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Non-standard working in the public service in Germany and the United Kingdom

Malcolm Sargeant
Holger Sutschet

Sectoral
Policies
Department

Non-standard working in public services in Germany and the United Kingdom

Malcolm Sargeant and Holger Sutschet

*Working papers are preliminary documents circulated to stimulate
discussion and obtain comments*

International Labour Office
Geneva

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List of Acronyms

ACAS	Advisory, Conciliation and Arbitration Service (United Kingdom)
BA	Federal Employment Agency (Germany)
BBC	British Broadcasting Corporation
BetrVG	Undertaking Constitution Act (Germany)
BMA	British Medical Association
CIPD	Chartered Institute of Personnel and Development (United Kingdom)
CSD	Civil Service Department (United Kingdom)
dbb	Civil Service Federation (Germany)
DE	Department of Education (United Kingdom)
Destatis	Federal Office of Statistics (Germany)
DGB	German Trade Union Federation
DGUV	Accident fund of the federal government (Germany)
DH	Department of Health (United Kingdom)
ECHR	European Court of Human Rights
ECJ	European Court of Justice
EPSU	European Public Services Union
Eurofound	European Foundation for the Improvement of Living and Working Conditions
FDA	First Division Association (United Kingdom)
GEW	Education and Science Workers' Union (Germany)
GEW	Trade Union of Education and Science (Germany)
GPR	Union of General Staff for the State of Bremen and the City of Bremen (Germany)
ILO	International Labour Office
NHS	National Health Service (United Kingdom)
NASUWT	National Association of Schoolmasters Union of Women Teachers (United Kingdom)
NUT	National Union of Teachers (United Kingdom)

ONS	Office for National Statistics (United Kingdom)
ÖTV	Trade Union Public Sectors, Transport, Traffic (Germany)
PCS	Public and Commercial Service Union (United Kingdom)
SACP	Scottish Affairs Committee of the Parliament (United Kingdom)
TdL	Collective agreement for the federal states (Germany)
TUC	Trade Union Centre (United Kingdom)
TVöD	Collective Agreement for the Public Sector (Germany)
UCU	University and College Union (United Kingdom)
UNISON	Public sector trade union (United Kingdom)

Preface

One of the complex challenges associated with the employment relationship is to improve the working conditions of non-standard workers, whose numbers have grown significantly through different uses of contractual arrangements, and who are considered more vulnerable in labour markets than those who are in standard work arrangements. The Sectoral Policies Department (SECTOR) is pleased to present a series of country studies on non-standard work in the public service, as part of its strategy to advance the study of changing employment relations. Drawing on the Conclusions of the Recurrent Discussions on Fundamental Principles and Rights at Work adopted by the ILC in 2012, SECTOR has compiled examples from various regions on trends in non-standard work arrangements, to increase understanding of their impact on Decent Work objectives and identify solutions as appropriate.

As a result of the most recent developments in budget constraints due to public service reform and changes in human resource management in public administrations, a growing number of tasks have been performed through non-standard working arrangements. The ILO's Committee of Experts on the Application of Conventions and Recommendations, in its 2013 General Survey on Conventions No. 151 and 154, expressed concerns regarding trends in labour relations in the public service, like the extension of contracts ruled by private sector labour law; the admission of temporary public servants, agency workers, or regular workers on a non-permanent recurrent basis or working part-time; and the use of civil or administrative contracts to provide services specific to public administration. The Committee warned of potentially negative repercussions for the independence of public servants and for compliance with constitutional requirements for the recruitment of civil servants.

In response to the General Survey, the Committee of Application of Standards of the 102nd International Labour Conference (2013) underscored that collective bargaining in the public service can maximize the impact of the response to the needs of the real economy, particularly during times of economic crisis, and contribute to just and equitable working conditions, harmonious relations at the workplace and social peace. It can ensure an efficient public administration by facilitating adaptation to economic and technological changes, and the needs of administrative management. The Committee encouraged the Office to provide support for capacity-building and assistance mechanisms to promote the ratification and full implementation of Conventions Nos. 151 and 154.

This series seeks to shed light on this phenomenon and strengthen the understanding of collective bargaining in challenging situations. We hope that the ILO's staff and constituents will find it useful in devising future policy initiatives.

Alette van Leur
Director
Sectoral Policies Department

Introduction

There is an extensive literature on non-standard work and vulnerable workers. However, as noted in the report prepared for the February 2015 ILO Meeting of Experts on Non-Standard Forms of Employment (NSFE),¹ there is no official definition of this kind of employment. The report states that, typically, “NSFE covers work that falls outside the scope of a standard employment relationship, which itself is understood as being work that is full-time, indefinite employment in a subordinate employment relationship.” For the purpose of the discussion at the Experts’ Meeting, the report considered the following forms of non-standard employment: (1) temporary employment; (2) temporary agency work and other contractual arrangements involving multiple parties; (3) ambiguous employment relationships; and (4) part-time employment. This paper examines non-standard work especially as it concerns examples of vulnerable low paid workers, women workers, migrant workers, young workers and others, including those that have attained a low educational level.² The concepts of non-standard working and vulnerable workers are linked because the jobs done by vulnerable workers are often part time, low paid and contingent. In this report we mention the low pay of many government workers (Unite 2014) and the many public sector jobs that have been outsourced to the private sector.

The ILO has shown its interest in this field and a concern with the influence of trade unions and social dialogue in maintaining standards in the sector (Ebisui, 2012). ILO work has also shown, however, that there has been a decline in the quality of work in many advanced economies. Between 2007 and 2010 part time employment and temporary employment increased in both Germany and the UK. The concern, however, is really with involuntary part time and temporary work arrangements, which becomes work of a non-standard nature. Indeed for the EU as a whole involuntary participation in this type of work has increased (ILO 2012). The ILO reports that, between 2007 and 2010, involuntary work arrangements of this nature increased considerably in the UK, but actually decreased in Germany. There is also evidence that pay is lower for part time and temporary workers than for standard workers (ILO 2008a).

Scope of the study

This paper is focused on those employed in the central civil service and those employed in local and regional government in Germany and the UK. There are large numbers of public service employees who have not been specifically covered in this report, e.g. teachers and National Health Service (NHS) workers, although where possible we have given examples of the impact in specific parts of the sector. The same issues apply to state employees and outsourced employees as do apply to civil servants. In this sense it is clear that civil servants are as susceptible to the effects of policy changes as those in the private sector.

¹ ILO: Non-Standard forms of employment, Report for discussion at the Meeting of Experts on Non-Standard Forms of Employment, Geneva, 16-19 February 2015. The report is available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/meetingdocument/wcms_336934.pdf.

² Cf., e.g., Sargeant and Ori (eds), 2013; Quinlan, 2012; TUC, undated; Fredman, 2004; Jayaweera and Anderson, 2008.

Key messages

Data: One of the challenges for a study of this kind is the availability of sufficient and accurate data concerning non-standard working in the public sector. In both Germany and the UK there appears to be a lack of official statistics apart from information available on part time working and some information on temporary/casual working, some of which is gendered data. In Germany there is more information available, but this has mostly been obtained by the use of questions in Parliament. There needs to be more data collected and made available.

Scope of the public sector: The scope of the public sector varies between countries. Both countries have been through a lengthy period of outsourcing of public services at national and local level which has created uncertainty. In addition, in the UK, there has been a concerted effort to reduce the numbers of employees in the public sector, to reduce costs and to assist the private sector to expand into areas previously considered the preserve of the public sector.

Industrial relations: The industrial relations structure in Germany and the UK are very different, yet the levels of collective agreement in both countries remain high. The continued outsourcing of public sector work is likely to remove workers from collective agreement coverage.

Reduction of the public sector: Outsourcing is just one aspect of a policy, especially in the UK, to reduce the size of the public sector and this presents major challenges to the continued inclusion in collective agreements of outsourced workers and also those that remain.

About the Authors

Malcolm Sargeant is Professor of Labour Law, Middlesex University Business School, London, UK. He co-edited the 2013 book *Non-standard work and vulnerable workers*.

Prof. Dr. Holger Sutschet, Osnabrück is Professor of International Commercial Law, Labour Law and Comparative Law at the University of Applied Sciences Osnabrück, Germany, and Visiting Professor at Brunel University London, UK.

All comments and the report as a whole are the responsibility of Professor Malcolm Sargeant.

Part A. Germany

41.61 million people in Germany are employed or self-employed; 28.92 million people are employees (BA 2013). Available statistics regarding the development of atypical work do not distinguish between the public and the private sector.

Table A.1. Atypical Work in the German Labour Market (1,000)

Year	Employees	Normal	p/t > 20 hrs	Atypical	Fixed term	Part-time	Minimal	Agency work
1991	31 386	26 948	1 751	4 437	1 968	2 555	654	-
1992	30 958	26 368	1 649	4 589	2 004	2 688	670	-
1993	30 361	25 927	1 707	4 434	1 792	2 767	649	-
1994	30 124	25 550	1 734	4 575	1 867	2 856	646	-
1995	30 039	25 185	1 672	4 854	1 986	3 026	750	-
1996	29 746	24 760	1 586	4 986	1 897	3 188	1 098	-
1997	29 350	24 119	1 628	5 231	1 955	3 392	1 310	-
1998	29 227	23 800	1 653	5 426	2 021	3 535	1 507	-
1999	29 678	23 727	1 674	5 951	2 302	3 834	1 744	-
2000	29 862	23 850	1 720	6 012	2 265	3 944	1 749	-
2001	29 941	23 828	1 801	6 114	2 212	4 127	1 816	-
2002	29 670	23 620	1 818	6 050	2 052	4 221	1 852	-
2003	29 133	22 903	1 824	6 229	2 069	4 407	1 943	-
2004	28 613	22 436	1 868	6 177	2 051	4 376	1 971	-
2005	28 992	22 138	1 979	6 854	2 498	4 673	2 416	-
2006	29 747	22 173	2 278	7 574	2 725	4 861	2 661	563
2007	30 338	22 554	2 309	7 785	2 752	4 946	2 766	616
2008	30 825	22 981	2 382	7 845	2 827	4 920	2 578	636
2009	30 755	23 057	2 486	7 699	2 734	4 915	2 574	560
2010	31 076	23 131	2 571	7 945	2 858	4 942	2 517	743
2011	31 765	23 728	2 647	8 037	2 905	5 044	2 672	778
2012	32 124	24 232	2 763	7 891	2 735	5 017	2 548	745

Source: Destatis 2014b.

The number of fixed term and part time employees in the public and private health and care sector has risen over the past years (Datheet al. 2011). In 1996, 54% of employment contracts were permanent full-time; by 2008, the percentage had declined to 39. Part-time contracts had increased from 19 to 25 per cent and fixed term part-time contracts, from 5 to 10 per cent.

