birmingham became the first public sector prison to be privatised in 2011 and HMP Doncaster became the first prison to be run on a payment-by-result basis (Institute for Government, 2012). This process was interrupted however by the fraud involving G4S and Serco over electronic monitoring of prisoners on release, when it was found that invoices were being submitted for dead or missing prisoners (TUC, 2015). In addition, a number of private prisons have come back into the public sector, e.g. the Wolds in 2013 when the private G4S contract expired.

The outsourcing of prisons was therefore the result of a political consensus that private firms could improve services and save money through efficiency improvements and the use of new technology (TUC, 2015). Initially developed for manufacturing and embraced by private industry, by introducing private sector practices, financial accountability and consultancy expertise it was believed that management could improve prisons and make them less bureaucratic (Mennicken, 2013). Performance measures to produce a weighted scorecard for individual prisons were introduced which it was believed would allow timely comparison. Doing so however ignores the fact that prisoners are often transferred between prisons, often several times. Moreover, as Mennicken (2013) argues, introducing an element of competition between prisons accepts prisons' existence and shifts attention away from consideration of the system as a whole i.e. the role of prisons in society.

2.1.3. The effect of outsourcing on prison officers working conditions

The outsourcing of services within prisons has had a number of direct and indirect impacts on prison officers. Reductions in prison officer numbers have led to increases in violence in prison increasing the stress and difficulty of carrying out their duties. Also, with respect to the employment structure, employee representatives advised that employee characteristics had changed, with prison officers wages significantly lower because of missing collective agreements with differing wages and conditions

dependent on the employer and the time of recruitment. Furthermore, the outsourcing process had changed the management culture of the prison in a number of ways, negatively impacting employee job satisfaction. Continued focus on benchmarking to other institutions was challenging and the limited empirical evidence to prove their effectiveness also negatively impacted prison officers' perception of their role. These issues are addressed in more detail below.

First, as discussed in 2.1.1 the reductions in staffing levels as discussed earlier have significantly affected both prison officer and prisoner safety and their working conditions across both the public and private sector. Reduced prison officer numbers meant that prisoners were more often confined to their cells and supervision of activities outside cells was restricted. Increased prisoner numbers often lead to over-crowding with prisoners held in inappropriate conditions and increased tension. Since prison officers had less time to interact with prisoners, they were unable to develop the stable conditions which improved prisoner behaviour and safety. An employee representative explained:

When you've got a visible staffing presence, a) the staff feel safer, b) the prisoners feel safer, you know what's normal behaviour and what's not, ... most of the prisoners quickly realise what's going on, that chap there starts to self-harm because he's getting bullied... which increases the amount of stress.

(POA national representative)

Employee representatives agreed that the decline in the number of officers had led to an increase in the amount of violence in prisons (BBC, 2017) as discussed earlier and reported increased levels of assaults and prisoner self-harm which are backed up by official statistics (Ministry of Justice, 2016). The increased violence and under-staffing significantly impacted employee morale.

Turning to employee characteristics, several employee representatives commented on how the typical employee had changed over recent decades and the role of outsourcing in this development. The introduction of prisons outsourced to the private sector had meant that private firms could recruit at lower salary levels (approximately £6000 less

per annum) (TUC, 2016) in comparison to public sector prisons because they were not covered by any collective agreement historically agreed with the Prison Officers Association. Previously the prison service had been “*a career, not just a job*” with a typical recruit in the 1980s an ex-military, non-graduate with the role understood as a disciplined, well paid working class male job. The well-paid and long-term nature of the job at this time meant many employees had invested in further education and saw the rehabilitation of prisoners as their key purpose.

Employee representatives suggested that more recent recruits did not see the job as “*a service*” but more as a secure job, with reports of candidates referred from job centres. From being primarily a male job, the gender distribution was now more even, with more female officers recruited as discussed earlier. Employee representatives suggested that more female recruitment particularly in privatised prisons and the South East was due in part to the lower starting salaries, which meant that the role was seen as “*a second job*”.

Some employee representatives suggested that the high turnover of staff meant that newer recruits, particularly in private prisons, lacked the experience and skills to handle prisoners effectively, thereby contributing to the levels of prisoner violence. They suggested that “*appeasement*” of prisoners had been characteristic of private sector prisons because recruits lacked experience in exercising authority and rule-setting. This change in status effected how prisoners regarded prison officers and is expressed in the interviews:

Once you take away that visible authority away, they see the white uniform and the crown, you're a prison officer, but you're now [in a private prison] a prison custody officer ..., and the whole ethos changes. They become more disrespectful, more confrontational, the violence levels rises, because the respect has gone. (POA national representative)

Being a job rather than a career, meant that new starters had less of a commitment to the role, meaning they were sometimes reluctant to join a trade union, as they did not regard the work as a career or “*job for life*”. Private sector officers in particular noted the lack of career progression and training opportunities (Howard League, 2017). Micro-

management and lack of decision-making power over relatively minor aspects made it a unsatisfying role, undermined their authority with prisoners and impacted on their ability to form constructive relationships with prisoners.

Many officers with long service whose terms and conditions had been protected by TUPE when their prison was outsourced to the private sector had found that TUPE could be “a *double-edged sword*” as an ACAS representative put it. Whilst TUPE meant their generally higher wages and in particular protected pension and retirement age were much better than private sector workers, TUPE acted to freeze them at a certain level of pay and terms and conditions. Employees were “*in a lift syndrome*” with nowhere to go, since if they went for promotion it would adversely affect their pay and terms and conditions. Simultaneously they might be envied by younger workers, “*because you’re doing the same job for more money*” but since their experience could not be utilized, it led to demoralized employees who were reluctant to innovate or share their learning. As the most expensive employees, some believed they were targeted by private firms for redundancy. Younger employees despite lacking experience, could go for promotion, but would still not enjoy comparable salaries, again demoralizing performance. Employee representatives suggested that these divisions between employees reduced trust between prison officers, which was particularly important given the increasingly dangerous conditions in which they worked.

