



Relaunching Collective Bargaining Coverage in Outsourced Services

RECOVER POLICY PAPER

Outsourcing and Collective Bargaining in the UK

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POLICY PAPER: United Kingdom

INTRODUCTION

In the United Kingdom (UK) outsourcing is traditionally very common both in the private and public sector and protection for outsourced workers by a collective agreement is generally weak. One reason for this is the “liberal” nature of the British industrial relations system which facilitates outsourcing because it is usually based on voluntary collective bargaining between trade unions and management at the company level.

The research project shows that the British industrial relations system has certainly facilitated outsourcing and in particular had the effect that employees who were previously covered by a collective agreement often lose this protection soon after their activity was outsourced. The research also showed that one major trend in recent decades, which has accelerated since the economic crisis of 2008, is the increased outsourcing of public sector activities to private sector companies. Therefore in this report, two of our case studies focused explicitly and in detail on outsourcing of public services to private sector companies and the implications for the collective bargaining coverage of these employees. More specifically, we analysed outsourcing activities in the Adult Social Care and Prisons sectors. In addition, we investigated the role of outsourcing for and within an individual Facility Management Company (FMC).

In our research we were able to give a detailed portrait of the different activities, services and sectors with respect to outsourcing and the socio-economic situation in which outsourcing is embedded as well as highlighting the problems and challenges for workers therein. On the basis of our analysis we then identified ways and options for different actors, i.e. trade unions and the state, to address the issues identified.

INDUSTRIAL RELATIONS RECKONING WITH OUTSOURCING

1. COLLECTIVE BARGAINING COVERAGE

The most common form of collective bargaining in the UK is between a trade union and the management of a company, i.e. collective bargaining in the UK is predominantly concentrated at the company level. Although higher level collective agreements exist, especially in some parts of the public sector, sectoral- or even national-level bargaining is rather the exception than the rule.

Not least because of the fact that (almost) no higher-level collective agreements exist, collective bargaining coverage is (relatively) low and only around one quarter of all employees are covered by a collective agreement. Historically bargaining levels were higher but decreased continuously in the past decades. As our research showed, one reason for this development might certainly found by outsourcing and the lack of legal support in order to guarantee coverage.

2. THE EXTENSION, REGULATION AND FORMS OF OUTSOURCING

In the UK in general, there are no legally backed extension mechanisms or regulations which would imply that collective agreements apply to all companies in the sector so that collective bargaining coverage is higher. Furthermore there are no voluntary extension mechanisms with respect to the coverage of workers in outsources sectors.

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

We considered in this research all business activities which involve the production of either goods or services, purchased by an organisation from an external supplier rather than provided internally as an outsourced activity and using this conceptualization our

research showed that the forms and practices of outsourcing are manifold. Basically this outsourcing can also be labelled as “subcontracting” but in the globalised British economy which is characterised by continuous and often rapid and dramatic organisational change and restructuring not only of companies but also of whole sectors (including the public sector), determining what is produced internally or externally is difficult, always fuzzy and in constant flux. However, as regards the forms of outsourcing our research showed that in the past decades the British economy has witnessed a myriad of reorganizations of both private companies and public organisations with mergers, demergers, strategic alliances, intra-organisational disaggregation and also public-private partnerships and alliances which also lead to considerably numbers of employees which were outsourced.

3. FACILITY MANAGEMENT COMPANIES (FMCs)

The FM sector has become increasingly important in the UK in recent decades, with many British companies following the example of American multi-national companies who expanded their business activities into the UK. The practice of outsourcing non-core activities such the maintenance of buildings, cleaning, catering and security, has become increasingly widespread in both the private and public sector, making the FM sector one of the fastest growing economic activities. There is no specific legal regulation covering this sector with respect to collective bargaining per se and therefore, similar to many other sectors and industries in the UK, collective bargaining is very limited.

