



TUC Commission on Vulnerable Employment (CoVE)

Understanding the Operation and Management of Employment Agencies in the UK Labour Market

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Executive Summary

The aim of this study has been to understand better the operation and management of employment agencies in the UK labour market, to increase CoVE's knowledge of the operation of employment agencies, identifying variation in practice, understanding the extent and scope of the exploitation of agency workers and identifying best practice and alternative models of employment agency operation, which could challenge vulnerable employment. Its key findings are summarised below:

The motives for using agency labour

- We find that although there were some similarities in the responses of employers and of agencies as to why agency labour was used, there were also some divergences. Employers mainly reported that agency labour was used to provide additional cover for peaks in production and where local labour was not available.
- The need for flexible labour, either to respond to production demands or to perform work as and when required and to be easily replaceable was highlighted by a number of respondents, however employers were more likely to emphasise flexibility in terms of production needs, whereas agencies were more likely also to emphasise flexibility in terms of how work was conducted.
- Cost was more rarely mentioned as a factor. For agencies cost was more frequently referred to, as was the fact that the use of agencies enabled employers to shift their HR costs – in particular recruitment costs and the costs of confirming workers' legal status.
- A number of employers claimed that there were local labour shortages (not necessarily skill shortages). Some employers claimed that they had to move to agency or specifically migrant labour due to the lack of local labour willing to do the jobs on offer. This was expressed in terms of the jobs being unacceptable to local labour, as other better jobs were available to them locally.
- We find that while legal factors were often referred to, this was primarily in terms of circumventing or avoiding having to deal with immigration requirements, by pushing responsibility for these on to the agency. Thus while both employer and agency respondents referred to the legal factors affecting the employment of migrant workers as a reason for using agencies, this view was more frequently expressed by employment agencies than by employers.
- Even among those employers that did use agencies and among the agencies themselves there was an acknowledgement that the use of agency labour was not un-problematic. The main difficulties raised related to training and language skills.

The motivations for not using agency labour

- Some of the employer respondents did not use agency staff and the reasons that they gave for adopting this position were sometimes similar to the reasons given by other employers for using agency workers. In other words they were expressed in terms of legal regulation and local availability of necessary skills. However, among employers who were not using employment agencies costs were more frequently cited as a reason for their decision than they were by employers explaining their reasons for using agency labour.
- In some cases, even where local labour was not available, employers were bypassing agencies by recruiting directly in country of origin.
- Some employers had also found that agencies were not sufficiently equipped to be able to supply the numbers and skills of workers that they had needed. Others felt that the diversities of staff supplied by the agencies were too great to manage effectively.

Selecting employment agencies

- Many of the employers we interviewed had arrangements with just a small number or even a single agency from which they sourced labour. This provided advantages in terms of the agency having a better knowledge of the employer's needs in relation to agency labour.
- There is some evidence of employers scaling down on the number of agencies they deal with, partly over concerns of standards. Some employers referred to the agencies they used being GLA approved, but not all did.
- A significant number reported having in the past used agencies which had been found to be exploiting workers and with whom they had consequently ended the relationship. But the fact that this was reported points to continuing possible abuse of agency workers.

The nature of arrangements between employers and agencies

- The report explores the nature of the arrangements between employers and agencies and the extent to which these were formalised and documented. We found that most of the employers did have formal service level agreements with agencies.

Enforcement mechanisms and choices

- We sought to establish the extent to which employers exercised any form of check or control over agency procedures or the extent of their knowledge and awareness of statutory regulatory mechanisms. We found that some had well developed mechanisms and up to date knowledge, while others did not.
- Opinion was divided as to whether the current mechanisms, in particular the GLA, were effective or not with some feeling that the GLA had made a difference and others expressing more criticism. In general those agencies that were more supportive of licensing were also more likely to have a relationship

with a small number of employers only and to offer more generous and supportive arrangements to the labour they supplied. A minority who were anti-regulation generally displayed minimal involvement in supportive arrangements for the labour they supplied.

- There was a significant amount of criticism of the GLA, in particular from those agencies that felt that they were being ‘*undercut*’ by unscrupulous agencies that were escaping the investigation of the GLA. In general this criticism related to the limited nature of the GLA's powers and resources.

Recruitment of agency staff

- The interviews reveal that the agencies have used a wide range of methods to locate and recruit mainly migrant workers to fill the kind of jobs that employers are looking to agency workers to do. Some were able to source migrant workers already in the UK but others were sourcing directly from countries of origin.
- An increasing number of agencies were recruiting bilingual office staff, especially Polish, to deal with East European workers. Other agencies were maintaining large databases of job candidates for when vacancies will be available.

Terms and conditions for agency workers

- Among employers there was a limited knowledge of agency workers’ terms and conditions.
- Agencies generally admitted to paying only the National Minimum, although some paid higher rates for longer serving staff or after a period of time.
- Among agencies there was a view that they were constrained in what they could pay by the conditions imposed on them by their clients and some also complained that they had no way of confronting employers who were treating agency staff badly.
- Some employers and agencies had made provision for English language training, but this was limited and often had not been sustained. A number stressed their opposition to the cuts in ESOL funding.
- In relation to whether employers or agencies had procedures that enabled a transfer from agency to direct employment, we found that while most did not a minority did offer this route into direct employment.

Conclusions

- The findings lead us to conclude that while some employers are using agency staff to cover for specific peaks in production, in other cases agency employment has become an alternative method of dealing with staff vacancies that otherwise, in the absence of agency labour, might have resulted in offers of permanent posts.

- We can also conclude that in those cases where there were variations in production demands requiring additional labour, employers who had established close working relationships with a single agency and who had detailed service level agreements, found these relationships more satisfactory.
- Reducing the number of agencies that an employer deals with, to one or two at most, appears to be associated with the maintenance of better standards.
- Employers who had moved away from using agency staff had often developed new and innovative methods of sourcing staff directly, demonstrating that there were alternative (and sometimes lower cost solutions) to labour shortages.
- The establishment of the GLA has had an impact on employment practices within the sectors that are covered by the registration scheme. Employers covered by the scheme generally did not perceive registration as a disadvantage; indeed some expressed the desire for more stringent systems of control.
- We conclude that this shows that there is no particular reason to anticipate that employers would be opposed to regulation or to the extension of regulatory mechanisms, provided that they view these as effective and as ensuring that poor employment practices, that might place the end user employer under media scrutiny, are avoided.
- The study thus leads us to conclude that once a licensing scheme is in force a majority of employers are likely to work with it. At the same time it is also the case that the interviews reveal a large amount of scepticism about the ability of the GLA, as currently constructed, to deal with bad employment practices. This points to the need to extend the powers of the GLA, both in terms of its ability to check on workplaces currently within the sectors affected and also in terms of the potential for its extension to other sectors where agency labour, and in particular low-paid agency labour, is heavily utilised.
- Furthermore, while accepting that the numbers in the study are small, it was those employers working in sectors that were not subject to GLA regulation who were more likely to have moved away from using agency staff, either through their concerns over the treatment of such staff or because they had taken steps to recruit labour through routes that were less open to criticism. We conclude that it is not GLA regulation that leads necessarily to a decline in the use of agency labour but the lack of regulation that obliges employers to move away from using agency labour.

1. Introduction

In September 2007 the Working Lives Research Institute (WLRI) was asked by the Commission on Vulnerable Employment (CoVE) to undertake a study to understand better the operation and management of employment agencies in the UK labour market to increase CoVE's knowledge of the operation of employment agencies, identifying variation in practice, understanding the extent and scope of the exploitation of agency workers and identifying best practice and alternative models of employment agency operation, which could challenge vulnerable employment. This report should be read in conjunction with the Literature Review, prepared by WLRI for CoVE. Reference is made to that review in this report, as appropriate.

Over the last decade, the use of temporary agency work has increased markedly. Estimates by the European Confederation of Private Employment Agencies for the UK suggest in 2005 there were some 6,000 officially designated employment agencies operating through 14,400 branches and sourcing 1.2 million workers a day (5% of the national workforce). These temporary agency workers made up 86% of all workers on a temporary contract, and the sector turnover was calculated at £24bn or 2% of GDP.¹ And these figures themselves are likely to be an under-estimate of the number of agencies and the size of their GDP. In general it is only the larger, well-established agencies that join the employment agency federations. Small agencies are much less likely to take up membership of bodies like the REC, but their presence is increasingly evident in the High Streets of most UK towns. Their growth can also be evidenced by the available VAT data, which shows that over 17,000 bodies operating as employment agencies are VAT registered, suggesting that the number of agencies and consequently the numbers of agency workers is much higher than the official figures demonstrate.

The huge growth in agency work in the UK has depended on a variety of dynamics, ranging from the nature of national regulation to changes in the labour process and industrial structure. Some studies have explored the economic and socio-cultural factors driving this development (Arrowsmith, 2006; Bergstrom and Storrie, 2003; Koene *et al*, 2004, Michon, 2005). Others have considered the roles of low paid and forced migrant labour in domestic work (Anderson, 2005), hospitality (Anderson *et al*, 2006; Wright and Pollert, 2006), the au-pair sector (Williams and Balaz, 2004; Ruhs and Anderson 2006), in agriculture and the sex industry (Anderson and Rogaly, 2005) and more widely (McKay *et al*, 2006; Haque, 2002; Kempton, 2002; Martin, 2005; Vasta, 2004).

In a 28-country study, the OECD (Burgess and Connell, 2002) found that temporary work was most prevalent in either unskilled or administrative and customer-related occupations. Earlier research we conducted found that some agencies promote exploitative relationships, by sourcing work that is poorly paid, low skilled and casual and which is positioned on the edges of the labour market (McKay and Winkelmann-Gleed, 2005). Workers sourced through agencies are more likely to be paid below the national minima, are less likely to be in employment that is union organised, are more likely to be working long hours and working unsocial shift patterns and employment is also more likely to be conducted 'illegally' (Report of the Environment, Food and Rural Affairs Committee, 2003.) A Department of Trade and Industry regulatory impact assessment of potential legislation on the equal treatment of temporary agency

workers suggested that if there were non-discrimination in pay it would benefit agency workers by £366m a year, while increased holiday pay and annual leave would cost £118m.

At present, although there is an element of formal regulation of employment agencies, in practice it is possible for agencies to open for business without having to meet any regulatory standards. Agencies perform an important role in introducing labour to employers, particularly in the case of migrant workers. One of the issues in relation to agency employment is the minimal element of their formal regulation, an issue that may in part be addressed by the EU Agency Working Directive.

While temporary work used to be predominantly contingent employment, growing numbers of organisations are now using it to enable them to function normally. It is thus present in the UK in two distinct forms:

- (1) Where an employer sub-contracts a set of core business tasks to an employment agency or labour provider that takes full management and supervisory responsibility for its employees successfully completing those tasks.
- (2) Where an employer requests a supply of labour from an employment agency or labour provider which it pays for such labour, but the employer has full management and supervisory responsibility for these agency workers.

The growth of sub-contracting in the labour process contributes to worker vulnerability, as contractors admit that they have little knowledge of the recruitment practices of the sub-contractors, and whether they operate to the minimum legal standards². But while the first of these contractual relationships is likely to have the greatest potential to increase vulnerability, both forms can have this effect. This is because within the UK's labour force the majority of workers are directly employed, working within a contract of employment that sets out obligations and duties between employer and employee. Many statutory employment rights are dependent on the existence of this form of contractual relationship and it is a particularly important employment relationship for women workers, since rights connected with pregnancy and maternity leave are predicated on the existence of a contract of employment.

Although there is no reliable data on migrant employment contracts, anecdotal evidence suggests that migrants are less likely to be directly employed. For example, within the food and drink industry an estimate by Food Business UK is that around one in three workers in the industry (125,000 workers) are employed through agencies and of these 90 per cent are migrants. Our own research confirms a much higher level of agency work within the migrant labour force and furthermore we have found that agencies are a common initial route into employment in the UK for the overwhelming majority of migrant workers (McKay and Winkelmann-Gleed, 2005; McKay *et al*, 2006, Wright and Pollert, 2006). Current WLRI research mapping migrant workers employment and skills in North London confirms that Polish migrant workers are major users of employment agencies.