The German Public Sector

Detailed information on employees in the German public sector is available via the governmental institute for statistical data (Statistisches Bundesamt). Its most recent publication on this topic was published in 2014.

Employers in the public sector can be the German state; one of the German federal states; local authorities; and national insurance. The main areas in which employees of the public sector perform their work are general administration, education, child care and health and care.

Table A.2. Number of employees (including civil servants) in the public sectors: total, full-time (F/T) and Part-time (P/T), 30 June 2012 (1,000):

Sector	Total				Female					
	Total	F/T	P/T	% P/T	Total	Pct.	F/T	Pct.	P/T	Pct.
Federal	703.2	622.7	80.5	11.4	178.8	25.5	126.7	20.3	52.1	64.7
States	2,496.0	1,692.4	803.6	32.2	1,381.1	32.2	749.2	44.3	631.9	78.6
Local	2,136.5	1,359.9	776.6	36.3	1,230.2	57.6	566.4	41.7	663.9	85.5
Federal Ins.	397.3	265.6	131.7	33.1	269.5	67.8	152.1	57.3	117.4	89.1

Source: Federal Office of Statistics 2012, at 17.

Table A.3. Number of employees only (excluding civil servants) over all sectors (*1,000)

Class	Total	Male	Female	Pct. female
Full-time	2,464.9	1359.8	1,105.1	44.8
Part-time	1,364.2	248.3	1,115.9	81.7

Source: Id. at 16.

These tables show two distinct characteristics. First, part-time employment is more frequent at the local level than at the state level and national insurance, and in all three cases close to three times as often that the federal level. Second, female part-time employment is substantially higher than both female full-time employment and male part-time employment, in all levels of public employment.

Two types of working relationships

Under German law there is a distinction between two types of working relationships in the public sector. One type is the civil servant whose relationship to the state is governed by public law (*Beamter*). The German civil servant is not an employee because there is no contractual relationship under the realm of private law between him and the state. A person does not become a civil servant by concluding a contract with the state but by being appointed by the state. Civil servant pay is not considered a *salary* in performance of a contractual obligation but is the fulfilment of the state's duty to sustain civil servants. Civil servant working conditions are not negotiated (neither individually nor by the parties to collective agreements) but laid down in statutes (hence it is for the state to decide unilaterally how much money it will pay civil servants). This relationship between the state and its civil servants is part of the German constitutional framework (Art. 33(5) of the German Constitution). It is most widely accepted that this constitutional framework also dictates that civil servants must not strike.³

Public employees represent another type of working relationship in the public sector. Their employment contracts are governed by private law. In principle they are like any other such contract between private parties. However, in respect of its employees the state is directly bound by their constitutional rights, whereas a private employer is not. All employment protection laws apply to these employees. Working conditions are negotiated by trade unions and laid down in collective agreements. Employees of the state have the right to strike. This paper is confined to the latter type of working relationships.

³ To this aspect and its relationship to international standards laid down in the European Convention of Human Rights, Cf. ECHR (2009).

Modern Trends Relating to Non-standard Work in the German Public Sector

It is rather difficult to obtain statistical data on non-standard work in the public sector. This is due to the fact that statistical data available in respect of the public sector gives information only in respect of numbers of full-time and part-time employees but not in respect of fixed-term or agency work. At the same time data available in respect of these workers (fixed-term and agency) does not inform about the numbers of such workers in the public sector.

Some information however has become available because political parties have used their right to ask questions in parliament to find out about specific aspects of non-standard work in the German state and a number of federal states. The political party The Left (*Die Linke*) filed a request for detailed information about agency work in the German state administration, to which the Government complied (Bundestag 2010a, 2010b, 2010c, and 2013b). These questions have sometimes been triggered by reports in the media about non-standard work in the public sector. An overview of these questions and answers to them may shed some light on the subject.

Table A.4. Agency workers in the German state administration 2009, 2010, 2012

	2009	2010	2012
Number of agency workers	1,343 (0.15%)	1,593 (%)	2,092 (%)
Avg. contract duration	6 months	2 months	< 1.5 months

The most important reasons to engage agency workers were sickness/leave of regular staff; temporary filling in vacant positions; administration work for extraordinary tasks. By far the largest group of agency workers (999 in 2009) was hired to do kitchen work. Eighty-seven per cent of the agency workers were on full time contracts and 13 per cent on part time contracts. Three per cent of agency workers were offered jobs with the state.

The government advised that it will continue using agency work in the future when appropriate. It refused to give information about the salaries paid to the agency workers and the rates paid by the government to the work agencies, arguing data protection laws and the duty to respect trade secrets forbade them to do so.

Fixed Term Contracts in the German State Administration

In most ministries, the percentage of employees on fixed term contracts was about 10-20 per cent on 1 July 2013 (Bundestag 2013c).⁴ In some cases the percentage is much higher (more than 30 per cent, e.g. in the Ministry of Food, Agriculture and Consumer Protection), in others much lower (e.g. 4 per cent in the Ministry of Defence). The government says that higher proportions of fixed term contracts in some areas are due to the fact that the staff concerned were scientists for whom fixed term contracts were normal practice (Spiegel online 2013).

A proportion of about 10-20 per cent fixed term contracts does not seem to be unusual when compared to the national average across all sectors. In 2005, 4,670,000 out of 32,013,000 contracts were fixed term contracts, amounting to 14.6 per cent; in 2012, it was 4,902,000 out of 35,419,000, i.e. 13.8 per cent.

⁴ Data are from Bundestag 2013a.

More interesting however seems the governmental answer to the question about how many of the new members of staff in the German state administration were given fixed term contracts. The following table is based on the data provided in the answer for the years 2005 and 2012.⁵

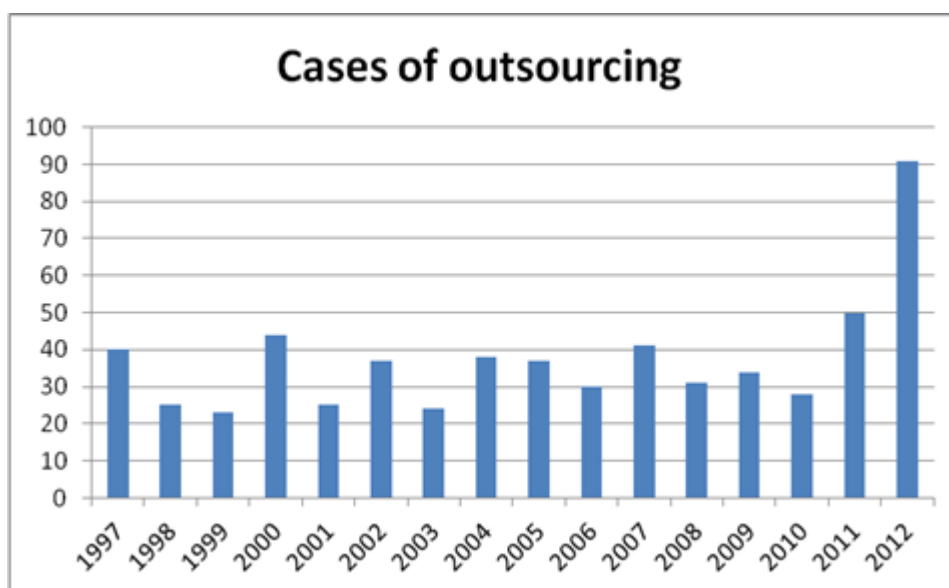
Table A.5. New employees with fixed term contracts

Ministry	2005			2012		
	New staff	Fixed term	% of new fixed term staff	New staff	Fixed term	% of new fixed term staff
AA	112	59	52.68	118	77	65.25
BMI	26	7	26.92	26	24	26.92
	538	136	25.28	798	510	63.91
BMJ	11	11	100	20	20	100.0
BMF	15	9	60.00	34	21	61.76
	71	25	35.21	268	175	65.30
BMWi	10	6	60.00	55	50	90.91
	240	199	82.92	435	381	87.59
BMAS	74	59	79.73	101	69	68.32
BMELV	2	2	100	32	31	96.88
	137	115	83.94	587	524	89.27
BMFSFJ	6	4	66.67	13	10	76.92
	4	1	25	166	143	86.14
BMG	14	8	57.14	23	16	69.57
	99	81	81.82	234	221	94.44
BMVBS	21	5	23.81	16	14	87.50
	139	43	30.94	556	419	75.36
BMU	36	32	88.89	51	46	90.20
	95	74	77.89	119	106	89.08
BMBF	19	14	73.68	36	35	97.22
BMZ	66	12	18.18	71	18	25.35
TOTAL	1,735	902	51.99	3,759	2,910	77.41

What emerges is that in 2005, 52 per cent of new members of staff were given fixed term contracts. By 2012, the proportion had risen to 77 per cent. This shows a tendency of the public sector to favour fixed term contracts rather than permanent positions. It seems that the case of Küçük (ECJ 2012), in which an employee of a district court had been given 13 fixed term contracts over a period of more than 11 years is not a singular case. The political parties SPD (social-democratic) and The Green claim that the public sector uses fixed term contracts systematically across all sub-sectors; these parties seek to limit the legality of fixed term work via amendments to the legal framework (Creutzburg 2013). There are now a couple of court decisions stating that the use of a long chain of numerous fixed term contracts over a long period of time is illegal (Trautsch 2013).

⁵ Bundestag 2013c, appendix 1 at 16 *et seq.*

Figure A.1. Cases of outsourcing in the German state administration



Source: Bundestag 2013b, at 9.