Both employer and employee representatives emphasised how the management culture within prisons had changed due to outsourcing. Benchmarking of public against private sectors meant that:

The public sector has now got the private sector ethos... but you’re not producing shoes in a factory, you’re dealing with people, some of them with mental illness, it’s impossible to do. (POA regional representative)

The more recent process of outsourcing of individual services within prisons had accelerated this effect. For management, arranging maintenance jobs or health care provision involved contacting an outside firm, arranging authorisation, and checking budgets “*it takes forever and ever amen*” (prison manager). The more involved process

meant there was a loss of control which again undermined the development of prisoners trust in prison officers which is expressed by following quote from a manager:

When you're on the landings and you're working with prisoners, you need things to happen.... they don't understand the urgency. (prison manager)

Poor maintenance particularly impacted older prisons in the public sector, many of which were built in the Victorian era. The poor conditions were demoralizing for prisoners and staff, but the outsourcing process meant that prison officers had little control over their environment and their authority was undermined – they were prisoners just as much as the prisoners. Moreover, those maintenance employees who formerly reported directly to the prison governor were now required to work within private company procedures. For example, Amey, who took over prison maintenance at Liverpool jail in 2015, instituted a new working arrangement that maintenance workers should work alone rather than in pairs (IER, 2018). The employees argued that this was unsafe, since prisoners could more easily steal tools if workers were working alone, particularly dangerous in a prison environment. They used internal grievance procedures and reported their concerns to the Prison governor and then aimed to take their concerns to the Health and Safety Executive but were dismissed by Amey on the grounds that their persistence had *“the potential to be incredibly damaging”* to the firms public image (IER, 2018). Cost-cutting on all services e.g. catering also had a negative impact on prisoner morale.

Public sector representatives were frustrated at the missed opportunities for investment in new technology to improve prison running. Whilst investment was possible in private sector prisons, e.g. prisoner access to computers in some private prisons for self-serve to order food i.e. reducing the need for prison officer jobs, computers were not available for educational purposes or to retain family contact: *“it's all about spend and where they want to spend it ...”*. The generally older public sector prisons in comparison lacked any investment in new technologies due to austerity measures.

In summary therefore, outsourcing combined with the effects of lower public expenditure due to austerity has led to a reduced number of workers performing this

activity in the UK economy, on generally lower wages, in poorer working conditions due to increased levels of prisoner violence.

2.2. Representation of workers and employers in prisons

2.2.1. Characteristics of the organizations representing employees and employers working in and for prisons

Employees in prisons are predominantly represented by the Prison Officers Association (POA) founded in 1938, which claims to represent approximately 24,000 members, across both public and private prisons (POA, 2018). The POA also represents psychiatric workers, immigration centre workers and recently has recruited some police custody officers as members (POA, 2018). A number of other trade unions are involved to a lesser degree such as GMB and Unison, as well as newer trade unions such as Community, formerly primarily a steel workers union, which claims to represent more workers in *“privatised justice services than any other”* (Community, 2017).

Prison Governors have their own trade union, the Prison Governors Association (PGA) founded in 1987 and claiming more than a 1,000 members which includes operational managers of higher grades and senior civil servants who work in operational prison management, mostly in the public sector (PGA, 2018).

The employer is essentially the Ministry of Justice and the Minister of State (Grimwood, 2014). There have been six Home office ministers since 2010, four since 2015, with employee representatives suggesting that this meant the role was not regarded as high priority (Prison Governors Association, 2018) but also that these changes at the top affected the efficiency of the department, producing inconsistencies and *“constant interference”* (Prison Governors Association, 2018). One minister for instance introduced the withholding of books as gifts to prisoners in November 2013 as part of an earned privileges scheme but this was reversed in December 2014.

The independent Prison Service Pay Review Body (PSPRB) was established in 2001 *“to provide independent advice on remuneration”* (PSPRB, 2017) for prison officers as compensation for provisions of the 1994 Criminal Justice and Public Order Act which

limited the ability of prison officers to take industrial action (POA, 2015). Each year it makes recommendations to government on public service prison officers pay levels, but has no remit to cover private prisons employees (PSPRB, 2017). Relations between unions and the PSPRB have soured significantly since 2010 as the POA argues that appointment to the Board is not independent, recommendations “*mirrored that dictated by government*” and were purely dependent on the “*cash envelope*” available (POA, 2015). POA members therefore voted to no longer co-operate with the Body in 2015, meaning that the union now makes no recommendations to the Board (PSPRB, 2017).

Relations between the government and all social partners are therefore poor. The government sought further legal action to limit the ability of prison officers to go on strike in 2017 (Independent, 2017). The Criminal Justice and Public Order Act 1994 prohibits prisons officer from taking industrial action or to withhold their services. Thus when the POA issued a circular calling upon members to withdraw from voluntary, non-contractual tasks, because of fears over safety, the minister was granted a permanent injunction, that “*services*” was not confined to contractual tasks. This effectively means that industrial action of any kind by prison officers is completely ruled out (Independent, 2017). HM Inspector of Prisons almost simultaneously reported a “*staggering rise in violence*” due to drugs and overcrowding in particular.

Therefore all parties appear to agree that urgent action is needed to address the condition of prisons, the remuneration of prison officers and poor morale within the service. Activities on a Prison Reform Bill which sought to particularly address the poor condition of many prisons and empower prison governors were suspended in 2017 due to the higher priority of implementing Brexit (House of Commons, 2017).

2.2.2. Challenges for the actors to organize and represent employees and employers

There are a number of significant challenges for both employees and employers in this activity to organise and represent their interests. All parties, including government are influenced and constrained by the outsourcing process which fragments their voice and complicates meaningful comparative analysis. We first address employee representatives concerns, before turning to employers.

The POA and other employee representatives drew a distinction between dealing with public and private sector employers and grouped concerns around three areas: first recruitment of new members; two obtaining recognition and establishing the bargaining unit and three, managing expectations of members on a variety of terms and conditions. Whilst noting that both public and private sector members had overlapping concerns, the removal of facility time as discussed earlier had forced re-organisation of the union itself because public sector officers in this lay-led union were not permitted to take paid time to go into private sector prisons on union duties. This action means that union officials cannot be regionally organised, but must reflect the public and private sector split, stretching union resources operationally and the expertise required to support members.

