

Resolution Foundation

REPORT

The good, the bad and the ugly

The experience of agency workers and the policy response

Lindsay Judge
November 2018

Acknowledgements

The Resolution Foundation gratefully acknowledges the generous financial support provided by Unbound Philanthropy that has enabled us to run a programme of research on agency workers. In addition, the author would like to thank the many colleagues and other experts who have shared their thoughts on this report through conversations and comments especially at a policy roundtable in July 2018. These include Janine Berg, Neil Carberry, Jennifer Ferreria, Gwen Hardy, Eliot Mason, Paul McAleavy, Usman Mohammed, Chris Morris, Hannah Reed, Will Somerville, Tim Thomas and Andrew Towers. That said, any errors or omissions remain, of course, her own.

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Executive Summary

In December 2016, the Resolution Foundation published its first report in a new programme of work exploring the world of agency workers. Despite the fact that agency work has been a feature of the UK labour market for at least a century, it has been the subject of limited research especially compared with recently emerging ways of working such as zero hours contracts and the gig economy. Our initial work showed that agency workers are a plural group (although they are disproportionately likely to be young, low skilled, from an ethnic minority or foreign born); that they work across all industries and occupations (especially manufacturing, transport, warehousing and communications); and that they are found across the pay distribution (although there is a downward effect on pay attached to being an agency worker).

We called this first report ‘Secret agents’ because there was so much about agency work that remained obscure. What explained the rising number of agency workers in the economy, for example? Why did so many agency workers consider themselves ‘permanent’ rather than ‘temporary’? Was the pay penalty we discovered willingly accepted by agency workers, or was this something they simply lacked the power to resist? In December 2017 we ran three focus groups with agency workers to explore these and other questions, and tested the insights we gained from this exercise through additional data analysis. What emerged was a truly plural picture, with good, bad and ugly practice regularly encountered throughout the agency worker world. This report captures this, and considers how policy makers can best navigate the complex reality that we reveal.

Agency workers are bemused by the legal world in which they work

Agency workers in the UK can (and do) take every possible legal form. They can be contracted as employees with all the entitlements attached to that status; be classified as workers and therefore have an attenuated set of rights

but (at least in theory) greater flexibility; or be self-employed with only the barest of employment protections but the highest levels of autonomy. This picture is further complicated by an additional set of entitlements provided by the *Agency Worker Regulations 2010*, some of which (most importantly, the right to equal pay with direct employees doing the same work) can be traded off for other benefits (such as pay when no suitable assignments are available).

This range of legal forms is useful for firms who can bring in staff in ways that best suit their business needs. However, it is bewildering for agency workers themselves, with few in our focus groups fully understanding their legal status. This does not set them apart from the workforce writ large: knowledge of contract types and employment rights is low throughout the population. But it is clear that the complexity of an agency worker's world makes informed choice about terms and conditions particularly important, especially given the potential living standards consequences attached to each way of work.

Beyond the niceties of their contracts, however, the majority of agency workers do have a core set of entitlements under their terms of hire. But how much awareness do they display of the basic rights that all (except the self-employed) actually have? And to what extent do agency workers feel able to assert such rights and be given their due in the workplace?

Agency workers are missing out today, and may well do so in the future

While most agency workers have a 'day one' right to holiday pay, our focus groups suggest the majority were either unaware of this right, or found it hard to enforce. This finding is supported by the data: analysis of the *Labour Force Survey* shows that agency workers are four times more likely to think they have no paid holiday entitlement than non-agency workers (at 17 per cent and 4 per cent respectively), and almost twice as likely not to know whether they have a right to holiday pay at all (26 per cent to 15 per cent). Lost holiday pay has a real impact on livelihoods: we estimate that in 2017, agency workers collectively missed out on as much as £500 million of unpaid holiday pay.

But agency workers are potentially being short-changed not just in the here and now. We estimate that as many as half a million agency workers should

have been auto-enrolled in a workplace pension by 2017 unless they had actively opted out of a scheme. But in our focus groups, almost none of the participants were aware of this important opportunity or knew if they were paying into such a pension. While this is not conclusive evidence that agencies are failing to enrol eligible workers, it does raise a red flag about the issue and strongly suggests further investigation by government is warranted.

Agency workers, then, appear to have low levels of knowledge about the core benefits to which the majority are entitled. While there is clearly good practice in the industry, with some agencies providing easy-to-understand information about holiday pay and other rights, obfuscation is also widespread. In light of this, the government's proposal to extend the requirement on firms to provide a statement of 'key facts' to all workers as well employees is very welcome. For agency workers, however, this statement would have most value if it were provided on day one of an assignment, and produced in a standard form to enable comparison of terms and conditions across jobs and agencies.

The local labour market is key to determining agency workers' power

While improving knowledge is clearly important, agency workers' ability to demand rights and respect in the workplace hinges at least as much on the question of power. Agency workers start from a place of disadvantage due to the triangular nature of their working relationship. If they are subject to poor behaviour in the workplace it is the agency - the gatekeeper of their work - to whom they must complain. Similarly, any issues they raise about the agency's own performance could lead to assignments drying up. This weak position is compounded by low levels of unionisation, leaving agency workers largely on their own when it comes to demanding their rights.

Our qualitative research led us to an interesting conclusion, however, when it came to identifying the agency workers least able to exercise power in the workplace. Groups such as women, those from a black and minority ethnic (BAME) background or older workers who conventionally have less clout in the labour market did not appear to be the most vulnerable. In fact, we found these traditionally disadvantaged groups often appreciated the 'buffer' an agency provides. The only group where inherent characteristics were clearly linked to low levels of power was migrant agency workers, who are often

found at the sharpest end of poor practice as a result of weaker language skills or their more transient presence in the workforce.

Instead, it was those for whom agency work provided the core, if not all, of their income that most lacked the capacity to resist poor treatment. In contrast, those with an earning partner, a pension income or another source of support who were less tolerant of slights. But in the final analysis, agency workers' power appeared to be largely contingent on the strength of the local labour market: those that work in more buoyant local economies can up and leave assignments or agencies that offer fewer benefits or treat them poorly.

This finding has implications for the government as it thinks through how to cost-effectively enforce the rights of agency workers in a world where experience is so mixed. It suggests that compliance activities should be place-based rather than group-targeted. Attention could most usefully be directed at areas such as Barking and Dagenham, Leicester and Sandwell for example, where there is a high concentration of agency workers (increasing the likelihood that poor practice will be found in that area in the first place) *and* a relatively weak local labour market (decreasing the opportunities that agency workers have to walk away from the bad instances of agency work). To this end, the Employment Agencies Standards (EAS) Inspectorate should take lead role and pilot enforcement task forces comprising the local authority, the police, HMRC and the Health and Safety Executive in key agency worker hotspots.