In addition to these figures, another 347 cases of outsourcing were registered in the years 1997 – 2012 within the remit of the ministry of defence which cannot be attributed to single years. Most cases of outsourcing took place in respect of these tasks (Bundestag 2013b, at 13):

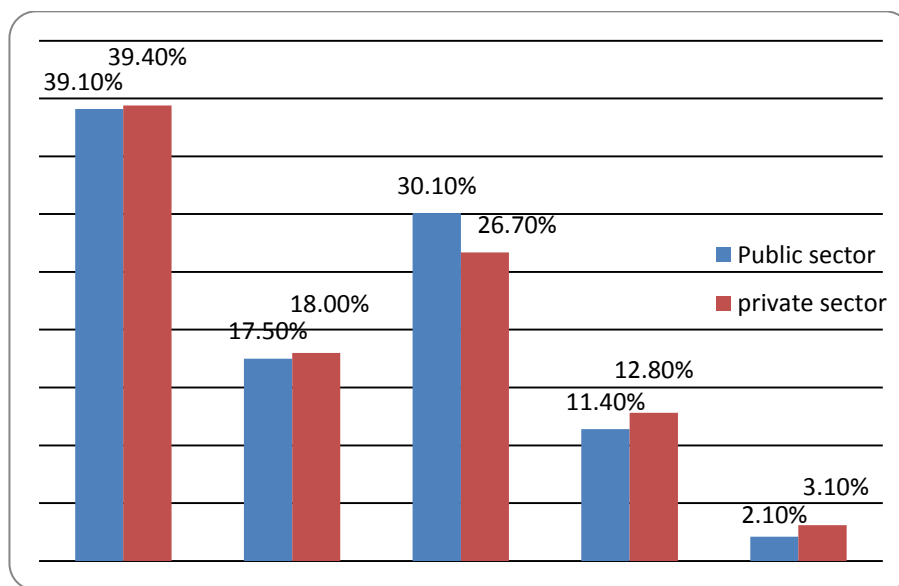
- Security services
- Information Technology
- Cleaning
- Facility management
- Gardening

It is interesting to see how these figures develop over the years, bearing in mind that each year tasks were outsourced on top of those outsourced in previous years. Clearly there seems to be a trend to cut costs via outsourcing. The government identifies “economic reasons” as the driving factor behind outsourcing (Id., p. 9). It also says they do not have any information about the working conditions of the staff who now perform these tasks on behalf of the undertakings to which those tasks have been outsourced (Id., at 12).

Non-standard work in child care, education and local government

A similar situation in respect to full time vs. part time jobs can be observed in child care (kindergarten, nurseries). Interestingly, there is hardly any difference between private and public employers.

Figure A.2. Full-time and part-time workers in child care (2011)



Source: Data from German Federal Statistical Office 2011.

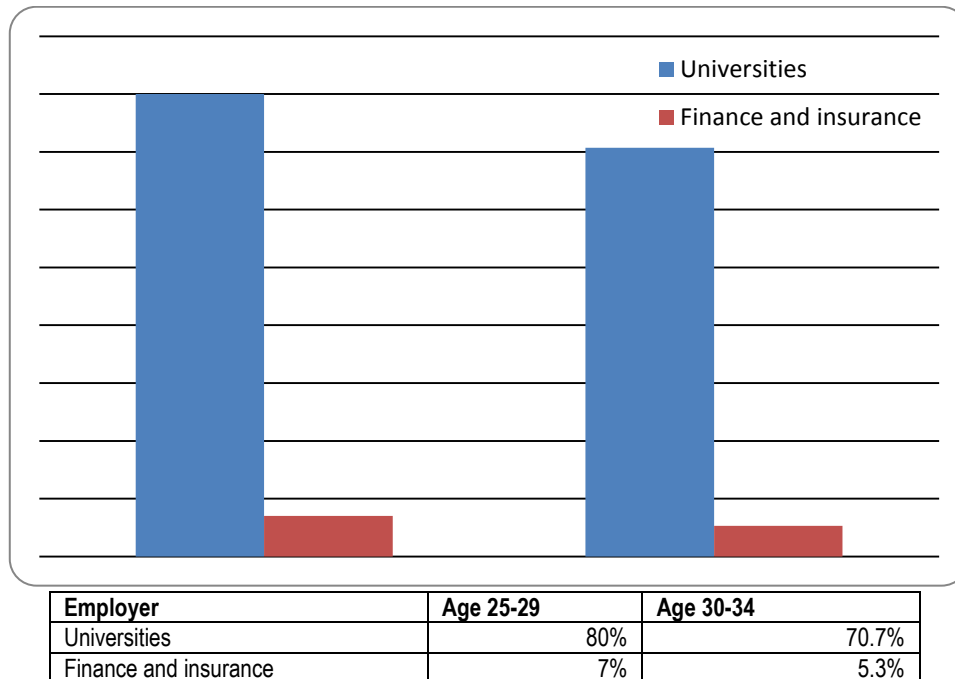
There seems to be a tendency to use forms of non-standard work also in education, especially in regard to pedagogical staff at schools. The trade union GEW claims that many employees are on fixed term contracts or part-time with only few hours spread out over five days a week or low earners without entitlement to pensions (GEW 2009). The trade union association DGB claims that in the state of Baden-Württemberg it is a practice to give teachers fixed term contracts until the end of term and to offer new jobs at the beginning of the next teaching term, thereby leaving them unemployed during holidays (Rogowski 2013).

Another trend in this field is the high proportion of teaching staff who are self-employed (Majic 2013). This type of working relationship is widely used in further education (additional education offered to people who are part of the workforce already but who seek further qualifications). Staff are paid an average of 20 € per hour and do work for several self-standing entities of the same public employer. Sixty two per cent of these workers earn 1,750 € (gross) or less per month.

Another field where non-standard work can be found is higher education. While fixed term contracts with employees in general must not exceed 24 months under the Part-Time and Fixed-Term Contract Act (*Teilzeit- und Befristungsgesetz*, TzBfG), employees at universities (apart from professors) subject to the Science Fixed Term Contracts Act (*Wissenschaftszeitvertragsgesetz*) can be employed for up to six years before they have obtained their PhD and for another six years "post-doctorate", i.e. after having obtained their PhD; apart from this, fixed term contracts are also permissible if the salary is paid from external sources of fund. This framework has led to the situation that many academics are never transferred to lifetime positions. Rather, they complete their 12 years term (six pre-doctorate plus six post-doctorate) and are then put on a chain of fixed term contracts under an umbrella of externally funded „projects“. One of the German political parties, "The Left" (*Die Linke*), requested changes to this legal framework in May 2013 with a view to improving working conditions for academics (Die Linke 2013).

The following table shows percentages of fixed term employees amongst younger (25-34 year old) staff at universities and in the finance and insurance industries. This comparison has been published by the German Federal Office of Statistics, apparently to show how large a difference this can be.

Figure A.3. Percentage of employees with fixed term contracts: universities, finance and insurance (2011)



Source: Data from [Destatis 2013](#)

Working Conditions of Non-standard Workers

In October 2011, the German Association of Trade Unions (Deutscher Gewerkschaftsbund, DGB) published a report titled “Working Conditions in the Public Sector in the View of Workers” (Muchs et al. 2011). The DGB found that working conditions of employees who are on fixed term contracts are substantially lower than those of their colleagues who are on permanent contracts. The fixed term workers complained especially about strain and having insufficient resources (Id., at 9).

A survey shows that staff members of job centres who were asked whether being on a fixed term contract has in a range between very positive (+2) and very negative (-2) impact on their work rated this question on average with -1.4. (Manz et al. 2011, at 37). Trade unions claim that fixed term workers often do unpaid overtime in hope of getting a permanent position (GEW 2009).

Planned Changes

On 27 November 2013, the three largest parties in the German parliament (Christian Democratic Union, Christian Social Union and Social Democratic Party) published their coalition agreement which has become the basis of the work of the present government. According to the coalition agreement, the new government will take the following actions to tackle issues in respect to non-standard work:

- A minimum wage of 8,50 € per hour has been introduced with effect from 1 January 2015;
- The use of agency work will be limited to a maximum duration per employee of 18 months;
- Tackling the abuse of contracts for services will be made easier by providing legislative guidance to identify such abuse.

A preliminary assessment of these prospective changes however concludes that these will hardly help address issues regarding the use of non-standard work in the public sector. Firstly, the most important form of non-standard work in the public sector is fixed term work. No amendments are planned in respect of the legal framework of this type of work. Secondly, the use of self-employed teaching staff in further education has been identified as an issue. However, the government only plans to tackle the “abuse” of contracts for services. It is to be expected that any new legal provisions in this respect will seek to help identify cases in which employers claim that their staff are self-employed whereas in reality they are employees. This approach is designed to help stop the abuse of self-employment. By definition, this will work out only in cases where employees serve in a relationship disguised as a contract for services. This approach is very unlikely to help self-employed teaching staff as they are self-employed according to the traditional distinction between contracts for services and contracts of service. While it is clear that these employees provide contracted for services rather than work under service contracts, the problem here is that no social security (job security, financial security) is provided. The issue in this respect is not the *abuse* of self-employment but the effective outcome of the *use* of self-employment. Thirdly, the government does not have any plans to stop the increasing process of sourcing out traditional public work. The only change in this respect is that workers who perform such work in future outside of the collective agreements for the public sector will have a minimum wage of 8,50 € per hour (which may or may not be the case at present).

Major Issues in Terms of Job Quality and Security

The October 2011 DGB report on the quality of working conditions in the public sector found that the overall rating for job quality is 62 out of 100, which ranks the public sector in the lower mid-range field among all the sectors. Only 18 per cent of public employees rate their job quality as good or very good; nearly 55 per cent rate their job quality as “medium” and 27.4 per cent think their job quality is poor. Even if we consider this rating as a reflection of unfulfilled subjective expectations, this result is alarming given that the public sector had always been regarded as being a top employer, offering very good job quality. While these figures relate to all employees (whether in non-standard jobs or not) the report emphasises that the job quality of fixed term workers is significantly lower than that of their colleagues in permanent positions. Thirty eight per cent of employees on fixed term contracts do not have any or have only limited resources and experience considerable stress related to their employment status. The report concludes that the public sector is no longer considered a model employer.

A report by the accident fund of the federal government (DGUV) found that the identification of employees with their work is an issue in job centres. Workers in this area also rated the impact of being on a fixed term contract on their work as “negative” (Manz et al., p. 37). Another 2013 report identifies being on a fixed term contract as one of the most important factors for stress in child care and education (Brandl and Bernhard 2013). At the same time, staff in this industry complain about confronting new tasks and too high a workload. It is likely that there is a correlation between these factors: staff on fixed term contracts have on average less experience than their colleagues; at the same time they are often determined to cope with a high workload in the hope of getting a permanent job.

However, the same report reveals that staff on atypical contracts (fixed term and part-time below 20 hours per week) are more content with some of their working conditions than their colleagues on “normal” (permanent full time) contracts; these working conditions include workload and job environment. A significant lesser degree of satisfaction could only be identified in respect to income and job security. The report suggests that the relatively high degree of satisfaction can be explained on the basis that expectations of non-standard workers have adapted to their situation. The same report

concludes that by and large, the use of non-standard work will have the effect of producing a workforce which is mentally detached from their workplace (Brandl and Bernhard 2013, at 50).

Trade unions claim that the use of fixed term or agency work does not only create problems for the non-standard workers themselves but also for their colleagues in-standard positions as they have to train new staff very frequently (on top of their normal workload).

On this basis it may be concluded that the large number of employees on fixed term contracts in the public sector suffer from their situation in more than one way:

- They feel insecure about their future;
- This uncertainty negatively impacts on their work;
- Workers on fixed term contracts are given fewer resources to perform their work than colleagues on permanent contracts.

While no information on working conditions is available in regard to other forms of non-standard work, these problems may also apply to agency workers as they are to a large extent in the same situation - and even more temporary - as their fixed term counterparts.