In research for the Health and Safety Executive (HSE), on health and safety and migrant workers, a number of the employers whom we interviewed had used agency labour, either to cover for specific labour shortages or as an entry route into direct

employment. Some of these agencies had their main base outside the UK and were engaged in the supply of workers, directly from a third country to the UK. It was often under these conditions that workers found themselves in vulnerable positions in the UK. At the same time we noted that some migrant workers viewed favourably the service they had obtained from agencies and labour providers, particularly where the agency had taken care of documentation or had otherwise smoothed their journey from country of origin to the UK. However, for the majority, agency employment represented lower pay (in relation to directly employed workers), which consequently encouraged long and unsocial working hours putting their health and safety at risk. They were also more likely not to be paid while sick and not to have holiday entitlements.

However, this research for the HSE and more recent WLRI research for the Ethical Trading Initiative on agency workers in the poultry sector, noted that some employers were moving away from using agency staff. This was either because they had reached a point where, already employing a critical mass of migrant workers, they could directly secure introductions to new workers through word of mouth, or where they were concerned that agency workers were being exploited. Many employers felt they are not able themselves to regulate the workings of agencies, other than by taking a decision not to use agency staff or to switch agencies where alternatives were available.

2. Methodology

This section discusses the methodology used for collecting the data. Both desk based and qualitative interview methods were employed, and 22 semi-structured interviews were conducted, 11 with employers and 11 with agencies. The study focused on three sectors: food processing, personal care and cleaning.

For this study the primary methodology adopted was qualitative, although we also carried out desk-based research, mainly a review of the existing literature³. Qualitative research was developed specifically to enable researchers to study social and cultural phenomena' (Myers, 1997) so that they might achieve 'the goal of understanding a phenomenon from the point of view of the participants and its particular social and institutional context' a perspective which 'is largely lost when textual data are quantified' (Kaplan and Maxwell, 1994). Qualitative research methods include structured or semi-structured interviews and can be 'one to one' or based on group discussions (focus groups). In this research we proposed the conduct of 28 one-to-one semi-structured interviews with employers, employment agencies and with key informants, based in three sectors: food processing, personal care and cleaning. Initially we had also proposed the conduct of two or three focus groups, bringing together those whom we had already interviewed, to explore their views, when vocalised in a collective context. However, the short time-scale for the research obliged us to reconsider the use of the focus groups, and, in discussion with the TUC, it was agreed that this method should be abandoned, as considerably more time had to be devoted to locating employers and agencies who would participate in the research.

The sectors chosen represented areas of employment where agencies were known to have a strong presence and where there was predominantly low paid employment and a high presence of vulnerable workers, whether measured by the hours that they worked, the atypical nature of their contracts, or their migration status.

Of the 28 interviews, 24 were to be with employers and employment agencies. However, on completion of the research we had conducted two fewer, 11 with employers and 11 with agencies. To secure these interviews we had contacted more than 60 employers/employment agencies. We had the greatest difficulty in obtaining participation from care homes and the clients of agency cleaning workers. However, as many of the employment agencies supplied labour to more than one of the sectors under investigation, the data we have collected covers more workplace situations than initially proposed. Table 1 shows the breakdown of the interviews conducted.

Table 1: Distribution of interviews completed by sector

	Sector				Total number of sectors
	Cleaning	Food processing	Personal care	Other	
Employer	1	7	0	3	11
Agency	7	9	6	0	22
Total	8	16	6	3	33

Our aim was to conduct as many of the interviews face-to-face as possible. In practice, while the majority of interviews (13) were conducted face-to-face, a minority (nine) were conducted by phone. This occurred where the participant requested a phone interview only, usually because they were constrained by time or by production schedules.

The research was based in London, the East of England and the South East although we did conduct one interview in the Midlands, one in the North of England and two in the South West, as the employers or agencies concerned had particularly innovative experience that we wished to reflect in the research. In terms of geographical spread, the participants were located as follows:

Table 2: Distribution of participant employers/agencies by locality

Region	Number of interviews
London	5
The East of England	11
The South East	2
South West	2
Midlands/North	2
Total	22

In terms of the size of the employers/agencies, we aimed to sample at least two larger (250+ worker companies) and two smaller (<100 worker companies) to cover a number of larger national employment agencies and employers, but also some smaller local and/or independent agencies. The overall breakdown of the participant interviews by size is as follows:

Table 3: Distribution of participant agencies/employers by size

	Employer	Agency	Total
Less than 100 workers	3	3	6
Less than 250 workers	1	1	2
More than 250 workers	7	7	14
Total	11	11	22

The interviews were generally conducted with HR managers, in the case of the employer interviews, and with those responsible for liaising with employers, in the case of employment agency interviews. The advantage to the research of interviewing employers and agencies was that we were able to reflect the potentially different perspectives of the two actors. The interviews were semi-structured and copies of the topic guides used for employers and employment agencies are included in this report as Appendix A and Appendix B.

In relation to the employer interviews the main issues explored were the organisational background of the company, its agency arrangements, the characteristics of agency workers used, their terms and conditions and their perceptions/experiences of regulatory mechanisms. In relation to the agency interviews the questions explored the extent of the agency's operations, the number of workers on their books, the methods by which they recruited agency workers, their terms and conditions and the agency's views on their obligations and responsibilities to the workers they sourced.

Interviews were also conducted with a small number of key respondents or experts. These were mainly trade union full-time officers and other academics working in the field of migrant labour. In total around four such exploratory interviews were conducted. In general each interview lasted for between 45 minutes and an hour. Interviews were recorded and a detailed note was made of the key elements of the interview. The detailed note was arranged under prescribed headings to allow the cross analysis of the data.

3. The demographics of the participant organisations

In this section we look at the participant organisations, their company/agency structures, their size and the type of workers they employ/source. Table 4 provides a general overview of the participants while Table 5 provides a breakdown of each of the participants. Of those employers not presently using agencies (five) only one had never used employment agencies. The other four had moved away from using agencies for a number of reasons, explored in the following sections. Where agencies were used employers tended to favour working with a single agency only and this was the position of four of the participant employers. Only one employer participant engaged the services of more than two agencies. Agency participants had a different profile. Overwhelmingly they supplied labour to a large number of employers. Only two supplied either to a single employer or to no more than two employers.

In terms of the size of the agency workforce, of the six employer participants who currently used agency staff, in three cases these composed less than 20 per cent of the workforce: 4 per cent; 5 per cent and 15 percent respectively. The three remaining employers had agency workforces of 20 or more per cent, specifically: 20 per cent; 28 per cent; and more than 50 per cent.

In relation to size, both the employer and employment agency participants reflected small, medium and large organisations. As far as the ethnic composition of the workforces in the participant organisations is concerned, Table 4 shows that although they have diverse workforces (taking account only of the two or three major ethnic groups present in each organisation) Poland emerges as the principle country of origin, for both the agencies and the employers, with Portugal the second most likely country of origin.

A check on the GLA list of registered agencies shows that four of the 11 employment agency participants were registered. One other agency was part registered, for those sectors that require it. Two agencies that were not registered nevertheless spoke of having had contact with the GLA.

The last category highlighted in Table 4 relates to relations with trade unions. This shows that of the employer participants, just under half had a recognition agreement or arrangement with a trade union. However, in relation to the employment agencies none were unionised and of the three that did have relationships with trade unions these were expressed primarily in relation to the exchange of information, mainly in relation to migrant worker issues.

Table 4: The overall characteristics of participants

		Employers	Agencies
No. Agencies used/ no. employer clients	> 2	1	9
	2 only	1	1
	1 only	4	1
	No agencies used	5	-

Percentage agency workers (employers only)	< 20 %	3	-
	20-40%	2	-
	> 40%	1	-
	No agency workers	5	-
Size of business	< 100 workers	3	3
	< 250 workers	1	1
	> 250 workers	7	7
Principle countries of origin of non-UK workers*	Poland	7	10
	Portugal	2	2
	A8	1	3
	generally		
	Slovakia	1	2
	Slovenia	2	1
	Bulgaria	1	0
	Ukraine	1	0
	Spain	0	1
	Russia	0	1
China	1	0	
GLA registered (agencies only)	Yes	-	4
	No	-	6
	Part registered	-	1
Trade union involvement		5	3

* In some cases, where there are significant numbers in the workforce from more than one country, we have shown more than one country of origin.

** In the case of employers this signifies trade union recognition. In the case of agencies this represents the existence of a relationship with a trade union or unions, often involving an exchange of information.

Table 5 provides a breakdown of the characteristics of each of the participants.

Table 5: Characteristics of each participant

	No. agencies/clients	% agency workers	Size of business	Principal country of origin	GLA registered	TU involvement
Food Co. A	1	15%	>250	Poland	-	N
Food Co. B	0	0	<100	Poland, China	-	N
Food Co. C	0*	0	<100	Poland	-	N
Food Co. D	2	5%	>250	Poland, Slovenia	-	N
Food Co. E	0*	0	>250	Portugal	-	Y
Food Co. F	4	28%	>250	Portugal, Poland	-	Y
Food Co. G	1	>50%	<100	Bulgaria, Ukraine	-	N
Cleaning Co. A	0*	0	<250	Poland	-	N
Local Auth. A	1	4%	>250	N/k	-	Y
Local Auth. B	1	20%	>250	N/k	-	Y
Transport Co. A	0*	0	>250	Poland, Slovakia, Slovenia	-	Y
Emp. Agency A	2 only	-	>250	Poland	Y	N
Emp. Agency B	>2	-	<100	Spain	N	N
Emp. Agency C	>2	-	>250	Poland	Y	N
Emp. Agency D	>2	-	<100	Poland, Slovenia	N	N
Emp. Agency E	>2	-	>250	Poland, Portugal	Y**	N
Emp. Agency F	1	-	<100	Poland, Portugal	Y	Y
Emp. Agency	>2	-	>250	Poland, Slovakia,	N	Y

G Emp. Agency	>2	-	<250	Poland	Y	N
H Emp. Agency I	>2	-	>250	Poland	N	N
I Emp. Agency J	>2	-	>250	Poland, Russia	N	Y
J Emp. Agency	>2	-	>250	Poland, Slovakia	N	N
K						

* Stopped using agencies
**Part registered

3.1 The employer participants

The following section provides qualitative background information on the research participants.

Food Company A is a food-processing factory with two sites in the East of England. It packs winter vegetables for one major retailer. It employs 250 hourly paid staff and around 60 to 80 salaried weekly paid staff, including the management team. The interviewee was the HR manager. The company operates on a team-working basis, with each team working as a mini-business unit, with responsibility for budgets and quality control. The company employs, on average, around 10 agency workers a day at one site and around 40 at the other. However, during the summer months these numbers fall to zero, while during the peak period, around the Xmas period, the number of agency workers doubles.

The respondent stated that the company has a ‘*unique culture*’ and that it operated on the basis of a ‘*set of beliefs and values*’. It organises a cultural programme for its staff based on ‘*leading by taking responsibility*’.

In terms of ethnicity, the permanent staff are generally representative of the ethnic composition of the local area, it is mostly white British, but there are also some Polish, Lithuanian, Afghan and Iranian workers. In relation to agency workers, these are mainly from Central and Eastern Europe, although there are also some Romanian and Bulgarian workers sourced to it.

The company is not unionised. It believes that its industrial relations are generally good and has only had two cases where employees had threatened tribunal cases, but these were settled without a hearing. The company was approached by one union at one of the sites about a year ago but according to the company, it did a lot of work with the staff to address problems and the union ‘*went away*’. There is a system of consultation, including monthly listening groups, suggestion boxes and monthly communication meetings. The company preference is for this form of communication.

Food Company B is a food packing company and operates in West London. It was established less than five years ago and employs just 40 workers, mainly drawn from

the local area. In terms of their ethnicity the workforce is white British, Chinese and Polish. In terms of age the workforce is mainly in the 20 to 30-age range.

Some workers are not fluent in English but the company requires only a 'basic' knowledge of English. It provides specific training at the beginning of employment and operates a probation system of three weeks. If successfully completed, workers are taken on permanently. It has never employed agency workers.

The company communicates directly with its staff through regular meetings.

Food Company C was established in the mid 1960s and is based in the East of England. It has a workforce of around 35 employees, with more or less equal numbers of men and women workers. The workforce is mainly Polish and the company communicates with it primarily through flyers translated into Polish, although it also employs a supervisor who is fluent in English and in Polish and who also acts as the interpreter when needed.

The workforce is predominantly unskilled, as they are employed primarily on a vegetable production line, involving elementary tasks only.