Lack of knowledge and power conspire to drive down agency workers' pay

Although agency workers are found across the pay distribution, we have noted before that they cluster in lower-paying sectors and roles. It is unsurprising, then, to discover that on average they have a lower rate of pay compared to non-agency workers (in 2017, the **pay gap** we observe between the two groups is £2.41 an hour).

However, when we control for personal characteristics (such as age, sex, ethnicity and education level) and job characteristics (such as sector, occupation, region and whether a job is temporary or not), agency workers on average still experience a **pay penalty**, earning 22p less an hour than

a comparable employee. Interestingly, this effect is not evenly spread. We note, for example, that the average male agency worker experiences a pay penalty three times as large as the average woman. Moreover, we observe that some agency workers (such as managers and directors, or those in caring, leisure or other service roles) experience a pay premium, while others (those in manufacturing or transport, storage and communication, for example) contend with a far deeper pay penalty than the average.

There are a number of potential explanations that might sit behind the agency worker pay penalty. To begin, unlawful deductions could be driving rates down: participants in our focus groups testified to amounts being taken out of their pay to cover uniforms, transport and insurance schemes. But there is also a lawful way that agency workers can be paid a lower rate than a directly comparable employee, namely a pay-between-assignment (PBA) contract (otherwise known as a 'Swedish derogation' contract). Under such an arrangement, a firm can give an agency worker a lower rate than a comparable employee beyond the 12 week point at which the pay parity provisions of the *AWR 2010* would otherwise kick in (in return for payment if no reasonable assignment is available).

The extent to which PBA contracts are used is highly contested, but of critical importance at this point in time. The government has indicated that if the evidence shows such contracts are widespread, it would be mindful to ban them altogether. But here there is a challenge: our focus groups show that agency workers rarely know what type of contract they have, while the government's own research reveals that firms and agencies are reluctant to disclose information about their use of PBAs. Without other reliable sources of information, we consider the pay penalty of 16p an hour that we observe when looking just at agency workers who have been in the same job for three months-plus the best evidence of the prevalence of this type of contract. Constituting a living standards hit of £173 million-plus for agency workers in 2017 (or an average of £275 of lost pay for each agency worker employed for three months or more), this is sufficient, in our view, to justify the repeal of the 'Swedish derogation'.

The good, the bad and the ugly of the agency worker world

This is not to say that all agency workers are unhappy with their lot. In our focus groups, those who use agency work as a 'filler', to supplement other

sources of income or who work in more buoyant areas where there were a range of job choices often spoke of the positives of this way of work. They enjoyed the flexibility of agency work, for example, and the opportunity to try out different roles and places of work. But these features were not enough to redeem agency work for all. Those who relied on assignments for their main income, worked in weak labour markets or for other reasons felt 'stuck' with this type of work were much more likely to highlight the negative and sometimes downright unlawful aspects of the agency worker world.

This ambiguous set of experiences presents policy makers with a real challenge. How can they eliminate the ugly, temper the bad but not compromise the good aspects of working through an agency when all three are widely observed? It is clear that government action cannot be so finely tuned that it avoids trade-offs altogether: providing a written statement of rights to agency workers on day one could raise administration costs, for example, while repealing PBA contracts might increase some firms' wage bills. However, many of the improvements needed to the agency worker world do not require policy change, but simply improved compliance with existing rules on the part of agencies and firms. More emphasis should be placed on enforcement, then, with activities strategically targeted at those areas, sectors and occupations where our research suggests non-compliant behaviour is most likely to be found.

There is much to celebrate about the UK's flexible labour market: it allows firms to staff their businesses efficiently and gives those who do not want a typical job the chance to participate in the labour market. But as the Taylor Review and the Director of Labour Market Enforcement's Strategy have both shown, business interests often take priority over workers' wellbeing. This report has demonstrated that this holds true for agency workers as much as it does for those working in the Wild West of the gig economy, or on the new frontiers of other types of precarious work. We look forward to government action to redress the balance.

Section 1: Introduction

In 2016, the Resolution Foundation launched a two-year research programme to explore the world of agency work. Over the course of the project we have documented the growing number of agency workers in the UK workforce;^[1] unpacked the reasons why businesses turn to agency workers and their plans for future use;^[2] and reflected on the experience of migrant agency workers and the possible impact that Brexit may have on this particular sub-group.^[3]

Throughout the project we have striven to explore the light and shade of agency work. While some accounts suggest that agency workers relish this way of working wholesale,^[4] others present this part of the workforce as largely hard-pressed and put upon.^[5] In December 2017, we ran three focus groups with agency workers to get closer to the truth, and to hear their views on the policy changes they thought would most improve their lot.^[6]

This exercise showed there is a huge range of agency worker experience. There are positive aspects to this way of working (flexibility, for example, or the chance to try out different roles or firms); negative aspects (such as a variable income or being treated disrespectfully by agencies and in the workplace); and aspects that are borderline if not downright unlawful (not being informed about, or paid for, holidays for instance). Figure 1 summarises the good, the bad and the ugly sides of the agency worker world that we uncovered in the course of the project.

Critically, our focus groups also showed that agency workers did not fall tidily into three tribes. It was not the case that one group of workers had an unadulterated positive experience, another universally expressed discontent with agency work, and a third was unremittingly at the sharp end of unlawful practice. Instead, all participants in our groups had experience of both the good and the bad sides of agency work, while the ugly aspects were not uncommon. While the findings from our focus groups are not statistically representative, they do highlight concerns which we have been able to test with further data work in many instances. This mixed methods approach suggests that many of the issues raised in the groups extend beyond our sample.

If agency workers writ large have such an ambiguous set of experiences, however, policy makers face a real challenge. How can they best eliminate the unlawful, temper the negative but not compromise the positive aspects of working through an agency when good, bad and ugly practice appear to be broadcast through the agency worker world? It is clear that a 'one size fits all' approach to policy is rarely going to be appropriate, but there may also be areas where government action cannot be so finely tuned that it sidesteps trade-offs altogether.

