

POLICY BRIEF UNITED KINGDOM



RECOVER IN BRIEF

Funded by the European Commission DG Employment, Social Affairs and Inclusion and involving 5 European partners, the RECOVER project analyses whether and how the growth in outsourcing and subcontracting is triggering coverage problems for workers in these outsourced services. The project will accordingly compare cases of collective bargaining coverage gaps in outsourced services at sectoral and company level in six countries.

KEY MESSAGES

- Outsourcing has become an established practice in the UK over the last three decades.
- Recent austerity policies by the UK government have accelerated outsourcing processes in the public sector
- Outsourcing in the public sector has been criticised recently because of the unsatisfactory quality of services provided and limited proven cost reductions
- The transfer of collective agreements is largely regulated by the Transfer of Undertakings Protection of Employment regulations (TUPE)
- As collective bargaining coverage is relatively high in the public sector and low in the private sector, the increase in outsourcing of public sector activities has led to a decrease in collective bargaining coverage in the UK
- Fragmenting of the workforce through outsourcing has significantly affected collective bargaining coverage
- The activities selected in the analysis (home health care, prison security) and the facility management sector have gained increased socioeconomic importance and have all been significantly affected by outsourcing.



OUTSOURCING IN THE UNITED KINGDOM (UK)

The UK is regarded as a pioneer in outsourcing activities both in the private and public sector. Outsourcing is considered an effective way to reduce expenditure and to increase flexibility in the hope of delivering services more efficiently. Outsourcing of activities however has had the effect of removing employees from collective agreements or fragmenting their coverage meaning that employee pay, terms and conditions of work were often negatively affected.

In the UK outsourcing has become very common in both the private and public sectors

In the UK legal framework, outsourcing refers to a business activity, involving the production of either goods or services, purchased by an organisation from an external supplier rather than produced internally. The extent of outsourcing of activities in the UK means that determining the boundaries of what is internal and external as well as what is public and what is private has become increasingly difficult.

When services are outsourced, the central legal framework of protection for employees is the Transfer of Undertakings Protection of Employment Regulations (TUPE). TUPE regulates the right for employees to transfer to employment by the new service provider with their contract of employment and collective bargaining rights intact.

Whilst outsourcing seemed to accomplish the goals of reducing expenditures and increasing organisational flexibility, making the United Kingdom one of the largest markets for outsourcing in the world, relying on private contractors to deliver public services has recently come

under increased criticism in the media. Failure to provide services due to company collapse, poorly constructed contracts and sometimes fraudulent company actions means that outsourcing is under increased scrutiny. The impact of outsourcing on employees, including the lack of collective agreements, is increasingly recognised to affect the quality of service provided.

COLLECTIVE BARGAINING COVERAGE

Collective bargaining in the UK is characterised by voluntary negotiations between trade unions and the management, primarily at the company level. Sectoral collective agreements are rare and national collective agreements are only the norm in the public sector and only there through intermediary *Pay Review bodies* with limited authority which make recommendations to central government. Local government which provides care services (which are analysed in this project) and some hospitals can set their own pay and terms and conditions even though many also participate in national collective bargaining activities.

Like many other European countries, collective bargaining coverage in the UK has declined in recent decades. In 2017, less than 30% of all employees were covered by a collective agreement but there are differences across sectors. While in the private sector only 15% of employees are covered by a collective agreement, in the public sector around 60% are covered. Outsourcing of public sector activities consequently means that collective bargaining coverage often declines.

FROM SECTORS TO ACTIVITIES: CHANGING FOCUS TO ANALYSE OUTSOURCING

For the UK two cases are analysed: the activity of security in prisons and care of the elderly. Both activities have become increasingly important in terms of socio-economic relevance for the UK economy and society.

Demographic changes, i.e. an aging population with more complex medical needs and changes in family support mean both increased demand and costs for care of the elderly. The prison population has also steadily risen with increased violence and drug use challenging prison employees. Both services have historically been funded by taxation and supplied by central government (prisons) or local government (care). As public budgets have come under pressure to cut costs due to the economic crisis, review of activities and outsourcing of selected services in both sectors has moved provision away from public sector to private company providers.

In both cases the pressures on employees providing these activities has led to tensions in the employment relationship and in some cases, industrial disputes. In both cases the number of employees covered by a collective agreement has significantly declined. Successive waves of re-tendering of services have not only led to a dualization of the workforce, between those covered by a collective agreement and those not, but a fragmented workforce, as successive waves of re-tendering of services create groups of employees with different pay, terms and conditions, complicating collective representation. Tensions between employees are thus exacerbated, given their differing terms and conditions, particularly between those who work for private sector companies and pursue the same activity as those in the public sector.