At present the company does not use agency labour although they did do so between 1999 and 2004, as in that period they also operated in canned goods.

Food Company D is a poultry processing company, established in the early 1970s and is based in the East of England. It employs around 450 staff, including a management and administrative team of around 60. The workforce is ethnically diverse with many languages spoken in the plant. The company estimates that around 25 nationalities work in the factory, although the majority are white British, Iraqi/Kurdish and Polish, German and Serbian is also quite widely spoken.

It employs a small agency workforce, representing around five per cent of the whole workforce. About three years ago, when there were greater production needs, the agency workforce was larger. Most of the agency workers are from Central and Eastern Europe (primarily from Poland and Slovakia) and this has changed from the situation pre-May 2004 when migrant agency workers were mainly from Portugal, Iraq and Afghanistan. There are more men than women and they are in the age bracket of 20 – 35. Agency staff do jobs that require the least skills and speed.

Food Company E is poultry processing company with two sites based in the East of England and employing around 2,800 workers. A third of the workforce is Portuguese. The company has an active policy aimed at promoting diversity in a rural workplace. It also employs around 400 to 500 workers in the pre-Xmas season, but in general there is a fluctuating demand for its product that leads to reductions in its staff numbers during quieter periods.

The company has a recognition agreement with a union and industrial relations are generally positive.

Food Company F is a sauce and pickle company that has been operating in the East of England for more than 50 years. It has a workforce of around 450 staff of whom more than a quarter (28 per cent) is agency staff. The agency workforce fluctuates

dependent on the seasonal nature of the product. Almost the entire agency workforce is now from Poland and Portugal, although a minority come from Lithuania, Hungary and Iraq. This represents a change from five years ago when it was mostly a native-born agency labour force. Most are in their early to mid 20s, and men and women appear to be in about equal proportions. Most of the A8 nationals who present themselves as agency workers are well educated; some hold post-graduate qualifications and often will arrive with a good knowledge of English.

Food Company G is a small farm produce company in the East of England. It employs just six permanent staff and around 19 agency workers. All of the agency workers are from Eastern Europe, mainly Bulgaria, Poland, the Ukraine and Lithuania. They are mainly in the country on six-month visas during the agricultural season. In terms of age, they are primarily aged 21-26 and in terms of gender, around 60 per cent are male and 40 per cent female.

Cleaning Company A was established in the mid 1950s. It employs around 100 workers, the vast majority being directly employed. There are just two agency workers, both of whom are Polish. Around 80 per cent of the workforce is female and the majority are young, under the age of 25.

Local Authority A is based in the South East of England. It has around 8,000 directly employed workers and also has around 300 temporary agency workers a month. Agency workers are used to cover for staff vacancies but are used extensively in cleaning, caring and catering. The majority of agency workforce is male, which differs from the permanent workforce that is predominantly female. Most are in the 20 to 39 age group. The authority has a target that at least 80 per cent of its agency staff be resident in the area and achieved this in 2007.

The authority has recognition agreements with the relevant trade unions.

Local Authority B is based in London. It has a large and ethnically diverse workforce. Around one in five workers are agency sourced. Agency workers are employed throughout the authority but there are significant groups in care and catering.

The authority has recognition agreements with the relevant trade unions.

Transport Company A is based in the Midlands. It has a workforce of several hundred and recruits directly and extensively from Poland. Around 80 per cent of recent recruits have been from Poland, Slovakia, Slovenia, Hungary and the Czech Republic.

The company has a recognition agreement with the relevant trade unions and has also worked closely with trade unions in Poland.

3.2 The employment agency participants

Employment Agency A is based in the East of England. It has been operating since 2000 and has four directly employed staff. It sources workers to clients in the food

industry, in agriculture and in commerce. It places around 700-1,000 workers a week in the peak season and around 340 in the off peak season. When it first started operating it had difficulty sourcing local workers to fill jobs, now some 90 per cent of those on its books are foreign born.

Employment Agency B is based in the South East. It has been operating only for a few months, but is part of a larger franchise established more than a decade ago. It is a one-person agency specialising in cleaning and normally supplies around seven workers to private homes and to estate agencies. The workers supplied are from the UK, Finland, Spain or South America and from Central and Eastern Europe.

Employment Agency C is based in the East of England and began operating around four years ago, in response to the growing number of A8 nationals in the region. It sources around 600 workers a week, mainly for factory work, including food processing. Around one in 20 a week secures permanent employment. The number of workers it sources is reasonably stable, although at times it can fall to around 400 a week.

The management team speaks only English, however, within the directly employed administrative staff it employs two Polish women who communicate with Polish agency workers.

The agency has a recognition agreement with a trade union.

Employment Agency D is based in London and was established four years ago, following EU enlargement. It is a small agency employing just three to four staff, all of whom are Polish. It supplies workers for a number of sectors and all over the country, although primarily for construction, catering, cleaning and the transport sector. Most of the workers it supplies are from Poland, Slovakia, the Czech Republic and Hungary. The majority are in their early to mid-20s. A majority of the jobs that it supplies to are for permanent jobs, meaning that the agency works primarily as a recruitment agency.

Employment Agency E is based in the East of England. It was established nearly 25 years ago and sources workers to a number of sectors, including health care and cleaning. It now has a sister organisation in Poland. Directly employed staff speak both English and Polish. During peak periods the agency sources around 400 workers a day, while off-peak the numbers drop to around 300.

Prior to the accession of the A8 states the agency relied mostly on local labour, but according to it, this meant that it could supply only a limited range of skills. It now sources a range of skilled workers directly from A8 countries, tending to take particular skills from particular countries – Poland for carpenters, Lithuania and the Czech Republic for wood-working skills, and Portugal for catering.

Employment Agency F is a large, internationally known employment agency. The respondent office is located in the East of England and works primarily with one large food-processing employer in the area to whom it almost exclusively supplies workers. The agency office is based in the company premises.

Initially it had difficulty sourcing migrant workers but had established contacts with migrant associations in the area, especially the Polish community. Around 40 per cent of the workers it supplies are Polish; around 30 per cent are Portuguese, with the rest being local workers. But the agency also notes that there are a lot of refugees from Iran and Iraq in the area who have no access to the Internet and therefore have difficulty in accessing information about work. For this reason it uses notice boards to advertise work.

There is no agreement with a trade union; however agency workers who are union members can pay by checkoff allowing the employer to deduct trade union contributions from the trade union member's salary and pay these directly to the trade union.

Employment Agency G is based in the South West and was established almost a decade ago. It sources both high and low skilled labour (although predominantly the latter) to a large number of sectors. It has a directly employed staff of 17 but there are four other sister agencies operating in the region. While the senior management speaks only English, the office staff speak Polish, Slovak, Czech and Russian in addition to English. The workers they source are mainly in their early 20s and there are more males than females. Some workers have been on the agency's books for more than three years.

The five agency offices collectively source an average of 1,000 workers a week of whom 98 per cent are unskilled workers. Seventy per cent of the workers it sources are from Eastern Europe, mainly Poland and Slovakia. The remainder are local workers. Five years ago, the agency was sourcing only local agency workers.

The agency has a partnership agreement with a trade union and encourages workers to join unions.

Employment Agency H is based in the North and was established just under two years ago. It sources labour to a wide range of sectors, including catering, cleaning and care. Its staff speak both English and Polish. The agency sources around 120-130 people a week during peak periods, but the numbers can drop to around 30-40 in off-peak periods. All of the workers they source are Polish.

There is no trade union presence.

Employment Agency I is based in London and was established ten years ago. The agency directly employs around 20 people, from a variety of ethnic backgrounds, but its senior management includes people from the A8 states. It operates two separate sections – one focusing on low skilled labour and the other the 'talent' section, dealing with highly skilled personnel. The low skilled section is government supported and supplies to a large number of sectors, including care and catering.

It sources workers from a mix of local minority ethnic backgrounds, but most of those on its books are from Central and Eastern Europe, with Polish workers representing the largest group.

Employment Agency J is based in London and was established two years ago. It describes itself as a Polish-English agency, jointly managed by a Polish and an

English manager. The directly employed staff speak English, Polish, Russian and Spanish. The agency describes itself as one that offers a *'better quality and more ethical recruitment service'*. It sources workers to a large number of sectors, including care, hospitality, construction, IT and administration. While it initially only sourced low-skilled labour, it is now sourcing workers to more skilled jobs as its reputation expands, on the basis that the company had *'managed to persuade employers that we can supply them with better specialists from the migrant communities'*. The ethnic composition of the workers it sources has also expanded from initially just being Polish workers, to now encompassing Russian, Spanish and Portuguese workers.

The agency also now mainly sources for permanent positions, acting like a recruitment agency.

The company does work with trade unions on publicising migrant workers' rights.

Employment Agency K is based in the South West and is part of a national network of agencies supplying EU sourced labour. It was established around seven years ago and supplies to a variety of employers, filling both low and high skilled workers. The low skilled sectors it covers are primarily care, transport and engineering. The high skilled workers are predominantly in healthcare and IT. Its directly employed staff speak English only as they mainly source to British origin employers.

The agency has no formal agreements with trade unions, although it works closely with them and there is an exchange of information on rights and working conditions.

4. The motives for using agency labour

In this section of the report we look at the views of the employers whom we interviewed and at their motivations for using agency workers. We then report on the views of agencies on what they feel employers' motivations are for using their services. Finally we analyse their similar and divergent positions and explore the reasons for this. We find that although there were some similarities in the responses of employers and of agencies as to why agency labour was used, there were also some divergences.

4.1 Views on employers' motivations

In the literature review we have highlighted several employer motivations for using agency labour. Primarily these were: flexibility; to facilitate recruitment, selection and training; for cost reasons; to access specialist skills; for reasons to do with legal regimes; and, as a method of avoiding trade union organisation. In this study employers were generally more circumspect in the reasons that they gave for why they used agency staff.

Flexibility

The literature review noted that the first motive for utilising agency staff was concern with flexibility, whether in terms of coping with changing production demands or requiring workers who are more 'flexible' in terms of their working hours and so forth. The interviews for this research point to both aspects of flexibility as being prime motivators in decisions to use agencies. The need for flexible labour, either to respond to production demands or to perform work as and when required, or to be easily replaceable, was highlighted by a number of respondents. However employers were more likely to emphasise flexibility in terms of production needs, whereas agencies were more likely also to emphasise flexibility in terms of how work was conducted.

Food Company A stated that their primary motivation for using agency workers was to meet seasonal demands for additional workers, without affecting the size of the permanent workforce. It described the production demands on the business as '*unpredictable*' mainly due to retailer and customer demand, and to fluctuations in crop production. Food Company D also described its use of agency workers as a '*top-up for when our permanent staff are on holidays. This has been the case for a long time*'. Food Company F stated that flexibility in production demands was a motivation for employing agency workers, as this allowed the company to easily respond to the peaks and troughs of demand. Using the agency meant that job vacancies could always be immediately filled. Cleaning Company A, that now rarely used agency staff, could point only to the need for supplying labour urgently as a motivation for using agencies. Local Authority B also saw the advantages of agencies in the ability to source workers quickly.

In general most of the agency participants were recruiting for low skilled work, particularly those recruiting in the food processing and cleaning sectors. Employment

Agency A stated that clients, particularly in the food processing sector, found agency labour beneficial due to the seasonal nature of their production processes. However, it should be noted that while this agency sourced a greater number of workers during peak seasons, it was still sourcing several hundred workers to the food-processing sector in off-peak seasons. Employment Agency E noted that companies could not hold a large bank of people sitting available for just a few day jobs, whereas agencies can. Employment Agency F noted that its ability to respond quicker than the HR department, when there was a need to increase (or to decrease) labour was a factor contributing to their use to the company.

Food Company G also cited flexibility of labour as a key reason for using agency staff. However, for it, this meant that *'if somebody proves to not be very good for the job and create problems, the agency can immediately replace [him/her]'*. Food Company G similarly referred to agency workers' flexibility in terms of *'if they are not obedient or good for the job, they are immediately replaced.'* Local Authority A also saw the advantages of using agency staff as allowing employers to get *'committed, readily accessible skilled workers on a short-term basis'*. It stated that it used agency workers on a short-term basis to cover sickness and holidays, with peaks in March when the annual leave year ends and around Xmas.