OUTSOURCED ACTIVITIES AND FACILITY MANAGEMENT COMPANY CASE

1. OUTSOURCED ACTIVITIES (Adult Social Care and Prisons)

In our research we have looked in detail at outsourcing in the Adult Social Care and Prisons sectors. Both activities are of special interest since both activities, previously

supplied by the public sector, have increasingly been outsourced to private sector companies. There is decreased collective bargaining coverage for employees who work in these activities.

For both activities we found a common picture that if an area is outsourced, i.e. usually to a private sector provider, the employees affected are only covered by a collective agreement in the longer run, i.e. if a transfer regulation expires, if (and usually only if) the private sector company has a relevant collective agreement in place. However, we also found that this is rather the exception than the rule. The only way to maintain (or increase) coverage runs via stronger involvement and activity by trade unions but which was found to be difficult since for both industries trade unions are relatively weak as they are also confronted by membership losses.

2. FACILITY MANAGEMENT COMPANY

Our analysis of a typical large FMC showed all the general issues and developments with respect to outsourcing are confirmed. This implies that if a FMC takes over of a certain area of another company the only guarantee in the longer run and if any transition regulations expire for employees to be covered by a collective agreement is if there is a collective agreement in place in the FMC. Against the background that in FMC bargaining coverage is low, i.e. not many FMC do have a collective agreement, the outcome of outsourcing is that many employees will not be covered by an agreement anymore after FMC took over.

POLICY RECOMMENDATIONS

Our research found that the UK's "liberal" and "weak" legal framework for collective bargaining is a major reason why employees in outsourced services lack the benefits of collective bargaining, in particular, its voluntarist nature. Against this background the coverage of employees in outsourced services by collective agreements depends mainly on the initiative of two actors, i.e. of trade unions and the state.

For trade unions one way of bringing employees in outsourced services either under another collective agreement or under a new collective agreement which is specially designed for outsourced activities is to develop strategies and campaigns which increase membership numbers in order to increase the “power” and “strength” to bargain with employers. The outsourcing process however fragments workplaces and increases the difficulties of support employees effectively, meaning that re-structuring of their own organisations is often necessary. We also found that new communication strategies, including the improved use of technology to communicate and represent younger workers, could be very effective. Also, trade unions should use their political contacts and goodwill both in local authorities and national government. Furthermore, trade unions need to strengthen legislative support for employees’ terms and conditions. Most notably to ensure the reinstatement of the two-tier code of practice which would specifically protect outsourced public sector workers by extending sectoral collective bargaining agreements to them.

Any protection of workers in outsourced services by collective agreements also depends upon the will of state to do so. There are two main ways in which the legal framework might be adapted to bolster collective bargaining. The first, and perhaps easiest way, would be to strengthen the regulations which aim to protect the rights of employees faced with outsourcing i.e. the Transfer of Undertakings Regulations (TUPE) regulations.

The second, but more wider and difficult on the one hand but on the other hand more sustainable way would be to rethink and reconsider its role towards collective bargaining in general. There are many way of doing this but most promisingly strengthening of sectoral collective agreements, e.g. via the introduction of extension regulations of collective agreements dependent upon certain defined conditions as in France or in Germany; the (re-)introduction of sector commissions which existed in previous forms in the UK before (e.g. Joint Industrial Councils); and works councillors system all of which enable a formal and legally backed system to facilitate employees to represent themselves collectively.

However, a third pathway addresses the outsourcing process itself and draws on

increasing dissatisfaction amongst all parties, employers, trade unions and the state with respect to the effects of outsourcing. In fact, clear guidelines and rules with respect to quality assurance and the protection of labour rights would be needed and the state should consider this accordingly within the legal framework. This implies that all private and public sector firms should be subject to the same transparency and remuneration regulations. Furthermore, information on working conditions and remuneration of service providers should be freely available to make comparisons easier between companies, i.e. service providers. Also, private and public service providers should fall under “open book” accounting to permit annual independent audits in order to guarantee fair working conditions.

This means that in this research project we were able to identify a number of pathways which would enable trade unions, employers and the state to protect workers’ rights and to increase the coverage of employees in outsourced services.