[1] L Judge and D Tomlinson, [Secret agents: agency workers in the new world of work](#), Resolution Foundation December 2016

[2] L Judge, [Choices, choices... why do firms use agency workers?](#), Resolution Foundation February 2018

[3] L Judge, [The most biddable of them all](#), Resolution Foundation July 2018

[4] See, for example, Recruitment and Employment Confederation, [Flex appeal: why freelancers, contractors and agency workers choose to work this way](#), RECS 2014

[5] See, for example, T Maurokis, [Temporary agency work in the UK today](#), University of Bath 2015

[6] See Annex 1 for full details of the sampling and methodology used in the agency worker focus groups

Figure 1: The mixed agency worker experience

The good ...*Flexibility - being free to work around other commitments or activities**Variability - trying out new roles and new workplaces and extending skills in the process**Lack of stress - being able to walk away at the end of the day and not worry about work**The agency as an intermediary - protecting workers from poor practice in the workplace and limiting discrimination***The bad ...***Lack of equal pay - meaning agency workers doing like for like work are paid less than directly employed staff**Fluctuating incomes - making it hard to budget**No sick pay, maternity pay or paternity pay - making ill health or pregnancy a worry**Lack of status - being treated as a second class citizen in the workplace and by the agency***And the ugly***Lack of information about, and under-payment of, holiday pay - leaving agency workers short-changed**Evidence of low levels of auto-enrolment - undermining agency workers' living standards in later life**Deductions from pay and unreasonable work-related expenses - reducing incomes**Bullying and power play - causing distress and anxiety*

How policy could improve the agency worker experience has been the subject of considerable deliberation over the last 18 months. The Taylor Review explored the topic of agency workers alongside other forms of non-standard labour;^[7] there are a number of ongoing government consultations on potential changes which would affect agency workers;^[8] and there has been a renewed focus on compliance with the appointment of a Director of Labour Market Enforcement.^[9] In this, the closing report for our agency worker project, we reflect on policy reforms that are currently on the table in the UK in light of our findings, and make additional suggestions for policy change.

To this end, this report is structured as follows:

- » Section 2 begins with our focus group findings and explores the **question of knowledge**, assessing how far agency workers understand the types of contracts that they work on and the rights that they have;
- » Section 3 then turns to **issues of power** which participants in the focus groups highlighted as of critical importance, investigating the extent to which agency workers are able to demand respect and exercise choice when it comes to this way of working;

[7] M Taylor, *Good work: the Taylor Review of modern working practices*, BEIS July 2017

[8] See, for example, BEIS, *Consultation on agency workers recommendations*, February 2018 and BEIS, *Consultation on measures to increase transparency in the UK labour market*, February 2018

[9] D Metcalf, *United Kingdom Labour Market Enforcement Strategy 2018/19*, May 2018

- » Section 4 returns to the question of **agency worker pay**, exploring the evidence on equal pay provision, the question of deductions and under-payment of the National Minimum Wage/ National Living Wage;
- » Section 5 offers some concluding thoughts on how **policy could better respond to agency workers** in the UK.

Section 2: The question of knowledge

One of the most striking findings from our initial deep dive into the Labour Force Survey and other data sources was that agency workers can (and do) take every possible employment form.^[10] Some are employees directly contracted by an agency; others have the legal status of a worker; and an increasing number of agency workers are classified as self-employed, working through an umbrella company or in some cases subject to incorporation. In this section we explore the extent to which agency workers are aware of their employment status, and critically how much they understand the rights that they have.

This question of legal form is not a trifle. Which status an agency worker has is important from an employment rights perspective (and, of course, for taxation purposes as well). Figure 2 outlines the entitlements attached to each employment category.

Figure 2: Employment status and rights: UK

	Employee	Worker	Self-employed
Unfair dismissal and redundancy	2 years+ service only		
Maternity/paternity/adoption pay			
Statutory sick pay			
Auto-enrolment	Eligible jobholders only	Eligible jobholders only	
NLW/NMW			
Holiday pay			
Right not to have unlawful deductions made from wages			
Whistle-blower protections			
Protection against unlawful discrimination			






















Note: Women and self-employed may be entitled to Maternity Allowance in some circumstances

[10] L Judge and D Tomlinson, [Secret agents: agency workers in the new world of work](#), Resolution Foundation December 2016

As this makes clear, those agency workers with a contract of employment have a full suite of employment rights (although some, such as the right to unfair dismissal and redundancy procedures, are contingent on a minimum length of service). In contrast, workers have a more limited set of entitlements, while those who are self-employed have only the barest of employment protections.

Agency workers have an added layer of entitlements, however, under the *Agency Worker Regulations (AWR) 2010* which came into force in October 2011. This legislation provides a set of ‘first day rights’ whereby agency workers should have access to the same collective workplace facilities as directly employed staff such as the canteen or crèche, and should be given notice of any internally advertised positions available at the firm as soon as they start working. After 12 weeks’ continuous service in a workplace, agency workers are then entitled to equal treatment with directly employed staff on a number of fronts. They should be given the same hourly rate of pay, for example, any holiday pay premium and the same number of days holiday as directly employed staff, and pregnant workers should be given paid time off for antenatal appointments.

Figure 3: Rights under Agency Worker Regulations 2010: UK

	Day 1 rights	12 weeks continuous service - worker	12 weeks continuous service - PBA contract
Notice of permanent jobs in firm			
Access to collective staff facilities e.g. canteen, childcare			
Time off for antenatal appointments			
Equal treatment regarding pay			
Equal holiday pay			
Equal holiday entitlement			
Paid between assignments			

Source: RF analysis of Agency Worker Regulations 2011

However, an agency worker can ‘trade off’ their rights to equal base and holiday pay in return for payment when no other reasonable assignment is available. These pay-between-assignment (PBA) or ‘Swedish derogation’ contracts require the agency itself to offer a contract of employment to the worker, thereby transforming them into an employee with all the additional rights attached to that status (see Figure 3).

This complex legal jigsaw means that firms can contract agency workers in a bewildering variety of ways, with different implications for pay and entitlements. An agency worker could:

- » Be on a PBA contract, which makes the agency worker an **employee**, and gives them the right to pay when no other suitable jobs can be found, but in the process means they forgo the right to equal pay if they are assigned to the same firm for 12 weeks-plus;
- » Be on a **worker** contract which gives no entitlement to maternity, paternity or adoption pay or sick pay, but the right to equal pay in the event of an assignment lasting more than 12 weeks; or
- » Be fielded by an agency but classified as **self-employed** with minimal employment protections but more generous treatment when it comes to tax and national insurance.

Such distinctions may not be that important for firms which hire agency workers in a short-term, stop-gap manner – or indeed for agency workers who simply dip in and out of this type of work. But for firms which make more strategic, long term use of agency workers - or those individuals that work through agencies for significant periods of time - the type of contract is much more important.^[11] The range of ways that agency workers can be hired allows firms (or agencies) to pick and choose the type of contract that best suits their business needs, but causes significant confusion for agency workers themselves.^[12] In particular, the use of PBA contracts and the potential downsides these might have for agency workers is a highly contested issue (see Box 1 for further details).

i Box 1: Pay-between-assignment (or ‘Swedish derogation’) contracts

Since their introduction in 2011, unions and others have argued that PBA contracts are inherently flawed as they offer firms a legal way to avoid offering agency workers equal pay with like-for-like employees. Having listened to such representation, in July 2017 the Taylor Review recommended that the government either repeal the PBA legislation, or extend the remit of the Employment Agency Standards (EAS) – the body tasked with enforcing aspects of employment agency legislation - to include compliance of firms with the *Agency Worker Regulations 2010*^[1]. As