Employment Agency G also referred to flexibility, as did Employment Agency H, which in addition stated that migrant agency labour delivered higher productivity to employers. For Employment Agency J agency migrant labour was composed of *'very good workers, enthusiastic and committed'*.

Costs, including outsourcing of recruitment

Our review of the literature pointed to employers using agency labour to reduce the costs of recruitment. The literature also points more generally to cost being a key factor in decisions over whether or not to hire through agencies, where costs are measured not just by lower payroll cost, but by lower administrative costs as well. Most employers did not mention cost as a key factor and indeed, of the employer participants, only three referred to costs and these were more likely to be employers who did not use agency workers. Indeed it was agency participants who were more likely to emphasise this than employers. Food Company A accepted that cost was a factor as the ability to bring on additional workers when required had the effect of reducing overall staff costs and overheads. For Food Company G cost appeared to be the most important factor in choosing agency labour. It had also switched from a local employment agency to a national government supported one for the sector, again for reasons of cost.

Transport Company A no longer used agencies but felt that they were used primarily where employers did not have the necessary resources to recruit directly.

Employment Agency A pointed to costs savings for employers. Savings in terms of resources for selection processes and recruitment costs were also referred to by most of the other agency respondents. Employment Agency F also cited costs as a reason why its principle client used agency staff. Employment Agency G believed that agency labour was cost effective for its clients, as they saved on advertising jobs, selecting and interviewing candidates and Employment Agency I held a similar view.

Employment Agency K also felt that the main advantage it provided to employers was in assisting them with recruitment processes.

Employment Agency E also saw agency labour as being ‘*cost effective*’ for its clients as they saved on recruitment costs, including expensive advertising and ‘*time consuming*’ interviewing ‘*especially if some candidates do not turn up for the interview*’. But additionally, sourcing labour through the agency gave the employer an anonymity, which some clients viewed as an advantage, particularly where they had high turnover rates and did not wish this to be publicly known.

Lack of locally available labour

The literature review found less evidence of agency labour being explained as a response to the lack of locally available labour and was more likely to place an emphasis on the lack of access to specialist skills. However, in this research we found a number of employers claiming that there were local labour shortages, as opposed to skill shortages. Some employers claimed that they had to move to agency or specifically migrant labour due to the lack of local labour willing to do the jobs on offer. This was expressed in terms of the jobs being unacceptable to local labour, as other better jobs were available to them locally. Food Company D was of the view that ‘*UK born and raised people are least likely to come to work here*’. Food Company F, for example, stated that there was no available local labour. Food Company G blamed the lack of local labour on changes to benefit systems. It had in the past taken on for seasonal work individuals who were registered as unemployed. However, since the work available was short-term only it was no longer advantageous for local workers to do it since they not only did not get their benefits but were concerned that there would be gaps when their temporary work ended before any benefit due to them would be re-instated.

Employment Agency F, which sourced labour mainly to one employer, stated that agency labour was used primarily because it was difficult to recruit workers directly from the local labour market. The respondent also expressed the following view:

‘At the beginning there was a lot of interest in us from local ‘chavs’ sent to us by unemployment agencies [Jobcentre Plus]. We did not want them as they were not really interested in the job.’

Employment Agency G also stated that there ‘*are no English people coming to register Because English people have already found permanent jobs or they have the choice to go to study, travel or live on benefits*’. It reported that it only sends Polish people to work in the meat factories ‘*as no English people are willing to work there*’.

Legal factors

In our review of the literature we found data suggesting that legal factors had also played an important role in companies’ decisions to employ agency labour. In this research we find that while legal factors are often referred to, this is primarily in terms of circumventing or avoiding having to deal with immigration requirements, by pushing responsibility for these on to the agency. Thus while both employer and agency respondents referred to the legal factors affecting the employment of migrant

workers as a reason for using agencies, this view was more frequently expressed by employment agencies than by employers.

For a minority of employers the advantages of employing agency workers were expressed in the fact that it saved the employer from having to deal with the legal requirements affecting the employment of migrants, in particular with applications for work permits (Food Company G). This employer similarly noted that employing agency staff shifted responsibility for checking on legal status from the employer to the agency. Food Company G also noted that having an agency '*saved you the trouble of work permit arrangements*'. Transport Company A (which no longer used agencies) felt that employers did use them to avoid having to deal with immigration issues. Food Company F noted that one of the agencies it used was working with the Home Office to check on false papers. In this company it also ran separate (from the agency) checks on workers' immigration status.

Some employment agencies also noted that employers used them to avoid having to deal with the legal problems of employing migrant workers. Other agencies mentioned that they would not normally deal with anyone who needs a work permit for the UK. This can only be done in exceptional cases when the worker possesses very difficult to find skills, and after a prior agreement with a client. Most of these agencies were also reluctant to employ Bulgarians and Romanians because of their restricted rights to work in the UK. Employment Agency E noted that agencies take over from employers the responsibility for sorting out migrants' legal status. This agency also paid the Worker Registration Scheme fee and then deducted it from the worker's first salary. This agency also took responsibility for National Insurance from the employer clients, as did Employment Agency K. Employment Agency G similarly viewed their advantage to employers as removing their legal obligations in relation to checking migration status. The agency takes responsibility for ensuring that migrant workers from A8 countries are registered. Employment Agency I felt that employers used it because it meant that they did not have to worry about the worker's immigration status as this was screened by the agency. Employment Agency J also carried out checks on immigration status and saw this as its responsibility, rather than that of the end user employer.

Most employers did not refer to other legal issues, outside of those concerning immigration status. However, Food Company A did indicate that in general the company did not want too many agency staff, as it did not want to create any conditions that might result in the company becoming the employer in law.

Issues of diversity

No employers mentioned diversity as a benefit of using agencies, although one mentioned it as a disadvantage (see below). In contrast agencies were more likely to express this as an advantage they possessed.

Employment Agency I referred to its ability to source an ethnically diverse labour force as a strength and as something that some employers might welcome. It specifically sought out '*diversity supporting*' employers with a record of recruiting people from different ethnic groups'. Employment Agency J also felt that it was able to offer a '*new, diverse pool of workers*'. However, at the same time it felt that while

‘clients should want diversity of their workforce; some employers are frightened of diversity, mainly because of language issues’.

4.2 The disadvantages of using agency workers

Among the employer respondents, those that did not use agency workers provided a number of reasons for having adopted this position. These are highlighted in 4.3 below. However, even among those that did use agencies and among the agencies themselves there was an acknowledgement that the use of agency labour was not unproblematic. The main difficulties raised related to training and language skills.

Food Company A pointed out that the main disadvantage was in the amount of induction training which the employer had to provide, particularly if each day brought a lot of new workers, although the respondent also pointed out that on balance the advantages outweighed the disadvantages. Food Company F highlighted the lack of control, which the company had over agency workers and the fact that they could be in the plant one day and decide to go off the next day, describing this as *‘a waste of money spent on their training’*. For this employer arrangements would work better if the agency worker was obliged to notify the client employer of her/his intentions regarding length of stay, allowing the employer the option of placing them *‘on a job that would not require much training and to which they could return after a long stay at home’*. Concerns about migrant agency workers leaving suddenly were also expressed by Food Company G which limited its use of agency workers precisely because they were often students, required to return home at short notice to prepare for exams. Local Authority A and Local Authority B similarly pointed to the high turnover of agency staff, who would leave without notice if a better option turned up or who had no long-term interest or availability. This employer, echoing the views of some employers who did not use agency labour, also pointed to the fact that it was more expensive to recruit agency staff for short-term appointments. Cleaning Company A found that, *‘There are so many problems in working with agencies. I do not want to know about it any more’*.

In relation to the agencies themselves, Local Authority B also referred to problems with agencies that were less than honest, for example, by sending a worker for interview, whom the agency knew had already accepted a better offer elsewhere and over whom the agency would then attempt to negotiate for a higher rate.

As might be anticipated employment agencies were less likely to provide evidence pointing to the disadvantages of their use, although Employment Agency C acknowledged that high turnover and agency workers going to better jobs, as well as a low commitment, sometimes from both the agency and the client, acted as disincentives. Employment Agency D also noted that it was becoming more difficult to recruit migrant workers, especially Poles as they had started earning more and were becoming more selective about the jobs they would not do:

‘Some four years ago, when most Poles first came to the UK, they did not know the language and were willing to accept most jobs on offer. Now things have changed.’

However some did provide examples of other agencies whose practices were questionable. Employment Agency A spoke of agencies in Poland that supply workers to the UK and gave those workers false hopes about their likely earnings in the UK, to encourage them to migrate. This respondent also agreed that such agencies were, in fact, *‘doing them a favour’* as most migrant workers now would prefer UK-based agencies rather than agencies at home.

4.3 Employer motivations for not using agencies

Some of the employer respondents did not use agency staff and the reasons that they gave for adopting this position were sometimes similar to the reasons given by other employers for using agency workers. In other words they were expressed in terms of flexibility, legal regulation and local availability of necessary skills. However, among employers who were not using employment agencies costs were more frequently cited as a reason for their decision than they were by employers explaining their reasons for using agency labour. In some cases, even where local labour was not available, employers were bypassing agencies by recruiting directly in country of origin. Some employers had also found that agencies were not sufficiently equipped to be able to supply the numbers of workers and the skills that they had needed. Others felt that the diversities of staff supplied by the agencies were too great to manage effectively.

Labour could be directly sourced locally or abroad

Food Company B, for example, had found that the skill levels it required were relatively easy to find through direct recruitment. The respondent viewed agencies as only viable in cases where specific skills were required which were hard to find. In some cases employers had moved from using agencies because they found that they could recruit directly a mainly migrant workforce through use of word of mouth. Once a base of workers had been established in the company, word of mouth could be used to supply all of the workers needed. This was the case with Food Company C, which spoke of having established *‘good connections with their Polish staff’* who had *‘started acting as [their] recruitment agents’*.

Recruitment could take place in country of origin. Food Company C had, for the last three years, been recruiting directly in Poland, using the contacts of one of its supervisors of Polish origin. The advantage for the company was that the supervisor understood what the company’s requirements for labour were and was able to select *‘the most suitable workers’*. Food Company E similarly had moved to directly employing staff, including sourced migrant labour in country of origin. It had set up its own recruitment office abroad. Cleaning Company A, which in the past had used agencies extensively but now used them sporadically, was confident that if the company needed staff they could be sourced abroad through a Polish government job centre from which it could recruit directly and for which there was no charge. Transport Company A also sourced workers from abroad directly having learnt *‘the business of recruitment from outside the UK’*.

Costs

As noted above, some employers suggested that their use of agency labour was associated with a desire to reduce costs. However, in general this was weakly argued, with few employers highlighting this as an issue, or providing hard evidence of the cost savings of using agency labour. However, for those not using agencies, cost was much more likely to be an associated factor in their decisions to use directly employed staff. Thus for some employers cost was stated as a reason for not using agencies. Food Company B believed that agencies offered no cost benefits, due to the size of the agency fee. The company thus preferred to employ directly, so that its workers benefited directly from the amounts set aside as payroll costs. The company gave the example of agencies claiming £7 per individual sourced and paying just £5 over to the agency worker. Food Company C also did not use agency staff, although it had in the past when the nature of its products had required more fluctuation in staff numbers. However, very high agency costs had caused them to move to direct employment. Food Company E, when asked if it would ever consider returning to use agency labour stated that while it would *'keep an eye on the marketplace'* it was difficult for honest agencies to compete in offering equal benefits to those offered by direct employers, as they could *'not do it cheaper and still make a profit'*. This employer noted:

'What you think you are getting cheap upfront is at some cost somewhere to someone.'

However, for this respondent, the issue was not one of giving it a competitive edge over companies that did use agency workers, so much as giving it an *'ethical competitive edge'* particularly in relation to the supermarkets and to their concern to observe Ethical Trading Initiative standards.

Concern regarding poor treatment of agency staff

Food Company C had been concerned over the agency that it had used and a press scandal over the poor treatment of the workers it sourced and this was one of its main motivations for shifting to direct employment. Food Company C had similar concerns over the treatment of workers by other agencies. It had noted that during a period when it had used agency labour it had no control over the terms and conditions of agency sourced workers. Food Company E had similarly been concerned over bad press over agencies. It had also received complaints from agency staff about not getting properly paid and was aware that agency staff anger would then be directed at the company. Cleaning Company A similarly stated that it had moved from using agencies due to the unfair terms and conditions which agency staff received. For it the principle disadvantage in using agency labour was in the differences in terms and conditions between them and directly employed staff:

'This is a huge disincentive for agency staff to do a good job; they quickly become aware of these differences and do not want to continue working for their agencies.'