Trade Unions and Non-standard Work

With reference to fixed term contracts, the most recent amendments (9 March 2013) to the collective agreement for employees in the federal states (Tarifvertrag der Länder – TdL) provides that "The parties to this collective agreement will continue their discussions on the practice to enter into fixed term contracts in the federal state sector." This highlights a number of things. Firstly, a practice to enter into fixed term contracts rather than permanent contracts has been identified. Secondly, this has become a concern for trade unions. Thirdly, discussions about this subject are on-going. Fourthly, this issue is not yet so critical for trade unions that they would make changes to this practice a condition for entering into a collective agreement.

At the same time, *ver.di*, the biggest German trade union, published in a June 2013 paper that one out of eight employment contracts is a fixed term contract and that the number of fixed term contracts had gone up while the number of permanent positions had gone down, indicating that there was a tendency to replace permanent positions with fixed term contracts (Ver.di. 2013b).

Ver.di also issued a "resolution" in February 2013, requesting that the government of the state of Nordrhein-Westfalen stop issuing fixed term contracts (Ver.di 2013a.). The union claimed that 17.5 per cent of the 85,000 employment contracts were fixed term. The German Civil Service Federation (dbb) argues that the wide-spread use of fixed term contracts in the public sector is a "wild-west practice" and demands that all staff in the sector be given permanent contracts (dbb 2013a, p. 5). The youth section of the dbb made non-standard work in the public sector the topic for their annual meeting in April 2013. They are particularly concerned with fixed term contracts of teachers and court staff (dbb 2013b). The Education and Science Workers' Union (GEW) has requested the Bremen city-state to use permanent instead of fixed term contracts for their staff (GEW 2009).

Trade unions and collective agreements

There are several strong trade unions in the public sector. The biggest of them is ver.di. This trade union was established in 2001 as a result of the merger of five single trade unions one of which was the Trade Union for Public Sectors, Transport, Traffic (*Gewerkschaft Öffentliche Dienste, Transport und Verkehr – ÖTV*). Ver.di has about two million members (Ver.di 2014).

The German Association of Civil Servants (*beamtenbund und tarifunion- dbb*) has about 1.26 million members. For the reasons explained above this trade union cannot enter into collective agreements for civil servants. However, it can and does enter into collective agreements for state employees.

There is another important trade union in the field of education: Trade Union for Education and Science (*Gewerkschaft Erziehung und Wissenschaft – GEW*) with about 270,000 members (GEW 2014). This union represents employees of nurseries, schools and universities (and competes in this field with ver.di).

Working conditions of public employees are laid down in collective agreements. : The Collective Agreement for the Public Sector (*Tarifvertrag Öffentlicher Dienst, TVöD*) covers workers of state and local authorities. The other collective agreement applies to employment contracts of the federal states, under the initials TdL. Both collective agreements have been entered into by the respective employers on one side and several trade unions (including ver.di, dbb-Beamtenbund und tarifunion and GEW) on the other side.

Under the German Collective Agreement Act (sec. 4.1) a collective agreement covers an employment contract if both employer and employee are members of the parties who have entered into the collective agreement. As a result of this, collective agreements such as the TVöD and the TdL apply to the employment contracts of those employees who are member of one of the trade unions. This collective agreement does not apply to the employment contracts of those employees who are not members of any of these trade unions. The percentage of employees in a specific sector who are trade union members is not known.⁶ However, all employers in the public sector apply the relevant collective agreements by implementing a term to this effect in all their employment contracts.

As a result of this, coverage of employment contracts by collective agreements in the public sector is close to 100 per cent Having said this, it must be borne in mind that collective agreements only apply to those employment contracts where the state acts as employer. Hence, the aforementioned collective agreements (TVöD and TdL) do not apply in cases of outsourcing and agency work.

Challenges to freedom of association and the right to collective bargaining

In principle, all employees of public entities are free to join trade unions. Eligibility for membership does not depend on being in a permanent position rather than a fixed term contract or on working full rather than part time. There are no signs suggesting any attempt of public employers to prevent workers from joining trade unions. So these groups of non-standard workers enjoy the same right of freedom of association as standard workers.

⁶ The GEW education union estimated that the percentage of trade union members amongst employees in private child care institutions was less than 15% in 2011 (GEW 2011).

Nevertheless, trade unions indicate that there is a very low rate of trade union membership amongst staff on fixed term contracts; recruiting members turns out to be much easier in respect of employees who are offered permanent positions. Given that the number of employees on fixed term contracts in the public sector has been growing for a number of years now, the low trade union membership rate may be identified as a challenge to the freedom of association. While fixed term workers are free in principle to join trade unions they tend not to do so, perhaps because they cannot be sure they would benefit from such membership for sufficiently long. This being so, it is to be expected that with a growing proportion of fixed term contracts, the overall rate of trade union membership in the public sector will decline, which will in turn, lead to an erosion in trade union influence on the working conditions in the public sector.

Secondly collective agreements in the public sector apply only to those workers who are employed by public employers themselves. Two groups of workers fall outside the scope of these collective agreements: agency workers and self-employed workers. Agency workers may come under the scope of a different collective agreement which is designed to protect agency workers (rather than employees in the public sector). However, even if agency workers were protected by such a collective agreement, working conditions under such collective agreements are often inferior to those under collective agreements covering employees in the public sector (TVöD, TVL). As for self-employed workers, they do not enjoy any protection by collective agreements. This is specifically a problem for teachers in further education where self-employment is widely used by public employers as a human resource tool.

For these reasons, the use of non-standard work in the public sector is a challenge to the system of collective bargaining: both the scope of collective agreements and membership rates of trade unions are reduced as a result of the use of non-standard work.

Other Forms of Social Dialogue

Works Councils

Under German labour law, every undertaking with at least five employees is expected to have a works council. This is laid down for the private sector in the Undertaking Constitution Act (*Betriebsverfassungsgesetz*– BetrVG) and for the public sector in the staff agency acts of the German state and all federal states (*Personalvertretungsgesetz*). These acts confer on the work councils specific rights and roles in respect of:

- Compliance
- Human resource matters (hiring new staff; dismissal etc.)
- Social matters (e.g. staff behaviour; annual leave plans; working hours etc.)
- Economic matters (e.g. moving the undertaking to a different place).

However, these rights do not extend to non-standard workers. In particular, they do not give the power to stop employers from using non-standard workers. In summary, the institution of workers councils is not helpful in addressing any issues in respect of non-standard work.

Employee councils

The employee councils are a form of collective employee participation in Germany that are apart from trade unions. Their legal basis is the BetrVG and the Staff Agency Act (*Personalvertretungsgesetz*). Every undertaking with at least five employees is required to have an employee council (s. 1 BetrVG), with the number of members of the council depending on the number of employees in the undertaking (e.g.: 1 member for 5-20

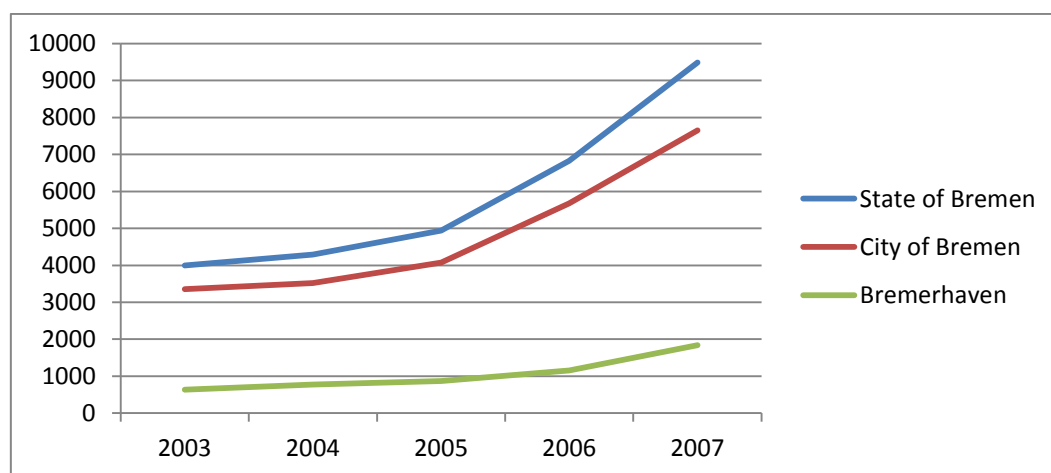
employees; 3 members for 21-50 employees; 13 members for 701-1,000 employees; s. 9 BetrVG). The Act confers participation rights on employee councils; e.g. they have to be informed and heard before any dismissal (s. 102 BetrVG); they have to be informed and their consent must be obtained before hiring new staff; their consent must be obtained on many issues relating to 'social' matters, e.g. how the normal weekly working hours are spread out over the days of the week (s. 87 BetrVG). Apart from these enforceable rights the employer may voluntarily seek their participation in other fields as well (s. 88 BetrVG).

In regard to non-standard work, employee councils may refuse their required consent before new staff are hired in cases where the working conditions of the new employees are unlawful; they cannot however refuse their consent on the basis that they are in principle against the use of agency work, fixed-term contracts etc. Thus, the only way for employee councils to fight against non-standard work is usually via voluntary agreements under s. 88 BetrVG.

The struggle of the Employee Council against non-standard work in Bremen

Bremen is one of Germany's federal states (one of three cities which are also states; the other two "city-states" are Hamburg and Berlin). The Bremen local governments substantially increased their use of agency work between 2003 and 2007. In the graph below, the yellow, pink and blue lines respectively refer to Bremerhaven City, Bremen City and Bremen state which altogether comprise the city and state.

Figure A.4. Temporary Work: State of Bremen and Cities of Bremen and Bremerhaven, 2003-07



Employer	2003	2004	2005	2006	2007
State of Bremen	3993	4293	4941	6826	9485
City of Bremen	3359	3520	4071	5672	7647
Bremerhaven	634	773	870	1154	1838

Source: Koch 2008, at 27.

As Bremen is an employer with more than five employees, it has established an employee council. As far back as 2009, this body identified non-standard work as an issue requiring action back when it claimed that more than 2,000 people were employed by Bremen as non-standard workers (GPR 2009). To address this issue the employee council made a proposal for an agreement to avoid non-standard work (GPR 2010). Under this proposal Bremen had to justify each contract which fell under the definition of non-standard work; agency work was permissible only in cases of emergency; fixed term contracts were permissible only if there was a justification. Bremen refused to enter into this agreement. However, in 2011 such an agreement was entered into in respect of non-

teaching pedagogical staff at schools (GPR 2011). Also Bremen has agreed to pay agency workers a minimum of 8.50 € per hour (Hulsmeyer 2011; Infoservice. 2011).