First, the reduction in staff numbers, particularly following redundancy as older prisons were shut down, meant that recruitment was particularly important. Recruitment was hampered however by high staff turnover, as mentioned earlier, but also by changing expectations of the role. Many new workers did not regard the role as a career, and had no long-term commitment to it, thus did not see any reason to join the union. Representatives also suggested that as the role was not regarded as particularly attractive, e.g. prisoners were not intrinsically appealing like children or nursing the elderly, the union had a “difficult” image and was not often portrayed sympathetically in the media. The role also did not normally impact on most citizens unlike e.g. the NHS of which most people had experience. Yet the turnover rate and number of new employees meant it was particularly important to keep recruiting steadily or union representatives recognised that they would lose recognition and negotiating rights.

Second, recognition for the POA was a given in the public sector but was dependent on the employer in the private sector. Serco for example refused to recognise the POA, meaning that, as an employee representative put it: *“You’ve got to deal with it prison by prison, director by director”*, creating more negotiation work for the union. The POA considered itself the union of choice in the prisons sector and sometimes found itself in dispute with other unions when it came to dealing with some private companies or with new-build prisons. For example, GMB which traditionally enjoyed significant civil

service membership had recognition rights with G4S at HMP Oakwood. Without recognition however the individual prison officers have no mechanism for official collective discussion.

Establishing the bargaining unit was a significant source of contention for both employers and employees. Although theoretically once membership reached a certain level (50%) the union could apply to ballot the membership, in practice this was not always the case as mentioned in an interview:

And even the 50% + 1 doesn't work. Because the employer can turn around and say "Well you might have 50% of the staff here (i.e. at this prison) but you don't have 50% of the employees of Serco." (POA national representative)

In some ways however dealing with private firms was easier than dealing with the public sector since union representatives felt that the government hid behind the PSPRB whilst the reductions in funding due to austerity meant that there was no room for negotiation on any other terms or conditions e.g. sick pay, holiday entitlement or retirement age not just pay. Employee representatives suggested that sometimes private firms approached negotiation in a more professional and constructive manner than the public sector, recognising the importance of staff recognition.

Third, the varied pay and conditions which exist in the prisons sector presented a significant challenge for the union in managing members' expectations. Whilst older employees sought to protect their higher pay and conditions this sometimes caused resentment amongst newer recruits who might regard the union as prioritising the interests of the older employees. The POA could only argue that the lower wages and poorer terms and conditions had been imposed by the outsourcing organisation, the government and were not the result of negotiation. The POA maintained that it was important to negotiate collectively since *"we're all doing the same job, the pay reward should be the same."* Some employees in the prisons sector also apparently found the POA *"too political"*, which complicated recruitment in public sector prisons.

Turning to employers, one must consider both the public and the private sector. Private

employers may face difficult choices in their dealings with government as at a time of continuing budget cuts, there is sustained pressure on private firms to reduce costs, usually achieved by reducing employee wages and thus negatively impacting employees, but also meaning that firms themselves may face three options: to reduce the service, reduce the number of employees, or go bankrupt. Both trade union and management representatives advised that there was a serious danger of private firms “walking away” from contracts with firms allegedly submitting bids which they did not hope to win as it would be impossible to supply a satisfactory service at the required level without making a loss.

From a state perspective however, the limited number of private firms involved leaves the state vulnerable to firm collusion on pricing and to the risk of private firm collapse so that pressure to not investigate, or not to put pressure on firms, since otherwise they end up with another situation in which a large outsourcing company collapses and the public sector is required to step in again.

2.3. Collective agreement(s) and bargaining coverage in prisons

2.3.1. Main characteristics of Collective Agreement(s) covering workers in Prisons

In the UK, collective agreements are dependent upon voluntary collective bargaining between the employer and the trade union, even where the employer is effectively the state. However, terms and conditions for prison officers are complex as there are a number of pay structures applicable, depending on when the prison officer joined the service and whether they work in a public or private prison, all complicating the work of trade union representatives to collectively represent employees. In this section, discussion of the nature of collective agreements between prison officers and employers is divided between the public sector and the private.

As discussed earlier, prior to outsourcing, the prison service generally held very little information in terms of formal contracts, budgets or operating reports (Mennicken 2013).

Representatives advised that this extended to employee terms and conditions. Terms and conditions were often based on civil service practices and policies: early discussions around outsourcing meant that both private employers and employee representatives sought clarification on exactly what terms and conditions applied. Older employees (those who joined pre 1992) have closed pay scales which were negotiated earlier between the Ministry of Justice and the POA. These are usually higher than those for “*fair and sustainable*” pay which was introduced in 2012 (POA, 2011). To address officer shortages, particularly in the South-east, Government offered further pay rises of between £3-5000 per annum to entry level prison officers who joined after 2012 (BBC, 2017) and this effects approximately a third of all staff further complicating issues. The POA described this as “*divisive*” (BBC, 2017) since an underlying principle of their negotiations is that all prison officers should be treated the same.

For the public sector therefore, the POA argues that the union does not enjoy full collective bargaining rights as normally understood, since under the Criminal Justice Act 1994, the union has no right to take industrial action, including strikes. The union also has no right to free collective bargaining since pay is determined by the Secretary of State, following non-binding recommendations from the PSPRB.

Turning to the private sector, the PSPRB has no role in the payment arrangements here but representatives from both employers and employees suggested that the PSPRB report was highly influential and set the basis for negotiations. Some private sector prison officers are covered by collective agreements, but not all, dependent upon the firm, the individual prison but also the outsourcing contracting process. Community, the largest union in the private prison sector has a national recognition agreement with both Serco and Sodexo, with key goals, e.g. with Serco to harmonise terms and conditions for pay, progression sick pay etc. across all six prisons. Therefore whilst the outsourcing process had broken up the collective bargaining framework, both the union and employer could see advantages in harmonising these terms and conditions.

Unlike the public sector therefore, where austerity has enforced a pay freeze until very recently, the national recognition agreement in the private prisons has simplified the negotiation process, allowing 2-2.5% annual pay increases to be achieved. Whilst

understanding what a private firm could “afford” was challenging, negotiation with a private firm was comparatively easier. In the public sector however, an employee representative advised “we’re being conditioned that austerity tells us that we can’t ask for more”. Serco for instance has a national collective bargaining arrangement with Community but with other unions this was on a contract by contract basis.