Transport Company A expressed the same views. For it the existence of agencies had caused differences in terms and conditions between directly employed and agency workers: *'In an ideal world agencies will not exist to determine different conditions*

for their workers, all will work according to the European mobility agenda and there will be equal treatment for all workers’.

Agency inability to supply staff

Food Company E had switched to direct recruitment because it had found that agencies were not able to supply the numbers of workers that they needed for peaks in production, particularly due to its rural location. It had also found that the agencies would ‘*skim off*’ the best workers or move them on, even when the company was keen to keep them.

Issues of diversity

In one case an employer expressed the view that the diversity of the workforces supplied by agencies made it more difficult for the company to manage and was a disincentive to employing agency workers. Food Company E had found ‘*diversity too much*’ when using agencies and that it did not deliver the stable staff it required. This was its reason for moving to directly target recruitment in one country of origin.

5. Selecting employment agencies

Many of the employers we interviewed had arrangements with just a small number or even a single agency from which they sourced labour. This was advantageous in terms of the agency having a better knowledge of the employer's needs in relation to agency labour. There is some evidence of employers scaling down on the number of agencies they deal with, partly over concerns of standards. Some employers referred to the agencies they used being GLA approved, but not all did. A significant number reported having in the past used agencies which had been found to be exploiting workers and with whom they had consequently ended the relationship. But the fact that this was reported points to continuing possible abuse of agency workers.

Most of the agencies also referred to building relationships and working with a small number of (or even a single) employers and some also provided examples of where they had ended arrangements with clients, due to reports of abuse of agency staff by the client company.

Food Company A had at one time used up to nine agencies, but was now using only one with which it had a *'very good relationship'* and this also made it easier to ensure that standards were maintained. The reason for switching to one provider was due to a problem the company had experienced with undocumented labour supplied by an agency, which had resulted in bad publicity for the company. Cleaning Company A had worked with two agencies over the last five years, but had been dissatisfied with both. One had been based in Poland and the company had found that it was *'all big promises, but could not deliver'*. The other had failed in its screening of staff, as the company had discovered that it had not conducted any interviews with the job candidates nor had it screened them for skills and language competences. As a consequence it had reduced its use of agency employment.

Food Company D was working with two agencies, one of which it had used for over five years. Both agencies were recommended to them and were GLA approved but for this employer the importance was the relationship and trust between agency and client:

'The agency is only as good as it's a local management team. It does not matter how big an agency is. Often [in my experience] big agencies are more willing to neglect legislation.'

Food Company F operated a tendering process for selection of agencies and was currently working with four agencies (one of which had an office within the company premises). The company had recently stopped working with one agency due to signs of exploitation of workers, as the respondent noted:

'I can't employ exploited people. It's not good for the name of the company. But more importantly, exploited people can't do good work.'

Its main criteria for selection was whether the agency was licensed by the GLA. But it also referred to its selection criteria including:

- The agency's level of professionalism;
- Its treatment of workers; and

- The benefits paid to agency workers.

With regard to the latter, the respondent spoke of some agency representatives appearing '*almost shocked*' when these criteria were raised. Food Company G also had once worked with a small agency that had been investigated by the police, causing the company to stop using its services. For this reason it preferred to use larger agencies as '*it's very difficult to be unethical if you are a big agency and everybody knows you*'.

Both of the local authority respondents used a centralised system for recruiting agency staff with no mark-up so that the agency worker obtained the full rate. It proved to be a cost-effective way to fill vacancies, which also secured better control over the terms and conditions of agency staff. Another advantage of this system was that it provided a single contact point, which reduced and even eliminated corruption because there was a clear system for filling temporary vacancies that avoided informal arrangements that might favour particular agencies.

A minority of agencies similarly described processes for selecting client employers. Employment Agency A had worked with the same clients for a number of years and had successfully tendered for the contracts each time. It targeted employers who had a good reputation in the sector, who looked after their workers and who treated agency and directly employed staff equally. As an example the respondent cited one client who would invite agency workers to the Xmas lunch. This agency had also ended a relationship with a client after reports of its supervisors bullying and being aggressive towards agency staff. Employment Agency C similarly had to end relations with client companies, mainly because of racist attitudes towards agency workers and because sometimes employers did not give the agency specific enough information about the types of work that workers would be doing. Employment Agency B, supplying cleaning staff to private homes and estate agencies, viewed its reputation for selecting only '*reliable and discrete*' workers as the reason why clients selected them.

5.1 Strategic planning for agency use

Few of the respondents gave any description that suggested strategic planning in relation to agency staff use. The exceptions to this were first in the case of the two local authority respondents, where managers did review agency use on a regular basis and also reviewed costs. The other exception was in relation to those employers who had decided to cease using agency staff, where some had carried out a cost benefit analysis.

Among the employment agency participants there were some common elements in how they operated and sourced staff. Some had primarily sourced labour from one country of origin and in these cases individuals with the same country of origin had originally founded the agency. Agency administrative and managerial staff would often be bi-lingual, usually in Polish and English, to enable them to communicate with those registering for work. However, in some cases, once the agency had expanded and found that the skill mixes that it was required to deliver could not necessarily always be found in candidates from one country of origin, they had begun

to source their supply of workers from other countries of origin.

6. The nature of arrangements between employers and agencies

In the interviews with employers and with agencies we sought to explore the nature of the arrangements between them and the extent to which these were formalised and documented. We found that most of the employers did have formal service level agreements with agencies.

Food Company A had a detailed service agreement with the agency, covering performance, delivery, employer liability insurance and so forth. The employer required of the agency that all its workers were registered for tax and National Insurance purposes; that they complied with relevant codes of practice; that they had signed opt outs if working more than 48 hours a week; and that migrant workers supplied had the right to work in the UK. The company also required of the agencies that they supplied one interpreter for every ten staff and that they ensured that agency workers supplied by them had the correct protective clothing. Health and safety basic training was also required from the agency although the company accepted its responsibility for health and safety on site, as did Food Company C and as did the clients of Employment Agency E. For Food Company C these arrangements worked well. They were flexible and allowed the company to meet its production demands (as discussed at annual predictive demand meetings). Local Authority A also operated under a formal service level agreement which specified the types of workers the authority wanted, including by target for ethnicity and disability. Regular audits were conducted both by the authority and the agency. Food Company G took responsibility for health and safety, for the provision of basic personal protective clothing (mainly safety gloves and waterproof jackets) and for accommodation for its agency sourced staff. The company additionally provides Internet access to workers and gives assistance with setting up bank accounts and with sending money home. Employment Agency E also provided assistance for setting up bank accounts. It stated that workers' rates of pay were set by the agency alone but the respondent claimed that rates were the same as for directly employed staff.

Employment Agency B and Employment Agency F did have a service contract with client employers. In the case of the latter the agreement required it to pay workers the right rate for the job; to help register them; to inform them about changes in terms and conditions and in work arrangements; to give them at least a week's notice of any job coming to an end; and to consider whether work could be offered on another site. For this agency:

'A lot is down to the spirit of partnership with the client. Some clients see the agency as a partner in the human resources management process, while others see it just as a supplier. The best experience is when there is a partnership between the agency and the client firm, so they can work together to improve workers' conditions.'

Employment Agency H and Employment Agency E also had service level agreements with client employers. The latter also carried out credit checks to make sure that employers could pay for the service. These set out that individuals sourced had to be eligible for work and had to have been risk assessed. The agency conducted client visits to check on the treatment of agency staff and spoke directly to workers about

their treatment. However, despite these well-developed procedures the agency often felt unable to monitor conditions in small workplaces like nursing homes and the respondent commented that *'there they usually pay workers as little as they can get away with and make staff work very hard'*. The service level agreement that Employment Agency G had with its clients covered: the history of the agency; its recruitment practices; how candidates are screened/selected; a description of the agencies offices and staff; its databases and how jobs are advertised, and what incentives it provides to clients who introduce new business; how the contract will be managed; its invoicing to clients; its responsibility for health and safety; and the length of a temporary placement. The agency then signs a formal contract or terms of business with the client.

Transport Company A had its own internal audit systems since it did not use agency workers. It did source workers from abroad but these were recruited directly to the company. Newcomers were provided with accommodation packs and with help regarding National Insurance, driving licence conversions and registration. Prior to their arrival in the UK these workers would also have undergone specialist language training, which the company had developed specifically to relate to the jobs that individuals would be undertaking, this included training in relevant local accents. This in-country training had meant that the company had been able to reduce the training time in the UK from 12 to six weeks. It should be noted that this employer had been encouraged not to use agencies in part as a response to information about the exploitative treatment of migrant workers, including reports of agencies paying below the National Minimum Wage and withholding passports.

Food Company D favoured formal arrangements between clients and agencies but provided no evidence of their existence in relation to the agencies it worked with. The respondent did express the view that the fact that the recruitment market is now quite competitive *'should improve the quality of the services provided by agencies'*. Food Company F ensured that migrant workers supplied through agencies had to have English language competence and its agreements were that initially the agency screened workers' abilities to speak/write English. Once recruited the shift manger again assessed English competence and if inadequate the worker was replaced.

For Food Company G the agency itself set basic terms which the employer had to comply with, including advice on installing new showers and on providing a new washing machine for workers based on site.

A few employers accepted responsibility for training, as was the case for Cleaning Company A and Local Authority B which both claimed to train all staff, whether directly employed or agency staff.

A minority of agencies and employers made no reference to service level agreements, as was the case for Employment Agency I whose only documents were a signed form that stated that the worker had been placed with a client.

7. Enforcement mechanism and choices

Of the participant agencies, seven were members of the Recruitment and Employment Confederation (REC), of whom five were also GLA registered. One agency (Employment Agency A) was also a member of Association of Labour Providers (ALP), which it used when experiencing problems as it found this '*a more efficient mechanism*' than the GLA. Employment Agency E, which was a member of REC, would report issues to that organisation although it had limited confidence in them being resolved. It was also supportive of GLA regulation.

Most of the agencies supplying labour in the food processing and agricultural sectors were registered with the Gangmaster's Licensing Authority (GLA). However, of those agencies that were (Employment Agencies A, C, E, F and H) only three could be described as supportive of the scheme as it currently operates. Indeed among those who were not GLA licensed, the degree of support for the GLA was almost the same, with three generally supportive of the licensing scheme (but not operating in GLA sectors) and three less positive about its work. Those who were GLA supportive could be characterised as either:

- Having a direct relationship with only a small number of employers for whom they were the sole suppliers of labour; or
- Offering more generous or supportive arrangements to the labour they supplied.

However, a minority of the employment agency participants expressed strong views in opposition of any form of regulation. In their view regulation was an interference with their rights to conduct their business. Those who were critical of GLA regulation could generally be characterised as:

- Having minimal or no involvement in supportive arrangements for the labour they supplied.

In the interviews with employers and with agencies we sought to establish the extent to which employers exercised any form of check or control over agency procedures and the extent of their knowledge and awareness of statutory regulatory mechanisms. We found that some had well-developed mechanisms and up to date knowledge, while others did not. Opinion was divided as to whether the current mechanisms, in particular the GLA, were effective or not, with some feeling that the GLA had made a difference and others expressing more criticism. There was a significant amount of criticism of the GLA, in particular from those agencies, which felt that they were being '*undercut*' by unscrupulous agencies that were escaping the investigation of the GLA because it had insufficient resources to investigate such agencies.

Food Company G insists on all of the agencies it deals with being registered with the GLA, as does Food Company A. The latter also conducts an annual audit of the agency workers sent to it to check their immigration status. It questions them about their pay and payslips, and checks for any evidence of bonded labour. In this way it had found two undocumented workers working on one of its sites, including one with false papers. It will not employ agency workers unless it has proof that they have a National Insurance number and it documents all agency workers. However the

company too was disappointed with how the GLA operates as it felt that it might discourage companies from carrying out their own check on the agencies they used, relying solely on whether or not they were GLA registered. In its view while the GLA was fine at the point in time when licenses were granted, but later on there was little rigorous checking up *'so having a licence doesn't mean anything'*. This respondent favoured annual inspections.