[1] M Taylor, Good work: the Taylor Review of modern working practices, July 2017

of November 2018, however, the government remains agnostic on the question: in its recent agency worker consultation it indicated that if sufficient proof that abuse of PBA contracts is widespread could be furnished it would be mindful to ban them altogether, but if the evidence points to more limited use it would rather seek to improve compliance.^[2]

[2] BEIS, *Consultation on agency workers recommendations*, February 2018

[11] Of the 20 per cent of UK firms that make some use of agency workers, around one-third are doing so as part of a strategic business case. See L Judge, [Choices, choices... Why do firms use agency workers?](#), Resolution Foundation February 2018 for further information

[12] D Berry-Lound, D Greatbatch and S Tate, *Qualitative analysis of the use of Pay Between Assignment contracts for agency workers including the role of umbrella organisations*, HOST Policy Research, July 2015 found that user firms suggested that it was agencies themselves who chose the contract type while agencies argued it was the firm who set the terms

The opaque world of agency worker contracts

Agency workers operate, then, in a complex environment, but what did those in our focus groups know about their contract type?^[13] Perhaps unsurprisingly, the majority of participants were unclear about their employment status. Some recognised this was at least in part their own responsibility, but for others lack of information was an issue.

It all happened a bit quick and some of the finer details passed me by – but with 10 pages of terms and conditions, I don't check, I just want to know what I'm being paid. I don't have time to check the type of contract every time.

(Focus group 1, Manchester)

Sometimes you don't even get a handbook, it's just "Here's a letter, sign here", there's no copy, nothing. Or you get an email. But I got that a week after I joined.

(Focus group 2, Leicester)

Overall, agency workers were best able to distinguish whether they were self-employed or not by virtue of their tax treatment: those who did self-assessment quite clearly fell into the self-employed category.^[14] However, a number of participants in the groups were caught up with umbrella companies which sometimes lead to confusion about their status.

I'm self-employed - I do self-assessment. But I got told about an umbrella scheme. The agency sent me an email saying I'd get more than what they are paying me if I did that. The umbrella would pay your tax and insurance and I'll get more money. I haven't done it because it doesn't add up to me.

(Focus group 2, Leicester)

I'm self-employed-ish – the umbrella company handles it all for me. You have two choices with my umbrella - do PAYE or go self-employed and do your own tax and national insurance.

(Focus group 3, Watford)

The boundary between being self-employment and other legal forms may be blurry but that is nothing compared to whether participants could distinguish if they were a worker or an employee.

I'm not sure – I think I'm a worker but in one of the agencies I signed up with they mentioned something about being employed, but I haven't seen any paper work so I don't know...

(Focus group 1, Manchester)

I don't know, it's frightening really when you think about it.

(Focus group 2, Leicester)

Given this lack of knowledge it is difficult to assess the prevalence of PBA contracts via this exercise (and arguably, via any piece of research that looks to agency workers themselves to answer the question). However, two findings from our focus groups do have a bearing on the issue of equal treatment and PBAs. First, 12 week contracts were commonplace suggesting that this is a key way firms with long term use of agency workers avoid the strictures of the equal pay

[13] Our three focus groups with agency workers took place in December 2017 in Manchester, Leicester and Watford. See Annex 1 for further details of the methodology

[14] The fact that several participants in our focus groups administered their own tax and NI but were quite clearly still agency workers has implications for our assessment of the number of such workers in the UK, an issue we consider in Annex 2.

provisions without resorting to a PBA. Second, no-one in our groups had actually received pay between assignments – either suggesting that these contracts are rare or that agency workers are regularly falling foul of the (often unreasonable) conditions attached to them.

They give you a 12 week contract and then there's the promise of a job at the end but all the time they put you back on another 12 week – and then send you back to the same place!

(Focus group 1, Manchester)

Participant: I was given a [PBA contract] but when the work tailed off, I didn't get anything

Facilitator: Why was that?

Participant: I don't know, well they offered me a job but it was miles away, I couldn't take that.

(Focus group 3, Watford)

In fact, the simplest way that participants in our focus groups were able to distinguish whether they were an employee or a worker was via their lack of entitlements, with the absence of sick pay in particular seen as a hallmark of worker status. But what of the rights that agency workers *do* have regardless of the niceties of their employment status? How widespread was knowledge about these?

Happy holidays (unless you're an agency worker)

All agency workers other than those who are self-employed are entitled to paid holiday from day one of their assignment. Those who work full time are entitled to at least 28 days paid annual leave, with this pro-rated appropriately for those who work part-time. Given that an agency worker's hours and wages can fluctuate significantly, the earnings over the most recent 12 week period are divided by the hours worked in the same time to produce the average hourly rate (with any week where no work is undertaken discounted in this calculation).

Furthermore, those agency workers that have been working on an assignment for 12 continuous weeks or more are entitled to the same level of holiday pay as directly employed staff unless working on a PBA contract.^[15] In addition, since a 2006 decision by the ECJ, firms are not supposed to 'roll up' holiday pay into an agency worker's hourly rate by simply paying them a slightly higher amount.^[16] In view of this, the government recently rejected a recommendation from the Taylor Review that workers receive rolled up holiday pay if they so choose.^[17]

Our focus groups reported various practices when it came to holiday pay. Some were told they could draw down on their allowance over the course of the year; others were able to take their entitlement as a lump sum at the end of an assignment; and still others were given a higher hourly rate that included holiday pay. What was noticeable across the groups, however, was how poorly information about holiday pay was communicated. Participants reported that it was standard not

[15] See <http://www.acas.org.uk/index.aspx?articleid=6493#holidayrights> for further details of agency worker holiday entitlements

[16] Robinson-Steele v PD Retail Services and other cases [2006]

[17] BEIS, *Consultation on measures to increase transparency in the UK labour market*, February 2018

to be told about holiday pay by the agency, with the majority finding out about their entitlement from colleagues. And when agency workers did know they had a right to paid holiday accessing their entitlement was often very difficult and required a lot of persistence on their part.

The agency didn't tell me about holiday pay, it was the other workers who did. They're not going to tell you about something you can get.

(Focus group 2, Leicester)

I was chasing up on this holiday pay and going in [to the agency] really, really often and different people were telling me different things. In the end they did pay me but only once and then that meant a lot of tax.

(Focus group 3, Watford)

However, it clearly isn't always like this. Poor practice was not wholesale, with some agency workers highlighting good experiences when it came to holiday pay.

The registration process made clear how much [holiday pay] I would accrue. They had a formula and gave a lot of support using an online portal to help you figure it out. It's quite transparent.