2.3.2. Collective bargaining coverage: the private and public sector divide

As mentioned earlier, prisons are either public or private and the PSPRB’s recommendations do not apply to private sector prison officers. Yet due to the complex history and reorganisations within the prisons sector in which prisons have been outsourced in a fragmented and piece-meal way, there are wide variations in the collective bargaining mechanisms and consequently the terms and conditions of employees. Some prison officers working in the private sector are covered by a collective agreement but this depends on the private firm employer and the prison involved.

Yet whilst there are groups of outsourced workers not covered by a collective agreement, the workforce divide is not simply between those who have been outsourced and those not outsourced, but is much more fragmented. Employees bargaining rights depend upon a number of factors: when they joined the service, the prison they work at, whether that prison is public or private, and if that prison, on an individual level, has sufficient union members to gain recognition and subsequently bargaining rights.

Therefore whilst there may be no conflicts in terms of the application of collective agreements to outsourced workers, other disagreements do exist, in particular in two instances. First, between those employees who due to long service, enjoyed significantly better terms and conditions, particularly in terms of pay and pension rights and those more recent recruits, who, because TUPE does not extend to new workers post-outsourcing, generally have both lower wages, poorer terms and conditions and lack the collective bargaining mechanisms to improve these. The POA advised that this can cause significant difficulties with newer recruits who note the unfairness, and whilst appreciating that this is not of the trade unions making, the unfairness creates tensions, particularly since union membership is much higher in the older group. This perceived

unfairness undermines the case for collective solutions within the workforce itself.

A second divide was also noted between public and private sector workers. This was particularly evident when a private prison came back into public sector provision, i.e. private sector workers at a private prison were “Tupe’d” into the public sector where the POA is the recognised union and has collective bargaining rights. Officers who were members of other trade unions sometimes objected to this and preferred to be represented by their original union. Employee representatives also reported that there was a degree of resentment over the use of public sector prison officers who were required to lend assistance in private prisons, particularly in times of riots. In part, this action reflects that more experienced prison officers tend to work in public sector prisons, but created a divide with private sector employees.

2.3.3. Strategies deployed by social partners in order to solve coverage problems

First it is important to understand that if we define coverage problems as the fact that not all prison officers are employed on the same terms and conditions, not all the involved partners see this as a significant problem. Strategies to address coverage problems varied between public and private sector trade union representatives also. Employer representatives did not appear to consider coverage problems a significant issue since contract terms and local pay and conditions were also important influences. Harmonisation of terms and conditions across the sector was considered important by all employee representatives and the PSPRB however but was viewed in different ways.

Representatives from the main public sector trade union, the POA, summarised strategies to address outsourcing and coverage problems in four ways: recruitment, representation, reorganisation, and engagement with the outsourcing process itself. Recruitment was crucial across both the public and private sectors in order to retain recognition and bargaining rights, particularly given high turnover of employees, with increased emphasis on legal protections and in-service benefits for members. This issue becomes clear by the following quote from the interviews:

Just recruit, recruit, recruit, if it costs you millions, just get in there and recruit them [...] because once you've got them recruited, then that gives you that power. (POA regional representative)

Representation had been complicated by outsourcing and removal of facility time for public sector representatives to represent their members working in private sector prisons. Like other unions, the POA had also sought to collaborate with workers in related sectors, such as the police. The “Protect the Protectors” campaign for example calls for better protection for emergency service workers, such as police, ambulance staff and prison officers both in terms of increased sentencing for assaults on these employees and better protection such as spit guards and body worn video cameras (Police Federation, 2017). These campaigns raised the profile and visibility of the union, aiding representation of members.

Reorganisation was important in order to effectively represent the disparate pockets of members across the public and private sector. Outsourcing had also fractured the management structure of the union, stretching resources, since public sector officers could not go into private sector prisons due to the removal of facility time. In a lay-led union such as the POA, i.e. where all officials have previously been prison officers, the union was also challenged by eg updated requirements of General Data Protection Rights (GDPR) and at a disadvantage when it came to proving membership numbers in balloting situations. Many other unions which had faced amalgamations with other unions had previously faced the challenge of updating systems and membership forms which the POA had not had to do.

A particularly important new strategy however was to become more involved in the outsourcing process itself. If the public sector can successfully make a bid to run a prison, then the employees are automatically within the public sector and the collective agreement. Outsourced workers had therefore been successfully brought back into the collective agreement by this process.

It was difficult for the public sector however to bid for contracts for a number of reasons and employee representatives were frustrated at the inability of the public sector to

construct successful bids for private prisons. First, the public sector bids started with a significant price disadvantage of being required to include on-site costs i.e. the cost of civil service administration, which private sector bids did not. Central government public sector appeared to lack the expertise also to compete on the actual bidding and contract construction process. The lack of transparency in private sector bids was a particular concern as expressed in an interview with a POA national representative: *“Things happen behind that private wall, you can’t see the details of the private bid”*.

Public sector trade union representatives suggested that initially they had seen private employers, rather than the government as *“the enemy”* and resisted outsourcing in general. This strategy meant that rather than trying to recruit in private prisons or negotiate, they had resisted any kind of relationship which they now saw as a mistake. The outsourcing organisation itself, the state, was the decision-maker who set up the rules of the outsourcing process, and therefore the real target.

Harmonization of terms and conditions across the sectors and regardless of the firm involved was viewed in differing ways. The PSRB noted *“an increasingly urgent need to comprehensively review pay arrangements”* and *“the increasingly fragmented and inconsistent nature of current pay arrangements”* (PSRB, 2017: xv). Private sector trade unions also saw harmonization of terms and conditions as a key goal, and working within national framework agreements they were seeking to ensure that their members enjoyed the same terms and conditions, across all that firms’ prisons, rather than per contract. Private employer representatives agreed with this goal, also seeking to standardize recognition agreements, since standardization assisted managers who often moved around contracts and even sectors. POA representatives however were somewhat reluctant to address harmonization for fear that this would lead to a levelling down of their members’ terms and conditions to less advantageous private sector ones.