Food Company E had been in contact with the GLA and was of the view that it had improved *'some of the poor practices in the industry; it definitely has tightened up and changed things'*. The company had not had contact with other regulatory regimes, for example that for the National Minimum Wage, but believed itself to be fully compliant. This employer did express a concern as to the growth in zero hours' contracts which were not sustainable for workers, but which were being used by some agencies. They meant that workers were not only being moved about from job to job and also were often not even provided with work every time they presented themselves for work and it was not clear what impact the GLA had on these sorts of practice. Local Authority A was also supportive of an effective regulatory regime. It pointed to the centralised system of sourcing of agency staff as one that was effective and worked well. Among the agency respondents, Employment Agency E, which was part GLA registered, stated that not only was it in compliance with GLA regulations but that in its view the GLA was effective. It favoured all agency clients checking the agency's status with the GLA. Employment Agency G (which was not GLA registered) similarly viewed the GLA as *'an effective enforcement body that has had the biggest impact on agency practice'*. However, it also felt that the body was under funded:

'They need more people out there, in the cold to enforce/audit. The GLA needs to be extended to hospitality, construction and catering as these are usually small businesses that are open to abuse.'

In contrast, in the view of this agency, the food industry was monitored both by the GLA and the supermarkets, which was making it more difficult for unscrupulous employers to operate in that sector.

Most employers had little direct contact with other regulatory bodies, although Food Company G had once had contact with the HSE and Employment Agency E had reported an agency to the REC for undercutting, but felt that it might take years for this kind of case to be resolved though the industry's own regulatory mechanisms. Food Company A felt that in general government enforcement agencies were less helpful than in the past. In this respondent's view enforcement agencies were less effective in acting against undocumented work, as they had neither the resources nor the mechanisms to deal with this.

Transport Company A was the only employer that made specific reference to the role of the trade unions in enforcement and in how specific regulations relating to employment rights enforcement should operate. This employer felt that effective sanctions should be in place against employers and agencies that broke the law as if not *'sometimes if a penalty is low, an employer or an agency may decide it is worth the risk'*. However, overall this respondent was also sceptical about whether the existing powers and resources of the GLA were sufficient to regulate the industry:

'There is still no evidence of any enforcement department to go out there and pursue employers involved in workers' exploitation in one way or the other. This is a completely grey area. No one knows what needs to be done. There is no real enforcement. To be practicable about it, there is the need of a united front between government, trade unions and employers. Employers should be warned that if they mistreat workers, they will be put out of business.'

Those who also were more sceptical about the powers of the GLA included Food Company F which saw the gangmasters' licensing scheme as 'a very basic regulation' and who felt that:

'A lot more legislation is needed to protect migrant workers. I am more stringent than the GLA Some of the agencies that got GLA licences are below minimum standards. I would not want to know them.'

Among the employment agencies too, there were a minority who also felt that there should be tighter controls, as the following statement from Employment Agency A (which was GLA registered) demonstrates:

'How can this improve? More inspectors who can inspect without notice. Immediate spot checks. Better relationships should be established between the GLA and migrant workers.'

This agency respondent favoured the establishment of surgeries so that migrant workers could find out about their rights and could access places where they could obtain confidential advice. The respondent also saw a role for trade unions in bringing rights' information to migrant workers:

'Migrants are frightened, if they speak out, they can lose their jobs, therefore an anonymous way[for example, through a trade union] should be found for migrants to report their problems.'

One of our trade union key respondents gave an example of such a surgery organised by the multicultural liaison officers in the local police; if they encountered employment problems, they would turn to the trade unions, and vice versa. This was seen as a very efficient way of intelligence sharing between the unions and the police in solving problems experienced by exploited agency workers.

Employment Agency C (GLA registered) also felt that the GLA was under-resourced and therefore could not operate effectively but additionally that it's operational model made it very expensive for those clients who were doing everything properly. This respondent described the GLA as, 'more like a quick money making scheme, instead of solving problems' and felt that it would be better if the GLA went 'off-guard' for a few years and then 'tightens up to come back as a more efficient scheme. Policing the industry in general would be a good practice'. Again the criticism related both to the GLA's limited powers, remit and funding. Employment Agency F had been granted a GLA licence and had undergone a two-day inspection. However, it knew of other agencies that had been guilty of really poor treatment of workers, making illegal deductions for housing and transport, paying workers by cheque yet making it difficult for workers to cash the cheques and charging large sums for protective clothing. Yet these agencies were still being granted licences and this participant

noted, *'This is unacceptable, it gives rise also to unfair competition in the sector'*. This agency believed that there was a need for on-the-spot inspections by the GLA as these are *'much needed'*. Employment Agency J (not GLA registered but mainly operating in hospitality, healthcare, construction and IT) similarly felt that there were too many unscrupulous employers, including in food processing. However, in its view, employers, rather than agencies did most worker mistreatment. It had on occasion reported instances to the GLA but *'not much can be done as they are under-staffed'*. For this respondent there was an urgent need for more accessible information for workers as *'informed workers make a huge difference'*. Employment Agency J was generally supportive of the GLA but it *'needs to be enforced rigorously'*. This respondent favoured the compulsory registration of agencies in all sectors, although she felt that the resources would not be made available for this as *'it's all down to money'*.

Other employers were less willing to discuss their practices; for example, Food Company C was very reluctant to discuss enforcement mechanisms, stating that the company had never experienced any problems that would require external intervention. Food Company D similarly expressed the view that *'If you work with a good recruitment agency, you do not need an enforcement one'*. Employment Agency H simply expressed the view:

'We do not need any enforcement agencies. We do not need the GLA either.'

Employment Agency I had similarly not found any need to contact the GLA and was not GLA registered.

Only a minority of the participant employers made reference to other methods of enforcement, beyond the GLA. Food Company C was aware of the existence of the Employment Agency Standards Inspectorate (EASI), the GLA and the HMRC National Minimum Wage Inspectorate (NMWI) but had no direct involvement with any of these agencies and was reluctant to discuss the issue of enforcement. Food Company A was aware both of the GLA and the NMWI, but was more critical of the latter, seeing government agencies as *'less helpful'* than they had been in the past. Food Company G had some contact with the Health and Safety Executive (HSE) and only worked with GLA registered agencies, describing itself as *'cautious'*. Food Company E had direct contract with the GLA but had no contact with the NMWI since the company was fully compliant in relation to the national minimum wage. None of the other employers made specific mention of enforcement agencies. In terms of other bodies of enforcement, the participants made limited reference to these. One participant in a company with a recognised trade union, made reference to its knowledge of the union having reported unlawful agency practices to the police. More often employers made reference to the media as a potential route to enforcement. Media involvement was seen both as putting a spotlight on poor employment practices and also speeding up the intervention of both the GLA and the police.

8. Recruitment of agency staff

The interviews reveal that the agencies have used a wide range of methods to locate and recruit mainly migrant workers to fill the kind of jobs that employers are looking to agency workers to do. Some were able to source migrant workers already in the UK but others were sourcing directly from countries of origin. An increasing number of agencies were recruiting bilingual office staff, especially Polish, to deal with East European workers. Other agencies were maintaining large databases of job candidates for when vacancies became available.

Employment Agency B advertised in local papers and on the internet. Candidates were interviewed and assessed for ‘*manners and professionalism*’, ‘*integrity*’ and ‘*initiative*’ and previous experience. Knowledge of English was considered very important:

‘I do not discriminate against any workers, but if there are any communication problems, I would simply not employ them.’

Employment Agency C tests candidates for skills and required proof of qualifications. It also ensures that the client employer assesses potential workers on the job. This agency noted that in recent years there had been an increased competition among agencies to secure the best candidates and that they now took steps to introduce ‘*more innovative ways in agency recruitment*’; they try and establish a relationship with candidate workers, asking them to come into the office a few times, by offering free training and by discussing different employment options with them. Employment Agency E checked CVs and references. For it too knowledge of English was important, although the extent of this depended on who the client was and what the nature of the job was. Employment Agency F undertook quite detailed checks of worker qualifications and experience and now regarded knowledge of English as essential stating that ‘*in the past, we’ve experienced a lot of frustration with workers who spoke no English at all*’. Employment Agency G required of all its candidate workers that they completed an application form to register. Workers’ skills are tested, as are language skills, while the agency also arranges for the worker to be tested on the job by the client.

Given that we also interviewed some employers who no longer used agency staff, we also looked at the methods they used to recruit workers. Food Company E is one of those that no longer uses agencies to recruit. Instead it has set up a detailed mechanism for recruiting migrant workers directly from abroad (in this case mainly Portugal). This involves the use of interpreters and the employment of bilingual staff responsible for the recruitment of migrant workers. The adoption of this method had resulted in less staff turnover and in more sustained productivity. The company claimed that it was easier to recruit individuals abroad, particularly because, in its view, those migrant workers who presented in the UK were more likely to be undocumented or to have false paperwork. Food Company D also no longer used agencies as it could source the workers it needed through word of mouth, now that a sufficient number of migrant workers were in its employment. Transport Company A similarly was recruiting workers directly in their country of origin (in this case Poland).

9. Terms and conditions for agency workers

In the interviews with employers and with agencies we requested information on the terms and conditions of agency staff. We were seeking to understand the extent to which these differed from those of directly employed staff. In addition, we wanted to know whether the end user employer exercised any influence over the rate that was set, or indeed whether the end user was even aware of the terms and conditions that applied to agency workers in the premises. Among employers there was a limited knowledge of agency workers' terms and conditions. Agencies generally admitted to paying only the National Minimum, although some paid higher rates for longer serving staff or after a period of time. Among agencies there was a view that they were constrained in what they could pay by the conditions imposed on them by their clients, and some also complained that they had no way of confronting employers who were treating agency staff badly.

Food Company A was aware of the terms and conditions that applied to agency staff as these were set out in its service agreement. Agency workers were paid at the National Minimum Wage, but permanent workers were paid 20p an hour more even when doing the same work. Agency workers do receive paid holidays and sick pay. They are provided with transport to and from the factory and although the employer did not have any information on this, the respondent assumed that workers were charged by the agency for this service. The respondent made the point that the company was 'strict' in checking that agency staff did not work too many hours, but for this respondent this occurred if agency workers were working in excess of 60 hours a week. Food Company G also had information about the rates of pay of agency staff, but this was because once the rate had been set by the agency the company paid workers directly. Agency workers were paid at the National Minimum Wage. They were charged for accommodation. Local Authority A was also aware of and could even control the terms and conditions available to its agency workers, but this was due to the centralised recruitment system, which was open and transparent. However, even though agency workers got paid the same rate they did not have the same access to other conditions like training and were only given a basic health and safety induction. Agency workers doing low skilled work received only the National Minimum with no occupational sick pay. According to Employment Agency F:

'As most jobs are low skilled, requiring very basic qualifications, we can place workers on the jobs with little or no training at all.'

In contrast, Food Company F played no part in setting the terms and conditions of agency staff. It recognised that it was in a position to influence these but the respondent felt that this would inevitably result in increased costs and there was no incentive for the company to do this. It did conduct audits of the contracts of agency workers but in the company's view agency workers wanted to do as many hours as possible, so long hours were not an issue that required consideration. Local Authority B in contrast claimed that agency and direct workers got the same training and were treated the same at work. However the authority had no influence on their pay rates; at the same time, it also claimed that agency workers, especially social workers, were paid much more than their colleagues on permanent contracts.

Employment Agency A paid the National Minimum, although some workers could earn significantly more, with the best workers being offered *‘peach jobs that pay £8.50 an hour’*. Workers also had an entitlement to some sick pay and to holiday pay, but again tied to the legal minimum. Employment Agency B paid at the National Minimum but also offered a ‘reliability bonus’ that would bring wages up to £6.60 an hour. It defined *‘reliable’* workers as those who *‘would not be ‘picky’ and would not have any preferences neither for the day nor for the time of the assignment’*. Employment Agency C paid the workers it sourced holiday and sick pay, but only after 26 weeks of continuous employment. Employment Agency F paid slightly more than the National Minimum and also paid overtime and holiday pay. However it did not have an occupational sick pay scheme for agency-sourced workers and it accepted that there were major differences between direct and agency terms, including in their hourly pay and in the number of hours of work they might be offered. Agency staff again only received a basic health and safety induction as the agency viewed this as the responsibility of the employer. Employment Agency G also paid just the National Minimum and in some cases paid occupational sick pay. They also had the right to minimum statutory holidays. Employment Agency H made the point that in reality employers set the rate of pay, since what the agency could pay was determined by the amount that the client was willing to pay to the agency. Employment Agency J also made the point that although they could make proposals, it was the client who determined the rates:

‘We formulate our terms and conditions more as a response to the advertisements of the clients. It is all on the client to decide about payments and working conditions.’