Issues

Producing a comprehensive report that gives detailed information about all types of atypical work in the public sector turns out to be difficult due to lack of data. Only some data are available from dispersed sources (trade unions; parliamentary debates, etc.). Also, where work has been outsourced, the outsourcing public employers do not follow up on the working conditions of the employees under the outsourced contracts. In instances of agency work public employers refuse to give information on the working conditions of agency workers, claiming an obligation to protect commercial secrets and data protection laws. In this respect, it would help if the Government was under an obligation (e.g. through ratification of the relevant ILO Convention) to collect and publish comprehensive data on the use of atypical employment arrangements in the public sector.

On the basis of the available data, these conclusions may be drawn:

- There is a substantial amount of atypical work in the public sector.
- The areas within the public sector which are most affected are health and care, child care and education.
- The most important types of atypical work are fixed term contracts and outsourcing.
- There is a trend to systematically replace permanent positions with fixed term work, with workers increasingly concerned by growing job insecurity. This practice may deter qualified people from entering the public service and also lead to employees in the public sector being demotivated. In regard to higher education, fixed term contracts are even more used due to a specific legal framework, and present issues of job security. Numerous academics go from fixed term contract to fixed term contract for decades.
- The use of agency work and outsourcing can be highlighted as an issue as work under this type of arrangement excludes collective agreements for the public sector from being applied to the workers concerned. The five biggest areas of outsourcing are security services, IT, cleaning, facility management and gardening. Public authorities do not follow up on the working conditions of staff now performing the outsourced tasks.
- Coverage of employment contracts in the public sector by collective agreements is close to 100 per cent. However, this does not prevent employers from using part-time and fixed term contracts. Moreover, the collective agreements which are designed to apply to the public sector are not applicable in cases of work outsourced to private agency operators.
- Non-standard work especially in the form of fixed term contracts adversely affects the well-being of staff.
- Furthermore, the practice is not properly documented, which affects its transparency.

Possible actions by the ILO, governments and social partners

Governments could take the following measures to address the issues identified in this paper:

- Restrict the use of fixed term work to situations where it is really necessary for public employers to use this instrument;
- Restrict the use of agency work to situations where it is necessary for public employers to use this instrument;
- Avoid outsourcing work to private contractors;
- Require providers of further education to not use self-employed personnel;
- Amend the specific rules under German domestic law applying to fixed term work in higher education with a view to stop universities from using this instrument to repetitively hire staff under fixed term contracts for decades.

There is very little trade unions can do to address the issues identified in this paper. In theory, restrictions to the use of non-standard work by public employers could be made part of collective agreements, but efforts in this direction have been unsuccessful. The most recent amendments to the collective agreement for employees in the federal states (see above) have not been implemented, because no such rules have been made part of collective agreements. Hence it seems unlikely that trade unions will make progress in this respect in the near future.

As for the challenges to freedom of association and collective bargaining, there is also little trade unions can do to address these issues. The decline of trade union membership as a result of the use of fixed term work can only be arrested by reversing the trend of using fixed term contracts in place of permanent positions. Given that public employers are using fixed term working arrangements legally, this will not change unless the legal framework changes or the tendency of public employers to prefer to make use of it also changes. Both of these issues are beyond the scope of collective bargaining, although employee councils have attempted to address them.

Social partners could of course tackle all issues identified here if they agreed on rules on the restriction of non-standard work and, where non-standard work would still be available to public employers, if they agreed on safeguards to protect workers in non-standard forms of work. Such safeguards could include an evaluation of resources available to fixed term staff to do their work in comparison to permanent staff and an evaluation of the working conditions of agency workers to ensure that they enjoy the same working conditions as comparable workers of public employers.

In response to these needs, a possible ILO instrument could establish:

- An obligation of all public employers (governments, governmental bodies, public administration and private entities owned to more than 50% by the state) to publish the percentages of full-time permanent staff, part-time permanent staff, full-time fixed term staff, part-time fixed term staff and agency workers; the average duration of work of agency workers; the tasks performed by agency workers; the reasons for use of agency workers rather than own personnel; tasks which have been outsourced; the working conditions of staff now performing the outsourced work (wages, working time, leave entitlement) in comparison to the working conditions of own staff performing such work.
- A consensus regarding the use of fixed term contracts in legitimate cases of temporary projects or replacement of temporarily absent staff.
- A maximum length for repetitive fixed term contracts, e.g. a maximum of five years (which would allow people on fixed term contracts to qualify themselves

within this period, ensuring at the same time that they are not too old for the job market outside academia when leaving their academic position).

The governments should, firstly, reduce the number of agency workers and outsourcing by limiting the use of agency work to such cases where tasks cannot be reasonably performed by their own staff. Secondly, where agency work or outsourcing is used, the (agency) workers must be given at the very least the same working conditions to which they would be entitled if they came under the scope of the collective agreement for the public sector.

To reduce the problem of self-employed teaching staff in further education, public education providers should be obliged to enter into employment contracts with those teachers who devote most of their working time (e.g. 75%) to one or more public education providers, to improve their working conditions.

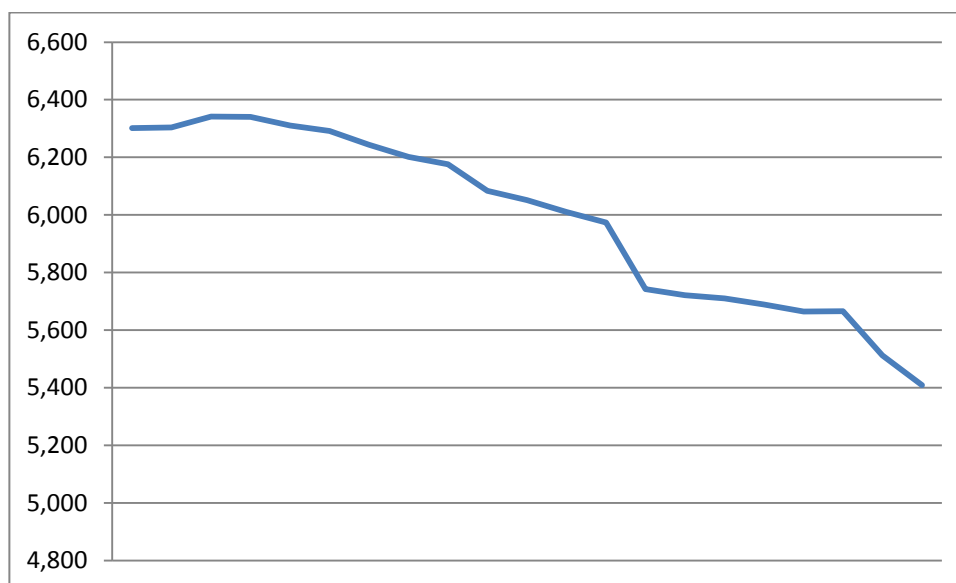
Part B. UK

Distinguishing between the civil service and the public sector

An important distinction must be made between the civil service and the public sector. The civil service is that relatively small part of the public sector which relates directly to the UK Parliament at Westminster. The government appoints Secretaries of State to head the various departments which are indirectly responsible for employment in the remainder of the public sector, which includes local government, education and the health service. The present government has declared its intention to reduce the number of civil servants, but doing this is unlikely to directly impact on the general public. The civil service determines policies for the public service and also funds it. It relies on agencies and other public bodies (who do not employ civil servants) to provide the information it requires. The decisions of central government, through the civil service on policies and funding are currently causing much re-structuring and reduction in the numbers employed in the public sector. There is concern both within the civil service, the remainder of the public sector and the general public, excited by the media, as to the likely impact on both the employment of individuals and the ultimate effect on the services which the population receive. However, while this unease is likely to remain as the process continues it is not possible to predict the ultimate consequences if the proposed changes are put in place.

Employment in the public sector has declined continuously since the first quarter of 2009, as the following graph shows:

Figure B.1. Total Public sector Employment, First Quarter 2009- First Quarter 2014, thousands



Employment in the public sector in the Second Quarter 2014 showed the following trends, according to the Office of national Statistics (ONS 2014a):

- Total UK public sector employment decreased by 11,000 from Q1 2014 to 5.394 million, which is its lowest level, on a headcount basis, since the start of the series in 1999.
- Employment in UK local government, at 2.360 million, is 10,000 lower than at Q1 2014.
- Employment in UK central government, at 2.847 million, is at the same level as Q1 2014.

- Employment in UK public corporations, at 187,000, is 1,000 lower than at Q1 2014.
- Private sector employment increased by 85,000, to 25.215 million compared with Q1 2014.
- Total UK public sector employment is 282,000 lower, and private sector employment 1.055 million higher, than at the same time last year, though these totals are affected by some major reclassifications.

The Civil Service

In June 2012 the UK government published its ‘Civil Service Reform Plan’, in which it stated that the civil service will be around 23 per cent smaller in 2015 compared to 2010. This progress towards that goal can be seen in figures supplied by the Office for National Statistics which show the civil service numbers decreased 15 per cent to 449,000 in March 2013, from 528,000 in March 2010.

It appears that the reduction in numbers have disproportionately affected full time staff rather than part time ones. Part time civil service numbers fell by 550 to 109,562 between March 2011 and March 2012, whereas full time losses amounted to a fall of 34,000 to 354,250 (Eurofound, 2011).

Reductions in the public administration have been a feature of policy since the 1980s and significant parts of the public sector have been outsourced or transferred to non-departmental public bodies and executive agencies. Outsourcing, of course, leads to further uncertainty for employees who are now employed by private contractors with outsourced contracts for a fixed period. It is not always clear that a transfer of contractor leads to a transfer of the affected employees. According to a report published in 2008, outsourced public services accounted for 6 per cent of the gross national product and directly employed some 1.2 million people; with a turnover of £79 billion compared to £31 billion, 13 years earlier (Julius 2008). A major trend associated with outsourcing is an increasing diversification of contractual forms and working hours (Huws, 2012), often referred as precarious employment (e.g. Quinlan et al. 2001).

The following tables give a breakdown into full time and part time working by gender in the civil service:

Table B.1. Permanent employees, First Quarter 2013

Employer	Male			Female		
	Full time	Part time	Total	Full time	Part time	Total
Central government	178,640	18,250	196,890	137,090	88,210	225,300
Scottish government	8,210	470	8,670	5,550	1,920	7,410
Welsh government	2,150	110	2,260	2,340	800	3,140

Note: Figures provided by the Northern Ireland Statistics and Research Agency show central government employment standing at 118,589 full time and 72,753 part time. There is no gender breakdown available and it is doubtful whether these figures are for the same categories as shown for Great Britain.