(Focus group 1, Manchester)

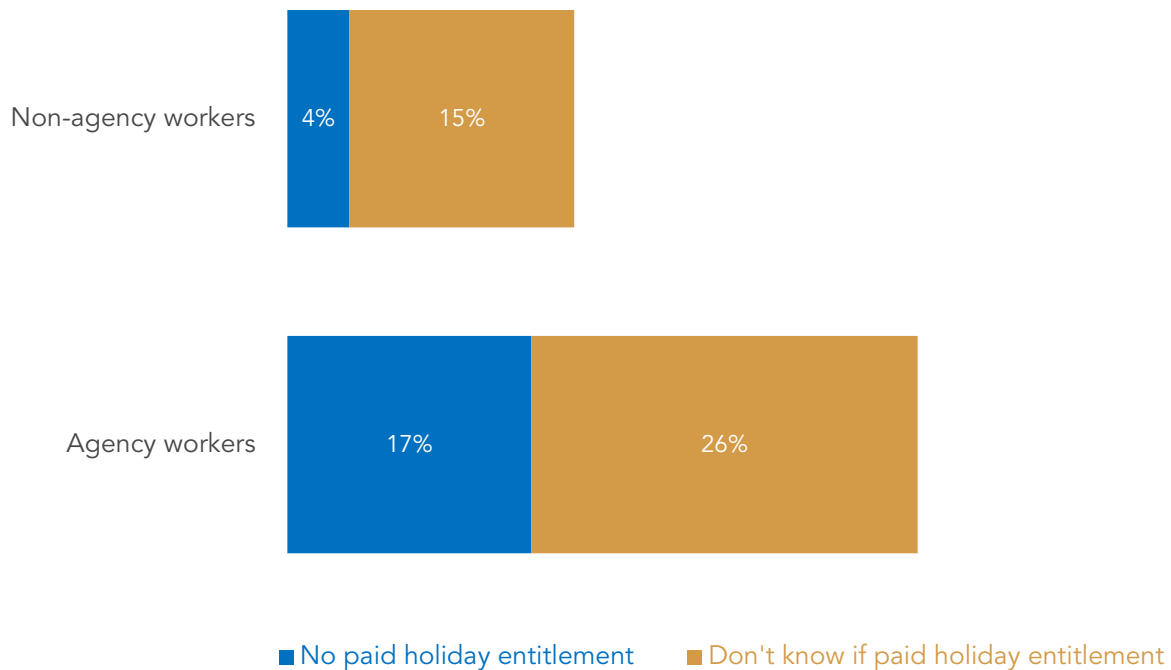
A look at the data suggests, however, that negative practice is widespread. Figure 4 explores the extent to which agency workers and their directly employed counterparts know they have a right to paid holiday. As this shows, agency workers are four times more likely to think they have no entitlement than non-agency workers (at 17 per cent and 4 per cent respectively), and almost twice as likely not to know whether they have any rights at all (26 per cent to 15 per cent). Taken together, this means that more than two out of every five agency workers are not aware of their holiday entitlement compared with one out of five non-agency staff.

This potentially adds up to a lot of lost pay. Using LFS we estimate that in 2017, agency workers who indicated they had no holiday entitlement in the survey collectively missed out on close to £300 million of holiday pay.^[18] If we include in our calculations those agency workers who said they did not know if they had any paid holiday entitlement as well, this figure rises to close to £500 million of lost holiday pay for that year. Significant though these figures may be, it is worth noting that that they could be conservative estimates and may fall far short of the real upper limit^[19]

[18] See Annex 3 for further details of our calculations

[19] D Metcalf, United Kingdom Labour Market Enforcement Strategy 2018/19, May 2018 cites a figure calculated by an agency owner of £2.5 billion missing holiday pay a year. This figure is based on the following assumptions: that the sector turnover is £30 billion a year; 12.07 per cent of this should be paid as holiday pay; and 70 per cent of which goes unpaid

Figure 4: Reported paid holiday entitlement by type of worker in 2017: UK



Source: RF analysis of ONS, Labour Force Survey 2017

Agency workers could be missing out on pension rights too

Since 2012, the government phased in the requirement that firms enrol staff in a workplace pension scheme unless the individual explicitly opts out of the plan.^[20] While those agency workers who are truly self-employed fall outside of the remit of auto-enrolment, all others are subject to exactly the same eligibility rules as any other worker. To be automatically enrolled an agency worker needs to be an eligible job holder. That means being aged between 22 years old and the state pension age (SPA) *and* earning more than the earnings trigger (currently £10,000 p.a.), as well as being paid in a payroll cycle of a week or more. Those who do not fit within these criteria still have the right to participate in any scheme at their own request.

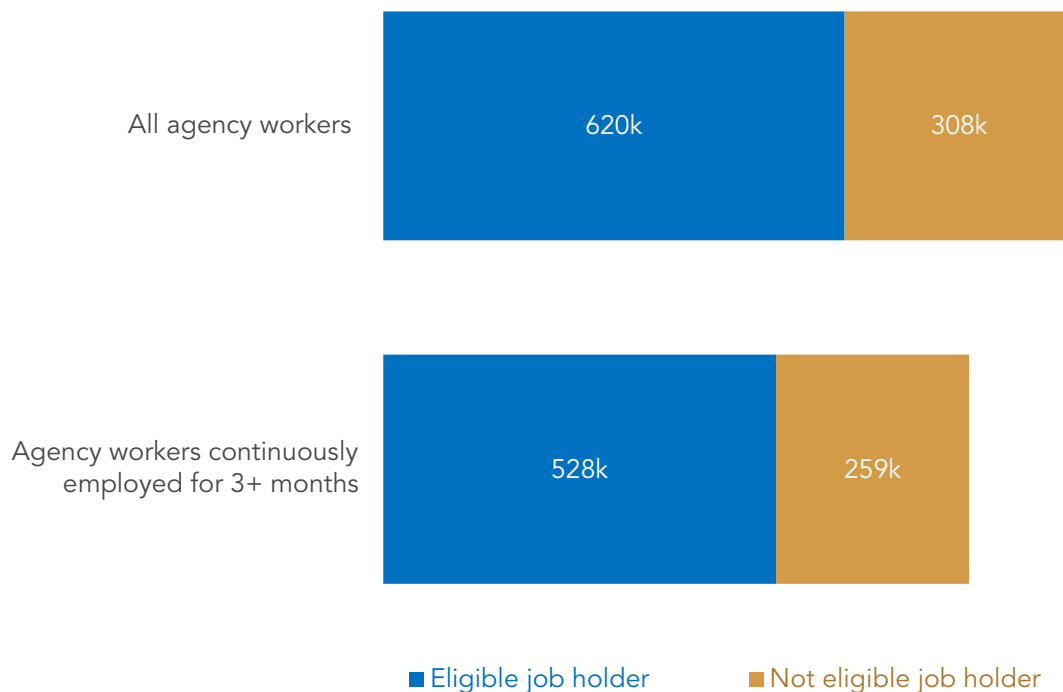
Applying these rules to agency workers with their variable work patterns and pay levels does present something of a challenge. But in essence, it is clear that agencies are responsible for auto-enrolling all within the relevant age band earning over £192 a week. There is, however, recognition within the rules that this could be onerous for firms with many workers that are on the books for limited periods only. As a result, agencies are able to 'postpone' auto-enrolling staff for three

[20] Larger firms were required to auto-enrol staff from 2012 onwards but this was rolled out gradually to smaller firms. By April 2017, all existing firms were required to auto-enrol their staff, and the process was complete in February 2018 when all new firms were expected to have set up the relevant systems

months but must inform the worker of this, and cannot defer auto-enrolment beyond that point.^[21]

It would appear that a substantial number of agency workers do make the grade and qualify as eligible jobholders. As Figure 5 shows, in 2017 there were 620,000 agency workers in the UK who we estimate were eligible for auto-enrolment, comprising around two-thirds of the total. Even when we drop those agency workers who say they have been employed for less than three months – the point at which any postponement would elapse – we still estimate that there are over half a million agency workers who could be eligible to be auto-enrolled in a workplace pension scheme.