Employment Agency K similarly stated that *‘terms and conditions of employment depend entirely on the employer; the agency has no influence on them unless something illegal is detected [especially in the wording of the advert]’*. This agency too was clear that it had no responsibility for health and safety, which was the responsibility of the client employer. Only one of the agencies appeared to set conditions on employers over the employment of agency workers. This was Employment Agency I that stated that employers had to agree to offer work for at least 13 weeks and for at least 16 hours a week and that the National Minimum at least must be paid. But this agency operated with government funding and this undoubtedly influenced its actions. One of the clients of Employment Agency G did pay agency workers the same as directly employed staff, and was considered the agency’s best client. At the other end of the spectrum, its worst client had made workers feel very unwelcome and consequently the agency had stopped trading with it:

‘Temporary staff were doing the same jobs as permanent staff, and the latter obviously saw migrant workers as a threat to take their jobs away.’

Food Company E did not employ any agency workers and paid its directly employed migrant workers around £6.70 an hour, well in excess of the National Minimum Wage. The company also made accommodation available to migrant worker employees at around £30 to £35 a week, but this was optional and staff could make their own arrangements. Cleaning Company A had been aware that there were big differences in terms and conditions, between directly employed and agency workers, and estimated that agency workers were paid around £1.50 an hour less. Agency

workers also received no overtime pay and no sickness pay and it was for these reasons that the company had stopped using agencies. They had found that they had no influence on changing terms and conditions, and indeed agency workers had been forbidden (by the agency) from even talking to the employer about their pay rates. But they had discovered, after some Polish agency workers who could communicate well in English had arrived and spoken to directly employed staff, that agency workers were being paid significantly less than their directly employed counterparts.

But employment agencies could similarly express their concern over their inability to challenge employer bad practice. Employment Agency D stated that the agency *'is still helpless in a case of a problem with employers'*. For example, it cited the case of a client in a bakery company who did not allow Polish agency workers to wear protective gloves and as a result one worker was severely burned. The agency contacted a trade union, as it did not know what else it could do to challenge this particular employer.

Among the employer respondents, only two suggested that agency work was a choice for migrant workers, with Food Company D noting:

'We've got a steady stream of people who want to work here; they treat the job as a temporary employment Some agency workers are happy with the flexibility temporary work gives them. Afghan people want to take long breaks; East Europeans want to save some money and go elsewhere or return home'.

Local Authority B also felt that some agency workers – although primarily skilled workers – might prefer agency work as it gave them flexibility and a high pay. They also felt that it allowed them to move around more as *'it is generally accepted that agency workers move around. That's why they do it, it is only positive for their careers. If a permanent worker does this he/she will have a problem finding a new job'*. However, overall it was agencies that were more likely to state that agency work was a preference. Employment Agency A described migrant workers in particular as enjoying *'the temporary character of their jobs, because they could choose to return home for longer periods than would be available under most holiday schemes'*.

9.1 Issues of language provision

Some employers and agencies had made provision for English language training, but this was limited and often had not been sustained. A number stressed their opposition to the cuts in ESOL funding.

At Food Company E the employer operated a dual language system at the factory but had also offered English language classes. However, workers had found it difficult to attend classes at the end of their working day. Classes had also been offered through Learn Direct and although there had been a take up from migrant workers, there were difficulties over the funding of the classes. This employer was very critical of the government's proposals to cut ESOL. For the employer more money was needed to go into language training as they felt that the whole region benefited from migrant workers and that language training should be seen as the state's way of

acknowledging these benefits. At Food Company G knowledge of English is considered important and it uses a system of pairing English and non-English speakers.

Employment Agency A stated that some client employers did provide English to workers, in the form of morning or evening classes, but that workers had not taken these opportunities up. Employment Agency K noted that a few employers in the care sector had provided ESOL classes but that this was now becoming more difficult for employers to do, as there was no government funding for ESOL. Employment Agency E had provided English classes in the past, but workers could only attend if the employers gave them time off. Employment Agency G had also offered ESOL classes but the funding for these was ending, even though '*clients are very happy that the agency provides ESOL because of health and safety considerations. It also accelerates cohesion*'.

Employment Agency E had previously provided free English lessons to those on its books although currently was not providing these. Employment Agency G was the only participant that referred to trade union involvement in provision or support for language learning. In the view of this participant, government cuts in ESOL provision meant that union learning was the only effective remaining option left to employers who wanted to ensure that they had a workforce with adequate English language skills. For this reason the agency encouraged trade union membership as a route to language learning.

9.2 Rights to transfer to direct employment

Most of the participants did not provide a means for workers to transfer from agency to direct employment, with only a very small number having a transparent system in place or encouraging the movement of agency staff into direct employment. Previous qualitative research we have conducted with agency workers show that many would prefer to work directly for the employer and indeed in this research one of the agencies made the point that '*migrants want long-term jobs in order to be able to settle here*' (Employment Agency J). We therefore were interested in knowing whether employers or agencies had procedures that enabled a transfer from agency to direct employment. We found that while most did not a minority did offer this route into direct employment.

At Food Company D an agency worker who is employed for at least 10 weeks can switch to direct employment, and about 50 agency workers a year were able to do this. Local Authority A also viewed agency employment as a route into direct and permanent employment. However, no other employers in our sample had such systems in place.

Among the employment agencies, Employment Agency A had an agreement with its client that workers could switch to direct employment after 13 weeks. For Employment Agency E around 70 per cent of agency temps had moved on to permanent employment during the previous 12 months. Employment Agency F had a goal of obtaining direct employment for its workers and its client had already taken on about 20 agency workers. Their agreement provides that workers can move to direct

employment after 13 weeks, without a fee having to be paid to the agency. For Local Authority A this period is 12 weeks. Similarly, with Employment Agency G, around 20 to 30 per cent of its sourced workers moved on to direct employment. For the remaining seven agencies there was no system in place that allowed for a shift from agency to direct employment.

Conclusions

The aim of this research has been to explore, through interviews with employers and with employment agencies, reasons for the utilisation of agency labour. All of the data gathered and presented in this report thus comes from these interviews, giving voice to the participants, allowing them to provide a context for their employment decisions.

The findings lead us to conclude that while some employers are using agency staff to cover for specific peaks in production, in other cases agency employment has become an alternative method of dealing with staff vacancies that otherwise, in the absence of agency labour, might have resulted in offers of permanent posts. This conclusion is based on the differing responses to the questions around motivations for using agency labour, provided by employers and by agencies. For while the former often refer to agency labour in relation to their needs for numerical flexibility, matching labour supply to product and service demand, agencies construe employer use of agency labour in relation to functional flexibility, in other words the need for labour that works flexibly.

We can also conclude that in those cases where there were variations in production demands requiring additional labour, employers who had established close working relationships with a single agency and who had detailed service level agreements, found these relationships more satisfactory. Reducing the number of agencies that an employer deals with, to one or two at most, appears to be associated with the maintenance of better standards.

It is also important to take note of the fact that a number of the employer participants were no longer using agency staff and in some cases had introduced alternative methods of recruiting, to respond to local labour shortages. These had sometimes resulted in new and innovative methods of sourcing staff directly, including direct employment from abroad. This demonstrates that employers, who are willing to invest in innovative recruitment methods (which could also be at lower cost), are able to source reliable labour, without the need to engage temporary agency labour.

The establishment of the GLA has had an impact on employment practices within the sectors that are covered by the registration scheme. Among employers in the food processing sector who were using agency staff, there was a general awareness of the need for agencies to be registered and a willingness to take up issues relating to registration. These employers generally did not perceive registration as a disadvantage; indeed some expressed the desire for more stringent systems of control. This suggests that there is no particular reason to anticipate that employers would be opposed to regulation or to the extension of regulatory mechanisms, provided that they view these as effective and as ensuring that poor employment practices, that might place the end user employer under media scrutiny, are avoided. The study thus leads us to conclude that once a licensing scheme is in force a majority of employers are likely to work with it. At the same time it is also the case that the interviews reveal a large amount of scepticism about the ability of the GLA, as currently constructed, to deal with bad employment practices. This points to the need to extend the powers of the GLA, both in terms of its ability to check on workplaces currently within the sectors affected and also in terms of the potential for its extension to other sectors where agency labour, and in particular low-paid agency labour, is heavily utilised.

Furthermore, while accepting that the numbers in the study are small, it may be of note that it was those employers working in sectors that were not subject to GLA regulation who were more likely to have moved away from using agency staff, either through their concerns over the treatment of such staff or because they had taken steps to recruit labour through routes that were less open to criticism. We note that less than a third of the employer participants operating in GLA sectors had stopped using agency workers, whereas half of the non- GLA sector employers had taken this decision. We conclude that it is not GLA regulation that leads necessarily to a decline in the use of agency labour but the lack of regulation that obliges employers to move away from using agency labour.

Finally, although this study has covered only a relatively small number of employers and employment agencies, it has demonstrated that there are a wide range of measures available to employers and employment agencies which they could adopt, including providing or facilitating ESOL classes; working with trade unions to prevent unlawful working practices; providing clear routes from agency work into permanent employment; making a detailed cost/benefit analysis on the use of agency labour; and making training facilities available to agency staff. This study has included practical examples of where these have been adopted.

¹ <http://www.euro-ciett.org>. Arrowsmith (2006) estimated just 2.6% temporary agency workers while a CBI representative survey of 210 companies estimated 3.1% (CBI, 2 August 2007).

² Environment, Food and Rural Affairs Select Committee-Written Evidence
<http://www.publications.parliament.uk/pa/cm200203/cmselect/cmenvfru/691/691we01.htm>

³ The literature review is contained in a separate report to the TUC.

References

- Anderson, B. and B. Rogaly, 2005, *Forced Labour and Migration*, TUC: London
- Anderson, B., Martin Ruhs, Sarah Spencer, Ben Rogaly, 2006, *Fair Enough? Central and East European migrants in low wage employment in the UK*, COMPAS: Oxford.
- Arrowsmith, J. (2006) *Temporary Agency Work in an Enlarged European Union*. Luxembourg: Office for Official Publications of the European Communities.
- Bergstrom, O. and D. Storrie, eds. (2003) *Contingent Employment in Europe and the United States*. Cheltenham: Edward Elgar Publishing
- Burgess, J. and J. Connell (2006) 'Temporary work and human resources management: issues, challenges and responses' *Personnel Review*, 35:2, pp.129 – 140.
- CBI/Pertemps (2007) Annual employment trends survey, <http://www.cbi.org.uk/ndbs/press.nsf/0363c1f07c6ca12a8025671c00381cc7/d6d6e007b3649b13802573f40037b617?OpenDocument>. Date accessed: February 2008
- Environment, Food and Rural Affairs Select Committee- Written Evidence <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmenvfru/691/691we01.htm>. Date accessed: February 2008
- Haque, R. (2002) *Migrants in the UK: A descriptive analysis of their characteristics and labour market performance*, based on the Labour Force Survey, London: DWP. http://www.migrationpolicy.org/pubs/MPI_PB_6.05.pdf. Date accessed: February 2008.
- Kaplan, B. and Maxwell, J.A. "Qualitative Research Methods for Evaluating Computer Information Systems," in *Evaluating Health Care Information Systems: Methods and Applications*, J.G. Anderson, C.E. Aydin and S.J. Jay (eds.), Sage, Thousand Oaks, CA, 1994, pp. 45-68.
- Kempton, J. (2002) *Migrants in the UK: Their Characteristics and Labour Market Outcomes and Impacts*, RDS Occasional Paper No 82. London: Home Office.
- Koene, B.A.S., Paauwe, J., and Groenewegen, J., 2004, 'Understanding the development of temporary agency work across Europe: Economic and socio-cultural explanations,' *Human Resource Management Journal*, vol. 14, no3, pp 53-73.
- McKay, S. and A. Winkelmann-Gleed (2005) *Migrant Workers in the East of England*, East of England Development Agency. Cambridge, EEDA
- McKay, S. M. Craw and D. Chopra (2006) *Migrant workers and health and safety*, London: Health and Safety Executive.