Both employer and employee representatives shared dissatisfaction with the outsourcing process itself and the governments’ role in this. Greater transparency of information around the tendering process was required so that private firms were not forced to undercut each other to win the contract in *“a race to the bottom driven solely by price [...] as opposed to a balance between quality and being able to provide the service to the*

public” and recognition that to get “*a better quality of service you might have to pay slightly more*”(Employer’s representative). Since labour costs might be “*between 65-80% of the contract*”, rigid focus on price inevitably hit employees hard; engagement and dialogue with unions was therefore seen as important to explain and understand the contract.

3. FACILITY MANAGEMENT COMPANY

3.1. Introduction

As discussed earlier the FM sector in the UK is considered a “mature” established market dominated by a number of large multinational firms. Industry estimates suggest that because the market is one of the most established worldwide, opportunities to grow are focused on integration of existing services and the potential of innovative technology to drive service improvements (Frost and Sullivan, 2017; Stoddard Review, 2018). Integrated services includes the combining of, for example, waste management with cleaning and property maintenance, such as requiring cleaners to sort as they dispose of rubbish, improving recycling rates and maximising energy savings for clients by ensuring heating and lighting usage is minimised (Roper and Payant, 2014). The UK service integration rate of 24% is already the highest worldwide industry sources suggest, but is expected to grow significantly (Frost and Sullivan, 2017). Therefore those firms which can best integrate FM services through improved contract management, employee engagement and better use of technology enjoy significant growth potential in the UK.

However whilst FM services have traditionally been more common in the UK private sector, i.e. business to business, outsourcing of FM, i.e. the provision of generic services such as catering, cleaning, security and front of house services such as reception are increasingly common in the public sector. Outsourcing of FM services in the private sector is believed to contribute to UK economic growth (Oxford Economics, 2015). Replicating this activity in the public sector is expected to increase significantly with the launch of a government framework agreement to encourage more outsourcing of FM

work to a variety of firms, particularly Small and Medium Enterprises (SMEs). The stated purpose of this initiative is to save approximately 10% of costs (Crown Commercial Services, 2018). This contract is estimated to be worth up to £12 billion over four years and represents a substantial growth opportunity for private FM firms.

Against this background, in this case study we focus on one particular international FM provider in the UK which works across the UK in both the public and private sectors providing FM services including security, cleaning and catering. The firm works in a variety of sectors to provide these services including banking, education and health. This firm was selected for study because of its international presence across Europe, making it a particularly powerful tool for cross-comparison of the impact of outsourcing in a variety of national, institutional and legislative settings.

We interviewed two representatives at the firm including an employee relations director and a manager together with two trade union representatives who specifically deal with this firm. We also draw on a further four interviews at the national level: an employers association; two interviews with ACAS (the Advisory, Conciliation and Arbitration Service) an independent non-departmental public body which provides advice, arbitration and mediation services to both companies and employees on employment affairs and one with a senior manager at another FM provider firm. Although our sample size is small, we triangulated interview data with documentary sources from publicly available company and national reports in order to validate our findings (Cresswell, 2008; Prior, 2003).

The selected firm is multinational tracing its foundation to Denmark in 1901 (ISS, 2017) with 490,000 employees worldwide and a UK workforce of approximately 43,000 (ISS, 2017). Industry sources and surveys suggest that the firm has a leading reputation in the UK FM industry for customer focus and value for money (IFM, 2017). The firm enjoys a limited media presence outside the UK FM industry however which employer representatives suggested was due in part to the almost invisible nature of the FM market in the private sector when it works well and to the excellent employee relations which the firm enjoys.

In the UK the firm is predominantly known as a FM firm catering to private businesses, rather than specifically targeting public sector contracts, in contrast to firms such as Serco whose work is almost entirely in the public sector (Serco, 2018). It differs to other UK FM firms in having a “*European management and approach to employee relations*” in contrast to other firms, which employer representatives suggested promoted a more harmonious employee relations culture.

3.2. Business strategy and organization

3.2.1. Business strategy; focus on cost reduction strategies vs quality

Business theory suggests that outsourcing benefits firms by allowing a client firm to focus on core and specialist business activities, without distraction from peripheral activities such as buildings maintenance, catering, cleaning or security (BSA, 2016; Roper and Payant, 2014). Maximising activity by providing all services on one site, including cleaning, security and waste management for instance avoids micro-management and means there is one point of contact for all services, providing a better service for clients and a more efficient, cost-effective service (Oxford Economics, 2015). This integrated services approach is also an effective way for the firm to expand contracts provided to a single customer, maximising income and offering economies of scale (ISS, 2017).

FM services are provided through yearly contracts often renewed tacitly and thousands of multi-year contracts, most having an initial term of 3-5 years (ISS, 2017). Since contracts are usually up for renewal each year, the firm focuses on customer satisfaction to retain business and mitigate contract maturity risk, proudly noting a contract retention rate of 90%. Notable new FM contracts reported for the UK include for the Department of Business, Industry and Industrial Strategy and Barclays bank. Overall 49% of revenue comes from cleaning, with the UK and Ireland contributing 14% to total group revenues (ISS, 2017).

The firm has specialist standardised processes for all functions, e.g. cleaning tasks, with local contract managers encouraged to develop relationships with local outsourcing management so as to understand clearly customer priorities and be in a position to offer

individualised added contract value compared to potential rival FM firms. The firm therefore tends to focus on quality rather than cost reduction strategies wherever possible.

3.2.2. Organizational structure

ISS is organised in terms of customer-facing structures and functionality. Thus business units are split into sectors e.g. education, health, but also then cross-referenced for functionality. For example on a mostly cleaning contract within a higher education college, managers report into the education sector. A key management structure is identification and prioritisation of key accounts, with the firm identifying 41 key accounts that account for 23% of revenue.

Regarding the workforce profile, 42% of employees are full-time, 58% part-time and the total workforce is 57% female against 43% male. Whilst 58% of supervisors are female however, only 23% of senior managers are female. Wage rates appeared to be in line with other FM providers. Despite the company's commitment to the living wage (defined as the wage rate based on what people need to live in the UK, i.e. £8.75 per hour), at the end of 2016, only 37% of employees were earning the real living wage or above. This suggests that most employees are employed on the statutory national living wage for over 25s of £7.83 (Living Wage, 2018).