Figure 5: Number of agency workers eligible for auto-enrolment, 2017: UK



Source: RF analysis of ONS, Labour Force Survey 2017

[21] See The Pensions Regulator, *Employing seasonal or temporary staff* at www.thepensionsregulator.gov.uk for further information

Our focus groups suggest, however, that at best agency workers are very poorly informed of their right to auto-enrolment, and at worst are actively missing out on this opportunity. In two out of the three groups not a single participant thought they were paying into a pension organised by an agency. This is not, of course, conclusive evidence that they were not auto-enrolled – it could simply indicate they were unaware that they were paying in to a pension – and we are unable to test these findings with further data analysis. However, it is worth noting that several participants had paid into pensions in previous jobs and clearly knew what this looked like. Moreover, this contrasts with an (unpublished) finding from another series of focus groups Resolution Foundation ran with low paid workers in 2017 where awareness of auto-enrolment among this group was high. And in the one group where a handful of participants thought they were auto-enrolled, awareness was still very low.

I have several bits of pension from when I was a permanent employee before – but with agency work, well I've never got anything like that from an agency
(Focus group 2, Leicester)

Participant 1: They force me into a pension scheme

Participant 2: Well the agency has to send you a letter about it but I don't think you have to agree to it

Participant 1: I didn't know that
(Focus group 3, Watford)

There is much more to be done to ensure agency know the 'key facts' about their jobs

Agency workers may not be the only ones with a weak knowledge of their contract type and entitlements, but given the complex legal landscape in which they operate their lack of understanding is especially concerning. So what more could be done to improve their awareness?

While firms are currently required to provide employees with a written statement outlining their entitlements within the first month of an individual starting work they do not need to do the same for those who are classified as workers. The government is seized of this issue, however. It has made clear it accepts the Taylor Review recommendation that all workers be given a written statement;^[22] is reflecting on whether this should a requirement from day one;^[23] and is also consulting on new information that could be included to provide additional clarity to agency workers on pay.^[24]

Our focus group findings suggest that a statement of this nature would go some way to improving agency workers' knowledge of their work conditions and entitlements. Substantively, clarity on holiday pay appears paramount (as is communicating more effectively to agencies themselves that rolling up holiday pay is unlawful) and the government should ensure that any written statement enables workers to understand their position better when it comes to auto-enrolment.

There are practical as well as substantive considerations worth bearing in mind to increase the effectiveness of written statements. To begin, given that many assignments are short-term, a statement of this type would have most value if issued on day one to agency workers. Moreover, while the government has rejected the call from the Taylor Review that there be a standardised format for written statements across the board, there may be case for a consistent presentation

[22] BEIS, *Consultation on measures to increase transparency in the UK labour market*, February 2018

[23] *ibid.*

[24] BEIS, *Consultation on agency workers recommendations*, February 2018

of the facts by employment agencies. Otherwise, it is conceivable that agency workers will end up holding sheaves of written statements and still find it difficult to compare which assignments offer better entitlements or take-home pay.

To conclude, Table 1 summaries the current state of play and our thoughts on policy when it comes to action to increase agency workers' knowledge of their contract type and entitlements. With studies suggesting that a greater awareness of legal rights is positively associated with stronger compliance, action to increase agency workers' knowledge is clearly important.^[25] However, knowing one's rights is not the same as achieving them. This hinges instead on the question of power, the topic to which we turn in the next section.

Table 1: Improving agency workers' knowledge

Current policy position	Our view
The government has accepted that all workers should have a right to a written statement and is currently considering whether this should become a 'day 1' right.	Given the short term nature of many of their assignments, agency workers should be issued with a written statement from day 1
The government rejected the idea that written statements should be provided in a standard format on the grounds that firms should be able to make own judgment about best way to communicate with workers	Agency workers need to be able to compare terms and conditions offered by different assignments and agencies. A standard format written statement should be used by all agencies to increase transparency and reduce administration
The government plans to amend legislation to improve the transparency of information which must be provided to agency workers both in terms of rates of pay and those responsible for paying them and is currently consulting on appropriate content	Providing clarity over holiday entitlement and agency workers' position with respect to auto-enrolment are both key

[25] See for example, S Lee and D McCann, *Regulating for decent work: new directions in labour market regulation*, Palgrave 2011

Section 3: The question of power

In the previous section we showed that many agency workers have little knowledge of their legal status or entitlements, and could be missing out on valuable benefits as a result. But knowledge is one thing and power another. We have noted before that agency workers are a plural group: they are present, for example, in high- and low-end sectors and occupations across the UK. But we also know that agency workers are younger than average, are more likely to be from an ethnic minority background or born outside the UK, and are lower qualified than the labour force writ large - all groups that experience disadvantage in the labour market. Consequently, in this section we turn to the question of power and ask which parts of the agency worker population are most likely to see the good in this way of working, and which are more vulnerable to bad or even ugly practice.

In our focus groups it was clear that agency work could be an active and positive choice. There were many virtues that participants associated with this way of working. Some enjoyed the flexibility for example; others appreciated the variety of assignments and felt that this gave them the opportunity to extend their skills base; and many liked the fact that at the end of the day, they could walk out of work and forget about it.

I like the flexibility. Your skills set gets so you can move into different industries and roles. Whatever you want to try, you can. Sometime I think "Can I really do it?" but after two days, it's usually great
(Focus group 1, Manchester)

Participant 1: Definitely I love that you've done your job and you go home

Participant 2: Yes, and you are immune from appraisals which in some organisations are a minefield. Show up for work and be reliable and you're ok
(Focus group 3, Watford)

But we also documented many downsides too. The lack of guaranteed work was a major issue for many focus group participants; variable hours and unpredictable places of work caused severe stress; and the sense that 'you're only as good as your last posting' meant that many felt they were always in a weak position. As a result, it was common for participants to take assignments they did not want and accept treatment that was far from ideal. At the sharpest end, we heard accounts of bullying and abuse which participants saw as clearly linked to their agency worker status.