Martin, David A. 2005. *Twilight Statuses: A Closer Examination of the Unauthorized population*. Independent Task Force on Immigration and America's Future Policy, Brief No. 2, Washington, DC: Migration Policy Institute.

Michon, F. (2005) *The Temporary Agency Work Market in France: Diversity and Segmentation*, IWPLMS conference, Berlin, September 8th -10th 2005.

Myers, M.D. (1997) 'Qualitative research in information systems' *MIS Quarterly* (21:2), June 1997, pp 241-242 MISQ Discover, archival version, June 1997.

Select Committee on Environment, Food and Rural Affairs (2003) House of Commons Select Committee on Environment, Food and Rural Affairs, 18th September 2003. Gangmasters. <http://www.parliament.the-stationery-office.co.uk/pa/cm200203/cmselect/cmenvfru/691/69103.htm>. Date accessed: February 2008.

Vasta, E., 2004, 'Community, the State and the Deserving Citizen: Pacific Islanders in Australia', *Journal of Ethnic and Migration Studies*, 30 (1) 195-213.

Williams, A. and V. Baláž (2004) From private to public sphere, the commodification of the au pair experience? Returned migrants from Slovakia to the UK', *Environment and Planning A* v36 (10) 1813-1833.

Wright, T. and Pollert, A. (2006) [The Experience of Ethnic Minority Workers in the Hotel and Catering Industry: Routes to support and advice on workplace problems](#), Acas Research Paper 03/06, London: Acas.

Appendices

A. Employer Interview – Topic Guide

Work/ Employment

What is the nature of the organization or business that you run?

Prompts:

Type of jobs that are done in the main.

Length of operation and history (changes over the last 5 years)

Can you describe the management structures in your organization?

Prompts:

Geographic areas covered

Languages spoken by management staff

Communication with workers (flyers, notices etc.)

Additional support staff (liaison officers etc.)

In terms of your direct workforce, how do you recruit to it and what are its key characteristics?

Prompts:

Numbers and nationalities; main languages spoken

Age, gender mix, educational profile, skill sets etc.

Importance of Language skills and functional literacy

Levels of English – how do you check; access to Language classes

Levels of functional literacy

Have they made any changes to the way they recruit? (i.e. getting at whether they have used agencies in the past and now recruit directly) If so why?

Is there a recognised trade union(s)?

If yes, is it consulted on the use of agency workers?

Does the union recruit/organise/represent agency workers? – or has it attempted to?

Agency arrangements

What in your view are the advantages for companies of employing agency workers?

What are the disadvantages?

Prompts:

Immigration status

Provision of services such as – accommodation, travel, food, medical care: payment?

Concerns about languages

Social security contributions

Filling of skill shortages

Costs savings?

Flexibility to respond to demand?

Which agencies do you use and how have you come to select them?

Prompts:

What processes are used for selection?
What key characteristics are you seeking in an agency?
Have you ended relationships with any agencies and why?
Ask for names of present and past agencies.

Advantages of smaller and larger agencies?
Length of time with current agency – and average length of relationships with agencies?

Do you have a service agreement with the agency (ies) and what does it cover?

Prompts:

Who is responsible for managing the relationship with the agency?
What do you see as your responsibilities as an employer? How are these different from the responsibilities of an agency if you engage one?

What obligations does the company have in relation to the agency workforce and what duties are left to the agency?

Prompt:

Health and safety (including provision of equipment); training; provision of ESOL and/or other English language training for migrant workers (we have a particular interest in their views of employers funding ESOL given recent restrictions that have been announced)

Advantages and disadvantages of agency taking on these roles
Ask if we can have a copy of the service agreement

What proportion of your workforce is made up of agency workers?

What types of jobs do agency workers do? What length of time do agency workers stay with the company for?

What are the main reasons/circumstances that the company has for using agency workers?

Have you considered alternatives to using agency workers?

Do you know how the agency goes about sourcing its workers?

Prompts:

a) What contractual arrangements are there between the agency and its workers?

Have you had any good experiences of using agencies that you would like to highlight?

Have you had any bad experiences of using agencies that you can tell us about?

Do you know of any other employers using less reputable agencies?

Do they know of employers who have set up their own agencies in order to save on charges to an external agency?

Do they know of agencies based in other European states providing labour to companies based in the UK? Views on practice?

Agency workers terms and conditions

What knowledge does the company have of the terms and conditions of agency workers?

Prompt:

a) Minimum wage or above

b) Sick pay/holiday pay

c) Hours

Charges or deductions made from pay

How are these terms and conditions set and does the company have any influence over them?

If not, have they ever tried to exert any influence?

How do agency workers terms compare with those of direct workers doing the same sorts of work?

Prompts:

Written or informal contract – translation?

Period of employment

Shift working

Hours of work per week – overtime – whether follow Working Time Directive or opt-out

Method of payment: amount and frequency (weekly/ daily/ fortnightly/ monthly)

Sick pay/ holiday pay/ maternity leave/ overtime pay

Provision of accommodation/food/transport – how set out and how deducted from pay

How many go on to permanent work?

How do they think that their practice compares to other companies in the sector?

How would you characterise the agency workforce?

Prompts:

Numbers and nationalities; main languages spoken

Age, gender mix, educational profile, skill sets etc.

How long have you been sourcing migrant workers? Change of nationalities over time? (would also be good to ask about the mix of migrant and non migrant workers)

Importance of Language skills and functional literacy

Levels of English – how do you check; access to Language classes

Levels of functional literacy

How is health and safety managed for agency workers?

Prompt:

a) What health and safety information and training do your workers normally receive from the agency? b) How is your company involved in the delivery of H&S information and training?

What do you see as your responsibilities for health and safety as client? How do these relate to the responsibilities of the agency?

How is training managed for agency workers?

How are agency workers represented in the workplace?

Prompts:

Unions: how many agency workers are members of unions?

Are there any health and safety representatives covering agency workers?

Are there any procedures for agency workers to move on to direct employment and can you describe how these operate?

Prompt:

a) Is there a charge to the employer and how much?

b) Effect of the charge on decisions regarding offers of direct employment.

What examples good agency worker practices and procedures are you aware of?

What bad practices are you aware of in the industry? Have they ever reported this bad practice?

Enforcement arrangements

What do you think of existing enforcement arrangements with regard to agency employment?

Probe on whether they know whether there are any regulatory bodies, and if so if they have heard of the GLA; the Employment Agency Standards Inspectorate; HMRC National Minimum Wage Inspectorate; HSE

Has the company had any direct experience of enforcement agencies and can you tell us something about it?

Probe on whether they know which agency, whether they would know how to contact an enforcement agency, what their views are on the resources available to the agencies, and on whether they would ever register a complaint about another employer (and if they know how to register a complaint). Have they ever had any experience of any of the helplines? What are their views on their utility?

Have you any views/opinions on alternatives to the current arrangements?

Probe on resources, ability to take action, impact on practice in the sector

What would be the company's view on possible limits on the use of agency staff or on enforceable options to transfer to direct employment?

What would be their views on further licensing of employment agencies (along the GLA model)

End of interview

Check whether know of any other employer/agency who would be willing to participate in this research – ask to pass on our contact details and ask them to get in touch with us.

B. Agency or Labour Provider Interview – Topic Guide

Work/ Employment

What type of recruitment agency/ labour provision do you operate?

Prompts:

Type of jobs that the agency provides workers for.

Sectors of major clients for whom workers are provided

Length of operation and history (changes over the last 5 years) General views on changes in the agency sector over this time?

What is the management structure of your agency?

Prompts:

Geographic areas covered

Languages spoken by management staff/other support staff

Communication with workers (flyers, notices etc.)

How do you recruit workers? And any changes in recruitment methods over last 5 years?

What type of workforce in general do you provide to clients?

Prompts:

Numbers in peak season and off peak time

Qualifications and skills training; how check?

Length of employment

Method of recruitment – adverts, word of mouth, links to overseas agencies etc

Do you have any agreements with trade union(s)?

If yes, which are these? Nature of the agreements

Are you aware of any unions recruiting/organising/representing agency workers?

What would their views be on union recognition of their workers?

Client arrangements

What in your view are the advantages for clients of employing agency workers? What are the disadvantages?

Prompts:

Immigration status

Provision of services such as – accommodation, travel, food, medical care: payment?

Concerns about languages

Social security contributions

Filling of skill shortages

Costs savings?

Flexibility to respond to demand?

Who are your main clients and how have you targeted them?

Prompts:

What key characteristics are you seeking in clients?

Have you ended relationships with any clients and why?
Ask for names of present and past clients.

Do you have a service agreement with clients and what does it cover?

Prompts:

Who is responsible for managing the relationship with the client?

What do you see as your responsibilities as an agency? How are these different from the responsibilities of an employer?

What do you see as the responsibilities of a client? How are these different from the responsibilities of an agency?

What obligations does the agency have in relation to the agency workforce and what duties are left to the employer?

Prompt:

a) Health and safety; training

Ask if we can have a copy of the service agreement

Health and safety (including provision of equipment); training; provision of ESOL and/or other English language training for migrant workers (we have a particular interest in their views of employers funding ESOL given recent restrictions that have been announced)

Advantages and disadvantages of agency taking on these roles

What types of jobs do agency workers do?

What are the main reasons/circumstances that clients have for using agency workers?

Do you know of cases where clients have switched entirely to using direct workers?

How does the agency go about sourcing its workers?

Prompts:

a) What contractual arrangements are there between the agency and its workers?

Have you had any good experiences of working with clients that you would like to highlight?

Have you had any bad experiences of working with clients that you can tell us about?

Do they know of clients who have set up their own agencies in order to save on charges to an external agency? Views on practice?

Do they know of agencies based in other European states providing labour to companies based in the UK? Views on practice?

Agency workers terms and conditions

What basic terms and conditions do you offer to agency workers?

Prompt:

a) Minimum wage or above

b) Sick pay/holiday pay

c) Hours

Charges or deductions made from pay

How are these terms and conditions set and does the client have any influence over them? Have any clients ever tried to influence them?

Do you know how agency workers terms compare with those of direct workers doing the same sorts of work?

Prompts:

Written or informal contract – translation?

Period of employment

Shift working

Hours of work per week – overtime – whether follow Working Time Directive or opt-out

Method of payment: amount and frequency (weekly/ daily/ fortnightly/ monthly)

Sick pay/ holiday pay/ maternity leave/ overtime pay

Provision of accommodation/food/transport – how set out and how deducted from pay

How many go on to permanent work?

How do they think that their practice compares to other agencies in the sector?

How is health and safety managed for agency workers?

Prompt:

a) What health and safety information and training do your workers normally receive from the client?

b) How is the agency involved in the delivery of H&S information and training?

What do you see as your responsibilities for health and safety as an agency? How do these relate to the responsibilities of the client?

How is training managed for agency workers?

How are agency workers represented in the workplaces they are sent to?

Prompts:

Unions: how many agency workers are members of unions?

Are you aware of any clients acknowledging health and safety representatives covering agency workers?

Are there any procedures for agency workers to move on to direct employment and can you describe how these operate?

Prompt:

a) Is there a charge to the employer and how much?

What examples good client practices and procedures are you aware of? What bad practices are you aware of in the industry? Have they ever reported bad practice?

Enforcement arrangements

What do you think of existing enforcement arrangements with regard to agency employment?

Probe on whether they know whether there are any regulatory bodies, and if so if they have heard of the GLA; the Employment Agency Standards Inspectorate; HMRC National Minimum Wage Inspectorate; HSE

Are they a member of the Recruitment Employers' Confederation (REC)? Do they abide by their voluntary code of practice?

Have you had any direct experience of enforcement agencies and can you tell us something about it?

Probe on whether they know which agency, whether they would know how to contact an enforcement agency, what their views are on the resources available to the agencies, and on whether they would ever register a complaint about another employer (and if they know how to register a complaint). Have they ever had any experience of any of the helplines? What are their views on their utility?

Have you any views/opinions on alternatives to the current arrangements?

Probe on resources, ability to take action, impact on practice in the sector

What would be the agency's view on possible limits on the use of agency staff or on enforceable options to transfer to direct employment?

What would be their views on further licensing of employment agencies (along the GLA model)

End of interview

Check whether know of any other employer/agency who would be willing to participate in this research – ask to pass on our contact details and ask them to get in touch with us.