In common with many other UK firms, Human Relations (HR) and Employee Relations (ER) are slightly different functionalities, with ER predominantly tasked with dealing with trade union negotiations and legislative issues around employment such as equality or absence processes, and ER management reporting into HR. The relative importance of this functionality however is often predicated upon senior management views of trade unions and relationship development between ER personnel and trade unions. For example, in another major FM firm, an ER manager noted how the new Chief Executive had publicly met the leader of the TUC which "*is a great example to the rest of our business*" and encouraged managers to not think of trade unions as "*the devil incarnate*". This suggests that a firms' attitude to trade unions and employee relations are significantly affected by senior management attitudes.

As many managers in FM firms frequently move location with contracts, and sometimes across sectors, the ER function is important for FM firms in order to create “*the same rules of engagement with each trade union*”. An interviewee explained that:

Our managers move around a patch, they don't stay on the same contract, they may move from sector to sector, but I want them to know that we have got in place relatively the same or similar arrangements with each recognised trade union. (Employment relations director)

This was important as an ER manager at another FM firm estimated they had over 600 sets of employee terms and conditions, significantly complicating employee relations. Both interviewed ER managers had made a conscious effort to develop national recognition agreements with trade unions, although the bargaining unit was contract by contract. Establishing a national recognition agreement had the advantage of providing a common process for negotiation and framework for discussion between managers and trade unions who, due to the characteristic ever-changing contract renewal process common to FM outsourcing, would not have had the opportunity to develop a personal relationship and mutual trust.

3.3. Characteristics of clients

In our research we noticed a divide between those FM firms which predominantly deal with the private sector (e.g. CBRE, ISS) and those which focus on public sector contracts (e.g. Serco, Sodexo). The British Services Association (BSA), an employers' organisation estimates that approximately 70% of the business services market is business to business with 30% from government to business (BSA, 2018). Our selected firm is somewhat unusual as the firm splits its activities fairly evenly across the public and private sectors in the UK. Within the private sector, activity was focused on FM services, including catering and cleaning for private companies, whilst in the public sector there was significant provision of catering, cleaning and FM services, particularly to the health and education sectors.

The public/private split had created differences in contract negotiation as an employer

explained that in the private sector

[...] it's much more around the level of service you're going to deliver, in the public sector, its much more about the cost. (Employment relations director)

Public sector contracts were also considered to be different to private sector ones in being usually subject to more stringent regulations around, e.g. sexual discrimination legislation. Public sector contracts also more often required trade union negotiation due to the higher level of trade union membership in the public sector.

This public/private sector boundary was not always clearly understood however. For example, UK further education colleges have been classified as private sector since 2012 and many NHS organisations were creating “arms-length” units, which are not subject to public sector guidance, blurring the distinction between the public and private sectors.

Public sector contracts were also particularly affected by austerity and funding cuts. Employer representatives in our selected firm suggested that public sector contracts had become so focused on cost that in some cases it was impossible to produce a realistic bid, and therefore it had been necessary to “*just walk away.*” A company manager advised that on a cleaning, caretaking and waste management contract with a college, formerly run by the local authority, a 40% cut in the 2017 contract price due to cuts in funding from the local authority had been necessary. The earlier (2008) change from local authority to private sector control had presented major challenges in terms of working to budget guidelines which were perceived as more as efficient but presented challenges to staff who had previously regarded the role as “*a job for life.*”

For many contracts, good relations with a trade union were a potential advantage in contract negotiation. For example on many private contracts, the pay rate was on a “*pay is pay*” basis, i.e. set by the contract and not up for negotiation, but a strong trade union presence offered the possibility of applying additional client pressure to improve this. Moreover, with public sector contracts, a good trade union relationship compared to that with other large FM firms was a potential negotiating edge in terms of winning a new contract.

3.4. Collective bargaining and workers' representation

3.4.1. Role of different collective bargaining levels

Following on from the public/private sector divide, collective bargaining agreements in large tended to mirror this split. In the private sector, contracts were often inherited or won from other private sector FM firms. When this happened, it was “a given” that any trade union recognition would also be inherited over too, with the firm keen to utilise initial relationship building during the statutory TUPE consultation process of 30 days. National agreements had the advantage here that earlier relationship building was possible at the highest level, sometimes before the statutory 30 day period. Employer representatives suggested that often trade union involvement was not visible on these contracts but there was no issue with dealing with trade unions – indeed there were potentially many advantages.

There are no sectoral collective agreements in the UK FM sector, but the firm recognises the NHS “Agenda for Change” sectoral agreement where this is applicable within health services. There is also no company level collective agreement but the firm has overarching national recognition agreements with eight trade unions including Unison, Unite and GMB. Recognition and collective bargaining however depends on the particular contract, which is usually equivalent to the bargaining unit. Reflecting its international roots, the firm has a global agreement with Union Network International (UNI) and close working with a European Works Council.

Pay rates for many employees were thus determined by the contract and by the statutory minimum wage, rather than through trade union negotiation and company agreement. Whilst the firm supports the national living wage, this was only possible where the contract supported it. Management advised that many cleaning employees for example, particularly outside London, had grown to accept this, with employees feeling “*at least I've got a job*” (interview with manager). Retaining pay differentials between, e.g. cleaning staff and supervisors and managers had been important however, with the firm going back to the contracting authority to negotiate more money for these employees and sometimes doing this in tandem with the union. Rather than low wages or poor

terms and conditions, staff turnover was thought to be caused by limitations in the number of hours available i.e. 10 hours per week on this particular cleaning contract since certain welfare payments are dependent on a minimum of 16 hours work per week.

3.4.2. Problems detected in relation to the coverage by collective agreements of outsourced workers in client companies

As there is no sectoral collective agreement to cover FM employees, collective bargaining coverage gaps are evident, particularly with public sector employees such as a local authority or an NHS hospital. Within private companies, anonymity of salaries together with other terms and conditions of employment is normally and strictly considered confidential information, with disciplinary action possible for contravention.