It's stressful having to prove yourself if you want a permanent job – you are always the new person on the block
(Focus group 3, Watford)

Participant: Oh the way you are looked down upon, you are breathed upon, oh the way they talk to you with such anger and aggression – there is spit flying
Facilitator: But is that because you just come across nasty individuals, or because you're an agency worker?

Participant: Oh because I'm agency! I've had people say to me "You're agency, you can't get a job". They think you are stupid, you're a nothing
(Focus group 2, Leicester)

The focus groups, then, painted a very mixed picture of agency work. But critically, each and every participant had good *and* bad experiences to recount, rather than specific individuals feeling entirely happy or unhappy with this way of work. However, there were some patterns that did emerge when it came to the question of who felt they had more power in their relations with agencies and hiring firms, and who felt they were instead largely subject to their whims.

Personal characteristics are not key to determining agency workers' power

It was not always the usual suspects who felt they had the least power in the worker-agency-workplace triangle. One noticeable feature of the focus groups was that women generally felt more positive about agency work than men. For some, this was because their income was supplementary rather than central to the family budget; for others, caring responsibilities meant they simply placed strong boundaries on their work.

I have a three year old and a husband who works so I can pick and choose. Say we've got the MOT coming up, I might do a bit more but sometimes I might do a bit less
(Focus group 3, Watford)

I've done agency work for a long time, it fitted in with my daughter and it now fits in with my grandson. I tell them the days I can work and that's that
(Focus group 1, Manchester)

Strikingly, agency work was seen to be empowering by some from groups conventionally disadvantaged in the labour market. By acting as the middleman the agency gave them a degree of anonymity, enabling them to find work without having to disclose too much about themselves and protecting them from potential prejudice and discrimination.

Participant 1: It's like blind interviewing. I've found when applying for other jobs outside of an agency I feel like people have a prejudice when they first meet me. Is it institutional racism? I don't know. But with an agency you get signed up to a job without people seeing your face, it gives you a better chance.

Participant 2: Yes and that's age related too ... if I submitted a cv they would think "Look, she did 'O' levels, she's so old". But with agency work I prove myself, show I'm up to date with things.
(Focus group 3, Watford)

However, there was one group where personal characteristics were clearly connected to low levels of control and power and that was the migrant population. This was at least in part linked to language: we heard accounts in each of the focus groups of situations where many migrant workers taken onto an agency's book had very weak English skills. As a result, they were more vulnerable in the workplace and their often temporary presence in the country meant they were less likely to assert their rights.

I've been to agencies where they say you need to speak English and they have a test and people who don't speak English bring in someone else to do the test for them and the agency staff are standing there, they're watching them do it. It's a numbers game – they need the numbers. But there's health and safety, if you can't read the signs you might be in danger and so might other people
(Focus group 2, Leicester)

I know a lot of agencies that think foreign workers will just go eventually. One of the guys, he was going home in about two weeks and they were like, we'll sort your holiday pay out, we'll sort it out and they waited until the last day and they said we can't sort it out. Once he leaves the country they don't worry. They were very conniving about it
(Focus group 2, Leicester)

Overall, however, with the exception of migrants, personal characteristics did not appear to be the key determinant of agency workers' experience in the labour market. What was more important to the question of power was whether agency work was simply a way of generating extra income - because participants had another job, for example, a partner who worked or a backstop such as a pension or a redundancy pay-out - or whether it provided their core income. For the latter group, the extent they could walk away from agency work if the negatives outweighed the positives was largely determined by the strength of the local labour market.

The importance of the local labour market

While the issues raised in our three focus groups were similar, the groups were very different in tone. In Watford, an area with a buoyant jobs market and the possibility of travelling into London for work, participants were generally upbeat about agency work and felt they had other options if needed. In Manchester, the experience was more mixed with those working in higher end jobs optimistic about their ability to change but those in lower grade work such as transportation and

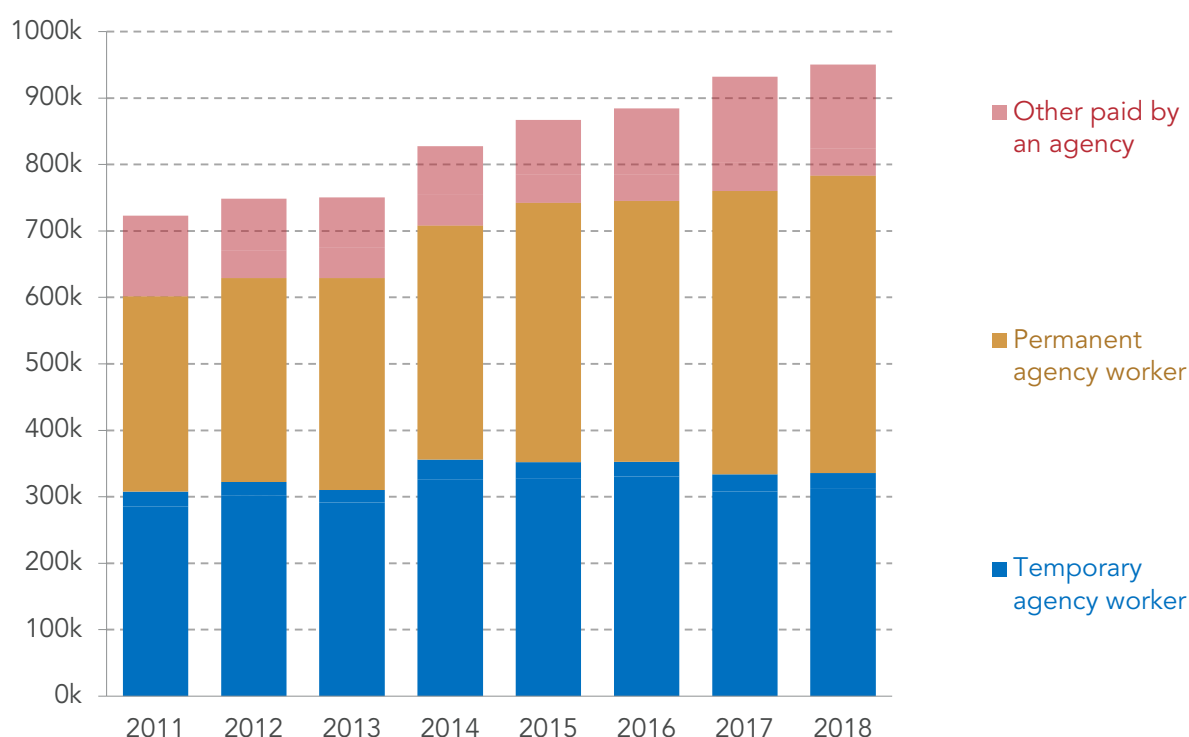
hospitality less sanguine about their choices. And in Leicester, our participants spoke of a labour market where many jobs were short term and low paid, with little sense that they could switch to different types of work if they so wanted.