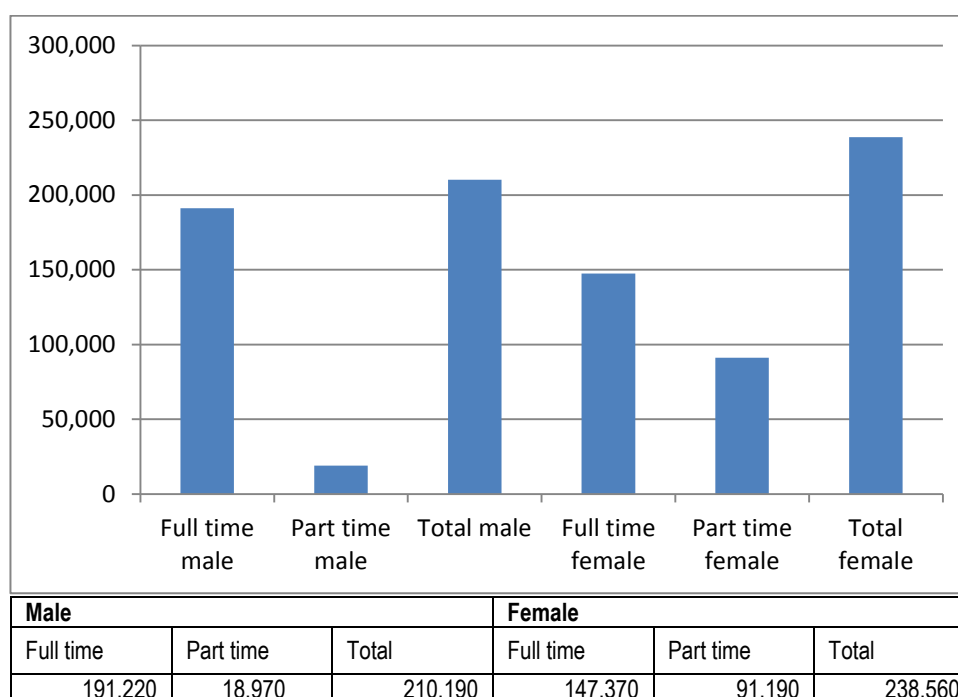
The following tables give a breakdown of temporary/casual working by gender in the civil service:

Table B.2. Temporary/casual employees, First Quarter 2013

Employer	Male			Female		
	Full time	Part time	Total	Full time	Part time	Total
Central government	1,980	110	2,090	2,100	210	2,310
Scottish government	180	20	200	220	50	270
Welsh government	70	10	80	80	10	90

This provides the following for a total of all employees:

Figure B.2. Total (Permanent and Temporary/Casual) Employees, First Quarter 2013



In addition to this there are 74,750 employees of non-departmental executive bodies, of whom 4,290 were temporary employees (Quarter 1 2013). Between Q4 2013 and Q1 2014, employment in bodies with an employment of greater than 20 persons increased by 600 on a headcount basis but only by 260 when measured on a Full-Time-Employee basis, which suggests a high level of part-time work (ONS 2014b). There is no indication of the gender breakdown of such employees.

The figures perhaps reflect a more general situation regarding women at work. Just over 9 per cent of male employees working in central government are working part-time, compared to just over 39 per cent of females. The figures for the devolved jurisdictions are even more pronounced. For Scotland the figures are 5.42 per cent of males and 25.91 per cent of females; for Wales these figures are 4.86 per cent male and 25.47 per cent female. The gender differences for the temporary workforce are less marked, but still a greater proportion of posts are female rather than male.

Case example – the Department of Health (DH)

The DH and the National Health Service (NHS) are good examples of the changes that are taking place in the public sector and the civil service. The role of the DH is to lead, shape and fund health and care in England, making sure people have the support, care and treatment they need, with the compassion, respect and dignity they deserve (DH 2014). DH

is a ministerial department, supported by 23 agencies and public bodies. The department itself employs 2,160 staff who work in locations across the country. Foremost among its responsibilities are creating national policies and legislation, providing the long-term vision and ambition to meet current and future challenges, putting health and care at the heart of government and being a global leader in health and care policy. The NHS is the channel through which DH has hitherto pursued the greater part of its mission. By the end of September 2010, 1.4 million people worked for the health service in England (Hughes 2011). Health care was second only to welfare in the amount of public funding. In 2010/2011 the budget was £105.5 billion out of a total public spending of £689.63 billion. The outlay the following year was slightly higher, but taking inflation into account it had fallen 1.2% (Guardian Data Blog 2012).

At the general election in 2010 the Conservatives committed to continue to increase NHS funding but a Health and Social Care Bill was introduced on 19 January 2011 which proposed to abolish primary care trusts (PCTs) and Strategic Health Authorities (SHAs). Thereafter, £60 to £80 billion of "commissioning", or health care funds, would be transferred from the abolished PCTs to several hundred "clinical commissioning groups", partly run by the general practitioners (GPs) in England. A new executive agency of the Department of Health, Public Health England, was planned to be established on 1 April 2013. The Bill was perceived as intending privatisation of much of the service, but the Secretary of State denied this (BBC Online 2011). In the face of a public and medical profession outcry in April 2011 the government announced a "listening exercise", halting the Bill's legislative progress until after the May local elections. The "listening exercise" finished by the end of that month.

Professional associations mean the NHS is in effect strongly unionised. The British Medical Association (BMA) regards itself as both a professional association and a trade union for doctors and over two thirds of doctors are members (BMA 2014). It is recognised for collective bargaining purposes within national negotiating machinery and by individual employers at local level. The association joined forces with the Royal College of Nursing, the Royal College of Midwives and the Chartered Society of Physiotherapy to protest that the Bill lacked a proper risk assessment (BMA 2012). The trade union UNISON has nearly half a million members working for the NHS in the UK (UNISON 2014a). It claims it led the opposition to the Bill arguing that the Bill should be dropped (UNISON 2012). UNISON members formed the bulk of the attendees at the TUC national rally against the Bill. The NHS is rarely out of the news and most of the commentary is adverse, not least so in the context of the proposals for re-structuring⁷

In January 2012 a Framework Agreement set out the relationship between the DH and the NHS (DH 2012). In effect it created a company charged with the management of the NHS within the policies laid down and the funds allocated by DH. The Health and Social Care Act 2012 received Royal Assent on 27 March 2012 to come into effect on 1st April 2013. The Framework Agreement shifts many of the responsibilities historically located in the Department of Health to a new, politically independent NHS Commissioning Board (now renamed NHS England). General practitioners are family doctors who have the status of independent contractors even though they may exclusively work for the National Health Service.⁸

⁷ E.g., video 19th April 2012. 'A bill restructuring the NHS has been passed by parliament in spite of mass protests against the controversial reforms. Opposition accuses MPs of pandering to private interests, signing the death warrant of free healthcare in the UK (HealthSectorTV 2012).

⁸ See information about a threat to this employment status in Stirling, 2013.

The NHS has long resorted to agencies as a source of staff, especially at the weekends and for night work. It is claimed the bill for temporary workers has risen by more than 20 per cent in just one year, with private agencies receiving more than seven times the rate paid to nurses on the pay roll. Although the UK has implemented the EU directive through the Agency Workers Regulations 2010, agency workers are not the employees of the agency; they have no security of employment and no system of collective bargaining. Their pay will be lower, in many cases much lower, than the charge made by the agency to the NHS; and short term assignments may not secure the workers the same pay as their employee colleagues (Donnelly and Moore 2013).

The most interesting aspect of this account is that neither strong recognised unions nor public protest has prevented the moves towards re-structuring and indeed there is evidence of public opinion prioritising the need for reform of the NHS though not necessarily in this way. The DH and the NHS is, however, a good example of how decision making and employment has progressively devolved from the central civil service to other organisations and how structural change is implemented despite the resistance of employee representatives.

Local government

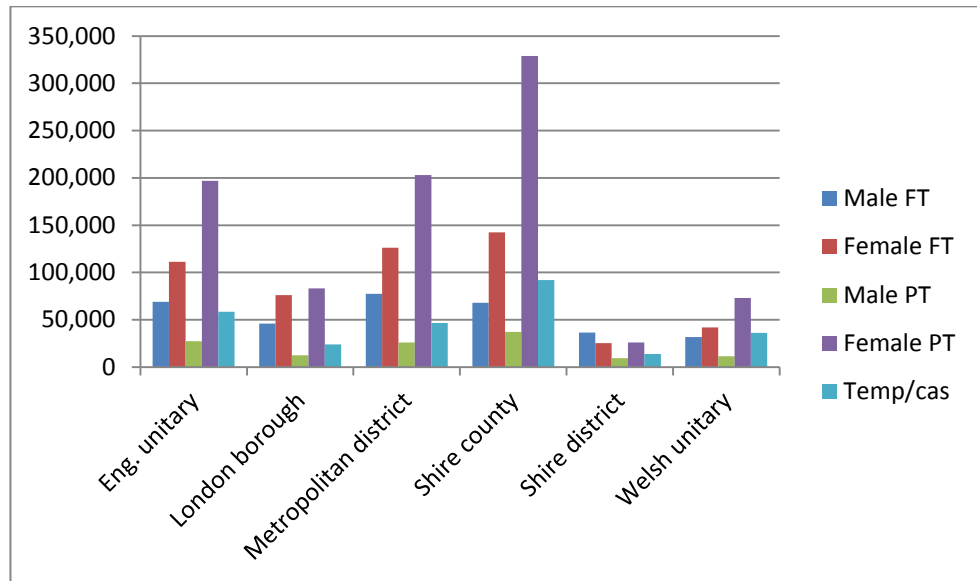
There are 2,514,000 people working in local government (Quarter 1 2013), of whom 1,066,000 are full time employees and 1,156,000 are part-time.⁹ There are also significant numbers of staff on casual/temporary contracts, with 307,000 employed on these types of contracts compared to 1,912,000 on permanent contracts of employment.¹⁰

The majority of the workforce is female (76 per cent) and part time (58 per cent). The part time work force is, as one would expect, overwhelmingly female in most types of local authority (ONS 2013b).

⁹ Figures provided by the Office for National Statistics; exclude Northern Ireland and the Police Service in England and Wales, and 292,000 contracts for which no data is available.

¹⁰ Excludes 294,000 for whom no data is available.