Employers representatives acknowledged that gaps in collective bargaining coverage with client companies were possible and an issue. Whilst many client companies for example had commitments to pay the Living wage to their own employees, this did not apply to those employees who worked on their premises but who had been outsourced to the FM firm. This was particularly noticeable with local authorities whose directly employed employees are covered by a collective agreement but where services had been outsourced, these employees were not due to the abolition of the two-tier code.

For trade unions, the multiplicity of employers within one workplace, divided by contract processes, complicated relationship building and meant that a collective employee voice was fragmented. Yet as a national trade unionist put it, a collective pay agreement would mean *“the right-wing and the ideologues will argue that it’s an infringement of choice”*. Union representatives suggested that dealing with a larger company was easier than a smaller one since generally there were more professional managers involved who had access to professional advice, and were not so cost-driven. Moreover, maintaining morale in that portion of the workforce that had been outsourced was challenging. Union representatives might have remained within the outsourcing organisation creating a representation problem. Outsourced workers were unlikely to be promoted creating a situation of *“working without enthusiasm”* which an ACAS representative suggested had a significant effect on productivity.

Both FM employers and employee representatives noted with interest a recent unsuccessful legal case which had specifically addressed the issue of employer liability for outsourced FM staff. Employees, including porters and security personnel, at the University of London are employed by an outsourcing firm, i.e. Covant. The IWGB (Independent Workers of Great Britain) submitted a claim for recognition to the Central Arbitration Committee (CAC) arguing that the University was the “de facto” employer, because the contract terms it set with the outsourcing firm substantially determined their pay and conditions. This was rejected by the CAC on the grounds that there could not be joint employers, but is being pursued further (Murrell, 2018).

Both employers and employee representatives shared a dislike and disdain for some smaller trade unions, specifically mentioning unprompted the IWGB. Both suggested that the IWGB tactics including demonstrations outside high profile work places and attempts to tie liability to the outsourcing firm were unhelpful and unprofessional. This suggested that there was an unofficial agreement between the firm and larger trade unions not to take advantage of “naming and shaming” techniques. Both management and the national trade union representative also suggested that these firms preyed on immigrant labour, particularly in London and made unrealistic promises to employees, with a national trade union representative characterising their tactics as: “*They promise the earth*”.

3.5. Strategies developed by social partners in order to cope with coverage problems

Trade union partners suggested that there were advantages in having an automatic national agreement with established protocols and meant that at the highest level there was a degree of trust and co-operation between unions and the firm. Difficulties were more common at the local management level, possibly where local management lacked experience or was under time pressure or unused to dealing with trade unions. Employer representatives had introduced a training programme for all management staff to address this, since many managers lacked an understanding of trade union issues and may have moved contract often. The programme includes presentations from trade

union representatives.

ACAS representatives also suggested that disputes in this sector were often due to a lack of management and supervisory experience. ACAS has also developed training packages to address this, suggesting that this was a particular UK problem, contributing to poor UK productivity which is consistently around 15% below that of G7 states (ONS, 2017).

Representatives at this firm saw good relationships with trade unions as advantageous for a number of reasons. Good employment relations meant a reduced level of strikes and contributed to reductions in staff turnover, particularly in cleaning, which had cost-savings in terms of recruitment and training. As an employee relations director explained:

I always say to the union, I'm probably one of your best recruiters, the staff are better off joining the union, because then I only have one voice to deal with instead of hundreds of you. (Employee relations director)

In comparison, groups of outsourced workers who were not covered by any agreement left the company in “open season” and vulnerable to strikes and stoppages from “silly unions like IWGB” who made the contract too difficult to make effective.

Trade union representatives varied in their approaches to address coverage problems. There was considerable scepticism around the efficiency arguments made for outsourcing, particularly from the public sector. Resisting outsourcing, particularly at the local level was therefore important, in particular by exercising influence at a local government level and through local campaigns. At a national level, changes around the contract rules of outsourcing were seen as important. For example, “Freedom of Information” legislation should be extended to cover private firms to improve information on contracts and public accountability.

Targeted recruitment of members, but particularly of leaders was a priority, who would then recruit more members. Recruitment needed to be done in a strategic manner however so that unions were not competing with each other, poaching members from other unions, and diluting a collective voice.

SECTION III. CONCLUSIONS

In this report on outsourcing and its' consequences for the coverage of employees by a collective agreement we have analysed in detail two sectors, prisons and adult social care, together with a case study of one Facility Management (FM) firm. The selected sectors are typically affected and characterized by outsourcing activities and exemplify the phenomenon well and thus help us to understand how collective bargaining in the UK has been affected by outsourcing and how social partners might address its decline. We note particularly that it is difficult for employees in outsourced services to be covered for a longer period by a sustainable collective agreement. The reason for this can be found in a lack in the legal framework for collective bargaining which would enable a wider coverage of employees and encompassing collective agreements.

In the UK the legal framework in which collective bargaining is embedded is traditionally and generally voluntaristic and "collective laissez fair" in the sense that there are relatively few regulations which support collective agreements. The key characteristics of the legal framework not only explains together with the low trade union density why the coverage of employees in outsourced services is relatively low, but also why the coverage of employees in almost all industries is low particularly in comparison to many other (continental) European countries. Against this background the coverage of employees in outsourced services by collective agreements depends mainly on the initiative of two actors, i.e. of trade unions and the state.

For trade unions one way of bringing employees in outsourced services either under another collective agreement or under a new collective agreement which is specially designed for outsourced activities is to develop strategies and campaigns which motivate employees to join a trade union in order to increase the "power" and "strength" to bargain with employers. As outlined in the report, UK trade unions are aware of the need for such initiatives and have developed a number of strategies with varying degrees of success.

First, many trade unions recognised the importance of re-structuring of their own organisations to meet the outsourcing challenge. In some cases, such as the prisons sector, this had been forced by the removal of facility time for representatives in the public sector which prevented them from dealing with private sector employees. Strategies included the use of more innovative technologies such as mobile phone apps to facilitate communication; improved processes to understand their membership needs and composition; and specialised negotiation and legal training to aid representation. There was an urgent need also to address their financing with many unions impacted by changes to the “check-off” system which meant that membership fees were not automatically deducted without charge. Improved use of technology to communicate and represent younger workers was also seen as important.