Thus both activities were selected because they exemplify recent trends in outsourcing well but also show the need to find solutions to the increased problems for employees who are providing activities which are gaining in socio-economic importance.

Activity 1: Looking after Mum? Taking care of the aging population – home health care workers.

Demand for care at home for the elderly has grown significantly over recent decades, due to demographic changes such as longer life expectancy, more complex

medical needs and changes in family support. Care is funded by central government taxation and most care workers in the 1990s were usually directly employed by local councils and covered by local government collective agreements. Pressure from central government and austerity measures however mean that now local authorities mostly act as commissioning agents and over 80% of publicly funded care is provided by the independent or voluntary sector. Only 7% of employees now work directly for local authorities and are covered by a collective agreement, with the remaining 9% self-employed. Most care workers are now not covered by any collective agreement, reducing real pay and negatively affecting employee terms and conditions.

Around half of the 1.58 million care workforce work part-time and most are female. The majority are British citizens (83%) with an average age of 43; 20% of the workforce is over 55. Staff turnover is estimated at 32% with over 1/3 of new starters failing to last more than a year and 47% of the workforce on zero-hours contracts. There are now over 20,000 organisations supplying care resulting in a complex, fragmented, price-driven market with varying levels of provision. The lack of employment security and stable working conditions which can be provided by collective agreements means that working conditions and pay for outsourced home health care workers are precarious.

Activity 2: Privatising justice - Making profit from prisoners – the prisons sector.

Outsourcing of UK prisons dates from the 1990s with 14 out of 121 prisons now wholly managed by three private firms, and 1 in 6 prisoners held in a private prison. However since 2012, the outsourcing model has re-oriented towards outsourcing of services *within* prisons, such as maintenance, catering and transportation rather than whole prisons.

The recognised trade union for prison officers, the Prison Officers Association (POA), represents the 24,000 prison officers. This number is down 30% since 2010, due to

funding cuts, despite higher prisoner numbers resulting in over-crowding and increased levels of violence and self-harm. An independent pay review body represents the government in pay negotiations but difficulties in employment relations mean that the POA has refused to negotiate since 2015. A 2017 High Court ruling by the government enforced a permanent ban on industrial action by prison officers, exacerbating relations more.

The use of outsourcing within UK prisons has produced lower pay and poorer employment terms for new prison officers, and fragmented the work force in both public and private prisons into differing employment terms and conditions, dependent on the employees start date and employer. This complicates collective bargaining activity by the trade union and has significantly affected employee morale.

FACILITY MANAGEMENT COMPANY

Facility Management (FM) firms are estimated to represent 8% of the UK economy but because of difficulties in defining the industry they are an understudied “invisible” sector. In the research project we analyse one of the largest international FM firms, employing 45,000 in the UK and providing all the typical FM services including cleaning, catering, security and other estate management services across both the public and private sectors.

The firm enjoys a good reputation with both industry and trade unions with company and sectoral agreements adhered to. Management aim to provide integrated services in order to reduce costs and improve quality through investment in employee training and technology. They suggest this is easier to do with private rather than public sector work, given the emphasis on cost reduction in public sector contracts and argue that unrealistic bids to obtain contracts encourages “a race to the bottom”. Collective bargaining is seen by the management as an important way to establish fair working conditions, reduce employee turnover and

improve quality of service provision which helps the company to achieve its long term goals.

RECOVER PROPOSES...

... that in the given UK framework of collective bargaining, the gap in working conditions and pay between employees pursuing the same activities but under different employers’ terms and conditions, can only be closed by encouraging employees to join trade unions which engage in collective bargaining.

... that if the UK government wishes to close the inequitable gap caused by outsourcing and the fragmenting of employee terms and conditions, the legal framework of collective bargaining should be strengthened by introducing extension rules for collective agreements so that collective agreements can cover workers pursuing the same activities, but in different firms, under one common agreement.

RESEARCH TEAM

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This policy brief is based on the final phase of the RECOVER project and is available on the RECOVER website,

<http://pagines.uab.cat/recoverproject/en/content/national-policy-briefs>

PROJECT IDENTITY

PROJECT NAME

Relaunching Collective Bargaining in Outsourced Services
– RECOVER

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EUROPEAN COMMISSION

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WEBSITE & SOCIAL NETWORKS

Webpage: <http://pagines.uab.cat/recoverproject/en>