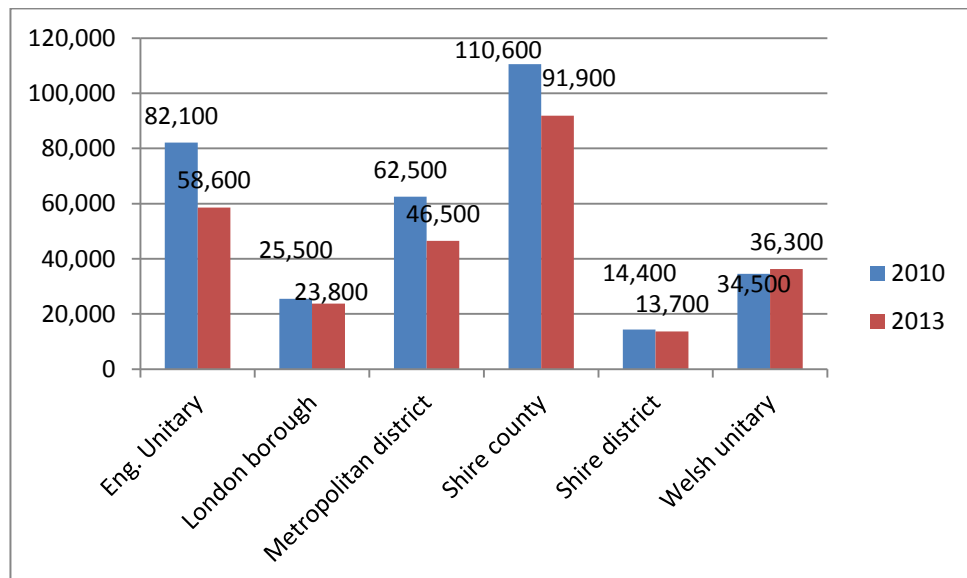
Figure B.3. Employment by type of authority



Type	Male FT	Female FT	Male PT	Female PT	Temp/cas
Eng. unitary	68,900	111,300	27,500	197,000	58,600
London borough	45,800	76,100	12,500	83,100	23,800
Metropolitan district	77,500	126,000	25,900	203,100	46,500
Shire county	68,100	142,400	37,000	328,800	91,900
Shire district	36,600	25,300	9,400	25,900	13,700
Welsh unitary	31,600	42,000	11,500	72,900	36,300

There is a variable trend in the use of temporary/casual staff; table 2 compares the figures for Quarter 1 2010 and Quarter 1 2013 and shows that in the majority of local authorities have reduced their usage of this category.

Figure B.4. Use of temporary/casual staff



Major Issues in Terms of Job Quality and Security

In 2012 the Chartered Institute of Personnel and Development (CIPD) carried out a survey of flexible work provision in the private and public sectors.¹¹ The table below shows the use of flexible work arrangements among employees in the private and public sectors.¹² Flexible work arrangements are non-standard working patterns because they are usually an alternative to full time permanent contractual relationships, sometimes resulting from the need to take on caring responsibilities for children or older people. The survey found that public sector employers are significantly more likely than private sector employers to refuse requests to work flexibly because of a detrimental effect on the ability to meet customer demand (48 per cent) and because they had the inability to reorganise work among existing staff (41 per cent) compared with 34 per cent and 24 per cent of private sector employers respectively. Employers in the public sector are also significantly more likely to refuse requests on the grounds that they have the inability to recruit additional staff (22 per cent compared with 11 per cent of private sector employers) and because of planned structural changes (17 per cent compared with 7 per cent).

Table B.3. Use of flexible work arrangements among employees (%)

Type	All	Male	Female	Private	Public
Part-time working	32	13	49	32	31
Term-time working	2	1	4	1	7
Job share	1	1	1	1	1
Flexitime	25	30	21	20	38
Compressed hours	5	5	4	5	5
Annual hours	3	2	4	3	4
Mobile working	14	22	8	16	12
Career breaks/sabbaticals	2	2	2	2	2
Secondment to another	1	1	1	1	1
Time off for work in community	3	3	2	3	1
Other	3	3	3	3	2
Use no flexible work options	26	30	23	27	26

Source: CIPD 2012, Table 9 (partial transcript). Base: All employees, excluding sole traders whose organisations provide some form of flexible working (1,298).

The use of temporary staff seems to be increasing and one analysis showed a 1.6 per cent increase for the first quarter of 2013 compared to a year earlier. The same analysis identified a trend towards a greater percentage of ‘white collar’ workers as a proportion of the temporary workforce. Over one third of temporary workers were under the age of 34 years, although there was also a trend towards greater opportunities for those aged 45 years and above (Comensura 2013). Local government has also been at the forefront of the contracting out of services and much uncertainty is created, although workers outsourced in this way are protected by Regulation 3(b) of the Transfer of Undertakings (Protection of Employment) Regulations 2006.

In the UK there is currently a controversy in the use of ‘zero hours’ contracts of employment. These are contracts of employment which do not stipulate any working hours. The result is that actual working hours can vary considerably from week to week. Although this pattern of work can suit some people, for others it can be onerous as there is no commitment on the part of the employer to allocate a particular number of hours, if any, each week.

¹¹ This report is based on responses to two separate surveys from more than 1,000 employers (HR professionals) and more than 2,000 employees.

¹² This is a partial copy of Table 9 in the original report

It is estimated that there are now one million workers employed on such contracts. Their use is not confined to the private sector, but is prevalent in sectors such as healthcare (used by 29 per cent of employers) and education (used by 38 per cent of employers). Research suggests that 12 per cent of all employees in those parts of the public sector where they are used are employed on such contracts. The CIPD research estimates that 9 per cent of public sector workers are employed on atypical (not full time or permanent part time) contracts of employment. They also state that 'the use of casual workers and agency workers is more prevalent in the public than the private sector. Nearly half (48%) of public sector employers employ casual workers compared with a third (32%) of the private sector. Furthermore, half (51%) of public sector employers employ agency workers supplied by a third party agency for periods of up to 12 weeks compared with 30% of private sector employers. These jobs are mostly low skilled ones such as cleaning, although they are used actively in the employment of nurses and teachers. The CIPD research does, however, suggest that almost half (43 per cent) of those working on such contracts in the public sector are satisfied with the arrangement, compared to 12 per cent who are dissatisfied (CIPD 2013a).

Apart from this there is limited evidence about the use of non-standard work arrangements and its effect on job quality and security. Much atypical employment will be in elementary jobs, with major exceptions being in nursing, where the use of nurse 'banks' is widespread and accepted, and education where the University and College Union (UCU) has an established anti-casualization committee to campaign against the use of hourly paid contracts for teachers in higher education, which are effectively zero hours contracts (Cf., UCU 2014a).

There is widespread use of these types of contracts in the education sector. One study stated, for example, that the 'marketization' (which includes outsourcing and the use of non-standard employment) "highlights the re-allocation of risk. Workers often bear the costs of new contractual relationships, through reduced job security, lower wages and work intensification. The effects vary, however, according to the specifics of the relationship" (Edwards 2006, at 5).

Trade Unions and Non-standard work

Trade union recognition is mostly voluntary in the UK and generally there has been a decline in membership from the peak which occurred in 1979. Trade union density for the UK stood at 26 per cent of employees in 2012. This decline has been most pronounced in the private sector, where trade union density now stands at 14.4 per cent compared to over 21 per cent in 1995. This decline is reflected, although to a lesser degree, in the public sector where trade union density fell to 56.3 per cent compared to over 61 per cent in 1995. A further illustration of the difference between the sectors is that, in 2012, 86.4 per cent of workplaces in the public sector had a trade union presence, compared to just 28.5 per cent in the private sector.¹³ National collective agreements are also a feature of the public sector, e.g. in education and health.

One study showed that in 2010, full time employees had higher union densities than part timers in nearly all areas. The only exceptions were amongst managers or supervisor, employees with a degree, and lower income earners. Similarly, permanent employees were more likely than those in temporary job to be union members in all categories of employment' (Achur 2010, at 6).

¹³ Figures produced by the Office for National Statistics from information in the Labour Force Survey.

A reflection of the weakness of public sector trade unions and their ability to negotiate on behalf of and to defend their members from detrimental change is the number of working days lost. In the public sector these fell by 1,078,600 from 1,276,200 in 2011 to 197,600 in 2012, the biggest annual fall between years since records began in 1996. This decrease in strike activity is also shown by the fall in the strike rate in the public sector from 210 working days lost per 1000 employees in 2011 to 34 working days lost per 1000 employees in 2012. The 2012 figure is also the lowest figure since 2005.

Table B.4. Working days lost and stoppages: Public/Private breakdown 2003-2012

Year	Working days lost (000s)		Stoppages	
	Public	Private	Public	Private
2003	369	130	46	87
2004	742	163	68	62
2005	99	59	60	56
2006	656	98	87	71
2007	1002	39	90	52
2008	711	48	75	69
2009	368	88	49	49
2010	313	52	47	45
2011	1276	113	88	61
2012	198	51	63	68

Civil servants and other public sector workers generally have the same rights as other workers to join trade unions and to participate in industrial action, although this is a ‘negative right’; i.e. the right in statute not to have action taken against a trade union for breach of contract (or other related torts) provided that the trade union complies with a complex set of procedures and limits the purpose of the action to that defined in statute. In 1984 the then government removed the right of 4000 workers at GCHQ (Government Communications Headquarters) to take industrial action, but this move was reversed in 1997 by a subsequent Labour government. The only group of workers in the public sector without the right to strike are now members of the police force.

There are three main trade unions in the civil service. These are the Public and Commercial Service Union (PCS) with a total membership of 280,000; *Prospect* with a membership of 119,000¹⁴; and the First Division Association (FDA) with a membership of 19,000.¹⁵ Pay levels for the most senior civil servants are set annually by the Review Body on Senior Salaries. Collective bargaining is widespread, but central bargaining was abolished in 1996, so there are now 90 pay bargaining units, although pay constraints are still set centrally by the Treasury. Bargaining is by unit rather than specific types of contractual arrangements (Cf. Bach 2009). These bargaining units do not, however, include those workers in outsourced enterprises and, given the fact that trade union memberships is essentially voluntary and that trade union recognition in the private sector is at a low level of 14 per cent, it is likely that there are many workers carrying out functions previously carried out by permanent employees of the civil service who will not be protected by collective bargaining arrangements. Indeed workers have little recourse if their employment rights are limited by others with whom they are not in a direct employment relationship. One report for ACAS states that this development presents a challenge for regulators and enforcement bodies seeking to uphold labour standards, as well as for unions, which have experienced difficulties trying to organise these workers (Wright 2011).

¹⁴ Figures from the Annual Report of the Certification Officer.

¹⁵ Figure provided by FDA website.

Significant trade unions in local government are UNISON, UNITE the Union and the GMB. The National Joint Council for Local Government Services is the biggest of the three national agreements in the service and has asked for an increase of £1 per hour. Others are the Joint Negotiating Committee for Local Authority Craft and Associated Employees and the Joint Negotiating Committee for Youth and Community Workers. As has been shown above, the majority of local government workers are in part-time work or employed on temporary/casual contracts of employment. There is a correlation between non-standard working and low pay. This is shown in the UNITE website which reports that “local government workers are the lowest paid across public services with over 500,000 employees currently earning less than the living wage. With a three year pay freeze and a derisory 1 per cent in 2013 members have suffered a real loss of 16% in earnings since 2008” (UNITE 2014).