Second, a key weapon was to mobilise against outsourcing itself by utilising political contacts and goodwill both in local authorities and national government. Many trade union representatives had worked on campaigns to “in-source”, i.e. bring outsourced contracts back into public sector control, thus returning employees back into the collective bargaining agreement. In-sourcing activity required effective mobilisation of political contacts across the outsourcing organisation itself, together with access to information to make a successful and effective public sector bid.

Third, trade unions sought improved legislative support for employees’ terms and conditions. The reinstatement of the two-tier code of practice would specifically protect outsourced workers by extending collective bargaining agreements to them. The TUPE process also required clarification and strengthening to protect employees. Trade unions were disappointed that their work and contribution were often ignored or side-stepped by the state for example in the Taylor Review (Taylor, 2017). The role that trade unions could play in cost-effective enforcement of equal pay, minimum wage and unpaid holiday pay for employees was also considered a missed opportunity for government.

Trade union representatives noted repeatedly that the increasingly individualised nature of work mitigated against collective action, with outsourcing in particular increasing the operational demands on trade union structures. For example, it was more difficult to build relationships when staff turnover was high and when employees might

work alone or in small groups, for example in the care and FM sectors, Whilst union officials agreed that an important part of their work was supporting members individually, e.g. for disciplinary proceedings, the Trade Union Act (2016) which had introduced stringent employee membership requirements for establishing union collective recognition rights but not removed employee rights for individual representation, meant that union officers often spent more time on individual complaints rather than collective issues, emphasising individual rather than collective rights and again presenting an operational challenge.

Furthermore, trade unions overwhelmingly saw outsourcing as predominantly a political, rather than economic issue, with several employee representatives noting that outsourcing spend had doubled since 2010 (Plimmer, 2014) and suggesting that the form that UK outsourcing had taken was often motivated not only to reduce costs but also to reduce government responsibility. Outsourcing services shifted attention from the government to the firm and to the efficient working of the market, rather than questions around the validity and accountability of a service itself. For example, representatives in the prison sector questioned the purpose of creating a market for prisons which predominantly evaluated the prisons' efficiency, rather than questioning the wider role of prisons in society. Some innovative local authorities had proactively addressed this issue, for example by increasing intensive re-enablement services for older people leaving hospital in order to reduce the need for outsourced adult social care at all.

The results of this study showed that even though trade unions, including trade union associations, i.e. the TUC, are aware of the complexity and difficulty of the issue, no wider range of activities and campaigns appeared to have been developed. However, the nature of British industrial relations per se as well as the collective bargaining system in particular with its very decentralized, local and fragmented structure make the success as well as failure of any of these initiatives relatively narrow in their range and scope.

Therefore, another option or possible pathway to increase collective bargaining coverage of employees in outsourced services is to adapt the legal framework on which collective bargaining is embedded. Any change in this respect however depends upon the

initiative of the state as the second key actor. There are basically two ways of adapting the legal framework. The first would be to strengthen the regulations which aim to protect the rights of employees faced with outsourcing i.e. TUPE. As explained in the report, the TUPE, i.e. Transfer of Undertakings Regulations, are currently designed and legally formulated in a way which do not guarantee a comprehensive and wide as well as sustainable long-term coverage of collective agreements of employees which have been outsourced. At the least, these changes in the TUPE could include a more detailed and wider definition of the factors which need to be considered with respect to the question of whether the activity which is outsourced is a similar business that is carried out by the new company and therefore the activity is simply continued in different hands. However, while the latter changes in the TUPE could, dependent upon the change in the definition of the factors, certainly increase the number of employees which are covered by a collective agreement, these changes would lead to little or almost no change in the trend of overall declining collective bargaining coverage and the fact that in the UK the protection of employees via collective agreements is low per se. Thus, a wider as well as more sustainable way for the state to protect the rights of employees in outsourced services is to rethink and reconsider its role towards collective bargaining in general. As suggested by labour law experts (e.g. Ewing and Hendy, 2017) this could be realized in many ways without any drastic reforms to the traditionally voluntaristic and “laissez faire” legal nature of the UK industrial relations system. These might include strengthening of sectoral collective agreements, e.g. via the introduction of extension regulations of collective agreements dependent upon certain defined conditions as in France or in Germany; the (re-)introduction of sector commissions which existed in previous forms in the UK before (e.g. Joint Industrial Councils); and works councillors system all of which enable a formal and legally backed system to facilitate employees to represent themselves collectively.

A third pathway draws on increasing dissatisfaction amongst all parties, employers, trade unions and the state over the outsourcing process itself. Employer representatives shared trade unionists concern over the increased downward pressure on costs in public service contracts to such an extent that both the quality of services was severely affected, employee terms and conditions and the survival of the firm itself. Outsourcing contracts

were drawn up in such a way that the risk of the undertaking was effectively outsourced to the firm. Limited profits threatened the financial stability of the firms and their ability to raise capital for investment from shareholders. Trade union officials agreed that having previously seen the outsourcing firms themselves as “the enemy”, it was more appropriate to address the rules around the outsourcing process itself. For example, reinstating the two-tier code, would mean that labour costs would be fixed, forcing firms to compete more professionally on innovative management solutions or technology rather than cost-saving wage reductions. Private firms undertaking public sector work should be subject to the same transparency requirements as the public sector, with e.g. ownership and remuneration details freely available to make comparisons easier and “open book” accounting to permit annual independent audits. An effective framework to evaluate service quality and the social value of a service was also necessary. For the state, improved outsourcing processes would address the risk of collapse by outsourcing firms and the resultant impact on services and employees, as well as aid UK productivity and consequently economic prosperity.

Thus, there are various pathways which would enable trade unions, employers and the state to increase the coverage of employees in outsourced services. However, our analysis showed that changing patterns of work exacerbated by the effects of government austerity have created a “perfect storm” for trade unions and collective bargaining, with the multiple layers of outsourcing increasingly fragmenting the workforce into more individualised working patterns.

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