These figures are supported by the Unison web site which reveals that many of the lowest paid are part time women workers (UNISON 2014b) and that

- Pay in local government is now worth 10% less than it was in 1997, after taking inflation into account.
- Pay rises since 1997 have either been just above inflation or below it - as they were in 1998, 2007 and 2008.
- Pay freezes in 2010, 2011 and 2012 mean that a bad situation has been turned into a critical one.
- The average gross pay for full-time workers - including overtime, bonus and other additions - in 2011 was £24,312, while it was £26,244 for the whole economy.
- More than half a million local government workers earned less than £15,000 basic pay in 2011-12.

This put most of them in the bottom 10% of earners across the whole economy in 2011. 8% of full-time workers and 38% of part-time workers in local government earned less than the living wage of £7.20 an hour in 2011. This is a quarter of the workforce.

Challenges to freedom of association and the right to collective bargaining

The European Foundation reported in 2010 that ‘there was little change in overall bargaining structure in 2010, though the new coalition government’s agenda of public sector decentralisation including outsourcing and devolving of functions to independent quasi-public bodies such as the growth of ‘free schools’ which exist outside the established education structure suggests that national-level pay bargaining arrangements in areas such as education and healthcare may be coming under pressure’ (Carley 2011).

Centralised collective bargaining is lessening. Eurofound reports in its 2013 analysis that it is becoming more decentralised in the public sector (Eurofound 2013, at 5). Pay bargaining, with some exceptions, has been decentralised to individual Ministerial Departments. Senior civil servants and prison officers have their pay reviewed by Pay Review bodies (EPSU, undated). There is, however, a continuing role for national bargaining in some sectors such as the NHS and higher education.

The main challenge for trade unions and the system of collective bargaining comes from outsourcing of the public sector and to the diversification of the sector. Until the case of *Alemo-Herron* (Case C-426/11), it had been accepted that the terms of collective agreements in the public sector transferred with the employees when they were outsourced to a private service provider. It had been argued that a private sector employer should not be held to future collective agreement deals when they were not represented in the negotiations. The European Court of Justice in this case, which was a referral from the UK

Supreme Court, held that this ‘dynamic’ interpretation of the effect of Directive 2001/23/EC could not be justified. The UK government is implementing this judgment in new Regulations (Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations) that came into effect in January 2014. The result will be that any future changes agreed by the collective agreement which covered the transferred employees when in the public sector will no longer apply. These same Regulations also provide that small businesses (of less than 10 employees) can inform and consult directly with employees rather than with ‘appropriate representatives’. There are no statistics available as to the continued trade union membership of outsourced employees, but given the levels of trade union membership in the private sector generally and the amended approach in the Regulations, it is likely that trade union membership will decline further.

An example of the diversification issue can be seen in education. Soon after the general election in 2010 the present government enacted The Academies Act 2010 which empowered schools in England that had been declared by inspectors to be outstanding to leave the maintained sector and register as charitable companies. Many schools have chosen to become academies under the Act of 2010; some have been inspired to do this since there was an immediate, if temporary financial benefit in doing so. Others have chosen to be academies because their local authority encouraged them to do so, by indicating that due to the cuts central government was imposed on them, they would be less able to support their schools to the same extent in future. The Academies Act 2010 did not expressly empower schools that chose this route to academy status to depart from national pay and conditions.

When a school achieved academy status it meant that technically staff had a new employer so the Acquired Rights Directive (2001/23) as implemented in the UK by the Transfer of Undertakings (Protection of Employment) Regulations had to be observed (SI 2006/246). The major unions (Unison for support staff and the NUT and NASUWT for teachers) made cautious responses to their members. While the unions pointed out that the new academies differed from the original ones in that they were not empowered to change pay and conditions there was a hint that in the foreseeable future this might change. In any case an employee who moved to another school would no longer benefit from the concept of moving from one ‘associated employer’ to another (Employment Rights Act 1996, s. 231) which, for maintained schools, meant that employees moving from one establishment to another would be entitled to carry their pay status with them at least within the same local authority and more widely while all maintained schools were bound by the same nationally negotiated provisions.

In 2013 the Department for Employment published advice to school governors of academies that academies were not bound by the nationally negotiated terms and conditions (DE 2014). It does not make any distinction between the original academies and those established under the 2010 legislation. In any case the recent ECJU decision in *Alemo-Herron & Others v Parkwood* (C425/11) lays down that acquired rights protected in a transfer of undertakings no longer apply when workers have been transferred from the public to the private sector and the new employer is not entitled to be represented when terms and conditions of employment are negotiated between employers and workers. It may however need litigation to determine whether academies are legally situated in the private rather than the public sector in spite of their corporate status and removal from being ‘maintained’ schools, since they are so dependent on government funding and have to adopt operating systems laid down by central government.

The annual performance management procedures for teachers are laid down in regulations updated annually. In the current year (2013) the relevant regulations are The Education School Teachers Appraisal (England) Regulations 2012 (SI 2012/115). Schools were advised that they needed to update their pay policies, and it was suggested that

academies could take the opportunity to move away from the nationally negotiated terms and conditions of employment. The trade unions disagree with this interpretation.

Other forms of social dialogue

It may be difficult to understand how little importance the UK government attaches to social dialogue. The 2008 ILO Social Justice Declaration reaffirmed that “social dialogue and the practice of tripartism between governments and workers’ and employers’ organizations . . . [is] now more relevant to achieving solutions and to building up social cohesion and the rule of law” (ILO 2008b, at 7). In the UK, social dialogue is of an extremely limited nature.

It is apparent that the UK government favours information and consultation procedures rather than centralised collective bargaining. Indeed there is a Cabinet Office Code of Practice on informing and consulting employees in the civil service, which is concerned with implementing the EC Information and Consultation Directive (CSD 2014b). This Code of Practice states that “there is, however, no need to restrict consultation solely to employee representatives; consultation directly with employees may also be considered.”

Issues

In summary we can say that the following are the major issues of concern, but there is clearly need for empirical research to try to quantify the effects of these issues on the delivery of services:

Reduction in size and modern contracts

The government is committed to both reducing the size of the civil service and local government and ‘modernising’ the way it works. The civil service in 2012 comprised only 1.55 per cent of the total UK workforce, compared with 2.38 per cent in 1992 (CSD 2014a). In June 2012 the government published its Civil Service Reform Plan. The relevant key points are that a smaller civil service will have more rigorous performance management; strengthened capability identifying missing skills and filling the gaps; a more unified approach to developing talent and building capacity across the civil service and creating a ‘modern’ employment relationship, so all departments will “undertake a review of terms and conditions to identify those beyond what a good, modern employer would provide.” (CSD 2012, at 28). This has meant a reduction in terms and conditions for new staff compared to existing ones and includes a maximum of 30 days leave, the removal of “privilege leave”; restrictions on sickness pay; the imposition of mobility clauses into all contracts and restrictions to entitlements such as flexitime during the probation period (CSD 2013, at 28).

Continued outsourcing to the private sector

There has been an increase in efforts to transfer work from the public to the private sector, including an increase in payments by results contracts. These and the process of competitive tendering for public sector work ‘has been seen to drive down terms and conditions of the workforce and concerns have been raised by some commentators on the implications for morale, work ethic and productivity’ (Gamwell 2013). The decision of the European Court of Justice in *Alemo-Herron* clarified the approach towards the transfer of rights under collective agreements and may have a detrimental effect on those employed by outsourced undertakings.

Pay and pensions

According to one of the biggest trade unions in the sector, UNISON, 8 per cent of full-time workers and 38 per cent of part-time workers in local government earned less than the "living wage" (in contrast to the national minimum wage) in 2011. This amounted to one quarter of the workforce. In addition there has been a virtual pay freeze for three years in the public sector. Reforms to the pension schemes include increasing the pensionable retirement age, changing from a final salary scheme to a scheme based on career average earnings and increasing members' contributions. The Pensions Policy Institute estimates that the reforms will reduce benefits by up to a third (although it also states that this is still superior to the defined contributions schemes that many employees in the private sector are part of).

Reductions in trade union facilities and time

According to the government, there are at least 6,800 trade union representatives across the Civil Service with an annual estimated cost of £36 million in gross salary (Cabinet Office 2012, at 1). In 2012 it held a consultation on reforming trade union facility time and facilities. In its response to the consultation the government recommended to departments that trade union representatives must spend at least 50 per cent of their time on their civil service job and any exceptions to this will need to be agreed at a very senior level; if any union official occupies 100% of the time in these tasks, then he or she will only be able to do it for a maximum of three years. The government's default position is that this time off will be unpaid. This clearly is a restriction on trade union activities, but is justified by the government on the reduction in the size of the service.

Flexible contracts

A major issue for the United Kingdom is the discovery that the Office for National Statistics had underestimated the numbers of employees on 'zero hours' contracts of employment. A CIPD survey on the subject estimated that there were some one million workers in the UK on such contracts and that "employers in the voluntary sector (34%) and the public sector (24%) were more likely to use zero hours contracts of employment than private sector employers (17%)" (CIPD 2013b). The government and parliament have announced inquiries into the use of these types of contracts in order to examine potential abuse of them (SACP 2013).

Possible actions by the ILO, governments and social partners

It is apparent that trade unions in the UK are aware of the changes and it is difficult to see what further they can do in the face of government determination to push through its policy of reducing the size of the public sector. Probably the most useful thing that could be done is the sponsoring of specific research into the effects of these changes on employee contractual arrangements.

- *Data and research* - it is clear that the official statistics do not reveal sufficient information on all forms of non-standard working in the public sectors and there is need for further research and analysis to explore the effects of the use of flexible working in the sector. It is likely that most non-standard jobs are in the low paid less skilled parts of the sector, whilst higher paid and established positions will more likely be the subject of standard working.
- *Monitoring outsourcing* - the continuing outsourcing of work in the public sector requires attention. The UK government is committed to this process and it is unlikely that it will change this policy. Of concern is the effect that this has the jobs

on those which are outsourced, especially those workers who are in low level employment often in non-standard forms of work.

- Linked to this is *the continued diversification of employers* in the public sector who are all outside the scope of public sector agreements and whether this leads to changes in the nature of employment relationships.
- *The nature of flexible working* is a matter of great concern, perhaps especially so in the UK, where zero hours contracts of employment are said to be widespread. There is evidence that this form of flexible working is welcomed by some but for others it is involuntary in nature.
- Perhaps the question also needs to be asked as to *why non-standard work is increasing* in the public sector and whether the justifications for using these types of contracts are the same as the justifications used for flexibility in the private sector.

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