My main job is term time only so I do some temping to wrap around that. I could ask my permanent job for some more hours in the holidays but I like the flexibility.
(Focus group 3, Watford)

Since I've been 18 I've just been in and out of agency work every year. I get a permanent job and then that goes under so I fall back on agency. I've spent more time working for agencies in the last 20 years than I have in a proper company.
(Focus group 2, Leicester)

This goes to an issue that was highlighted in our initial agency worker report which is the number of agency workers who viewed themselves as 'permanent'.^[26] As Figure 6 shows, in 2018 an estimated 447,000 (or close to half) of all agency workers identify as 'permanent', and it is this group which has largely driven the growth of agency workers in recent years.

Figure 6: Number of agency workers 2011-2018: UK



Notes: Figures for 2018 are q1 and q2 only

Source: RF analysis of ONS, Labour Force Survey 2011-2018

While the survey data cannot provide further insight into this finding, the focus groups allowed us to unpack the reasons why agency workers might see themselves a 'permanent'. Three potential explanations emerged. First, for some, their permanent status was linked to their choosing to

[26] L Judge and D Tomlinson, [Secret agents: agency workers in the new world of work](#), Resolution Foundation December 2016

work long term through agencies. Second, others felt they were permanent because they had a long term assignment with a particular firm. And third, those who lived in areas with a weaker labour market often saw agency work as enduring because of a lack of choice locally.

Well I enjoy it [agency work]. It suits me and my husband and I'll carry on doing it for as long as I can

(Focus group 1, Manchester)

Sometimes they find me a long term contract through the agency and promise me that it's ongoing so I might get a full time job... I think of that as permanent.

(Focus group 1, Manchester)

I'm permanently temping! There's nothing else that I can do around here

(Focus group 2, Leicester)

This is a charged issue given that agency work is often recognised as less than ideal but is regarded as a stepping stone to a more stable position.^[27] In view of this, the government has accepted the recommendation made by the Taylor Review that agency workers be given a right to request a direct contract of employment if they have been placed with the same hirer for 12 months, and that there is an obligation on the hirer to consider the request in a reasonable manner. However, such a move would not preclude a firm that used agency workers in long term roles simply breaking their contracts for a short period of time close to the 12 months mark, ending the workers' period of continuous service and negating the right to request. It is worth noting that some countries such as France and Switzerland avoid this problem by simply restricting the number of times a firm can extend an assignment, something the UK government might think about if it were really to give the right to request teeth.^[28]

Making a complaint

Nowhere was the question of agency worker power more pertinent than when it came to making a complaint. As highlighted in our first report, agency workers start from a position of disadvantage due to the triangular nature of their working relationship. If they are subject to poor behaviour in the workplace it is the agency - the gatekeeper of their work - to whom they must complain. Similarly, any issues they raise about the agency's own performance could lead to assignments drying up.

It's so difficult for some people to make a complaint. I was in a kitchen and there were two [migrant worker] chefs that were treated so badly. I spoke to them and asked them why they were doing it and they didn't have the skills or awareness to make a complaint. When I took it up with the agency, they just didn't care.

(Focus group 3, Watford)

Facilitator: Why don't you complain [about bad treatment by an agency]?

Participant: Well they'd put a black mark next to my name. They might even take me off their book.

(Focus group 2, Leicester)

However, there were situations where agencies had interceded on the part of workers especially if they were tried and trusted. In the view of one participant the agency protected them to such an

[27] See, for example, A Broughton, *Temporary work - stepping stone or dead end?*, *Employment Studies Issue* 17 Spring 2013

[28] See OECD website Indicators of Employment Protection for further information

extent from problems in the workplace that they felt their interests were fully aligned.

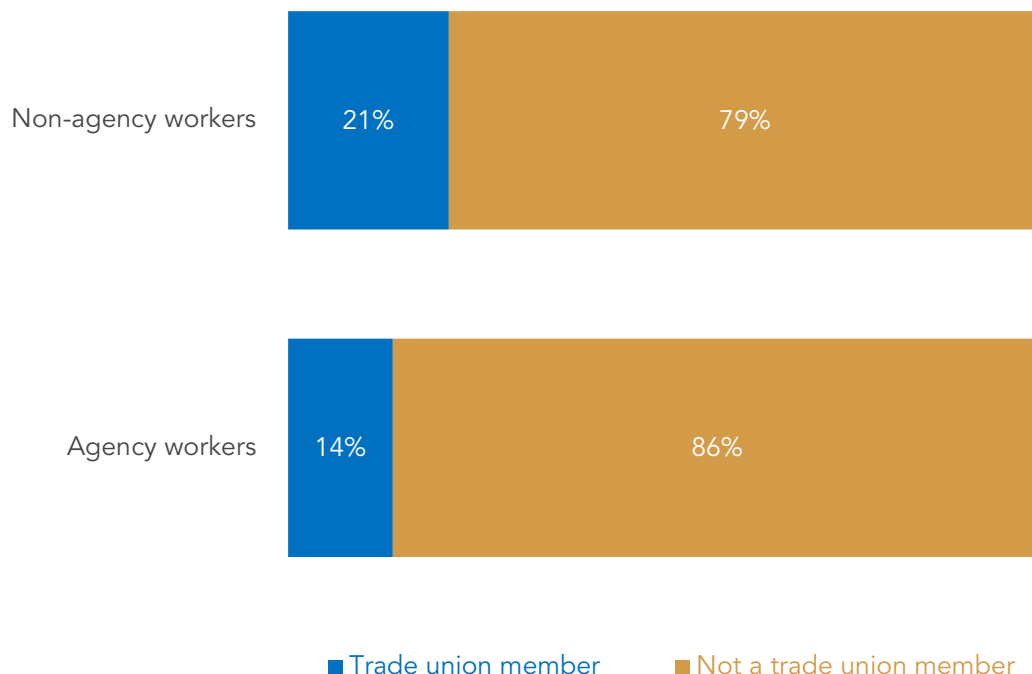
I had a new manager who screamed at a 16 year old girl who no one had shown how to do the job. I pulled her [the manager] up on it and she said you know where the door is. I put in a complaint and the agency were really supportive. But I had a track record. It turned out others had complained about this but they hadn't listened to the new people. It shouldn't just be based on your track record to make a complaint. (Focus group 3, Watford)

If there is a problem the employers know that they should talk to the agency. They [the agency] are almost like your union, they've got your back. (Focus group 3, Watford)

Agency workers can have a complicated relationship with unions

Of course, an agency does not function like a union but becoming part of a representative body is the conventional way to leverage power in the workplace. Our focus groups suggested, however, that few agency workers are union members and for those that were, this was largely a legacy from previous jobs. This finding is supported by the data: as Figure 7 makes clear, only one in seven agency workers say they are unionised compared to over one in five of the non-agency worker population.

Figure 7: Proportion of agency workers in a union, 2015-2017: UK



Source: RF analysis of ONS, Labour Force Survey 2015-2017

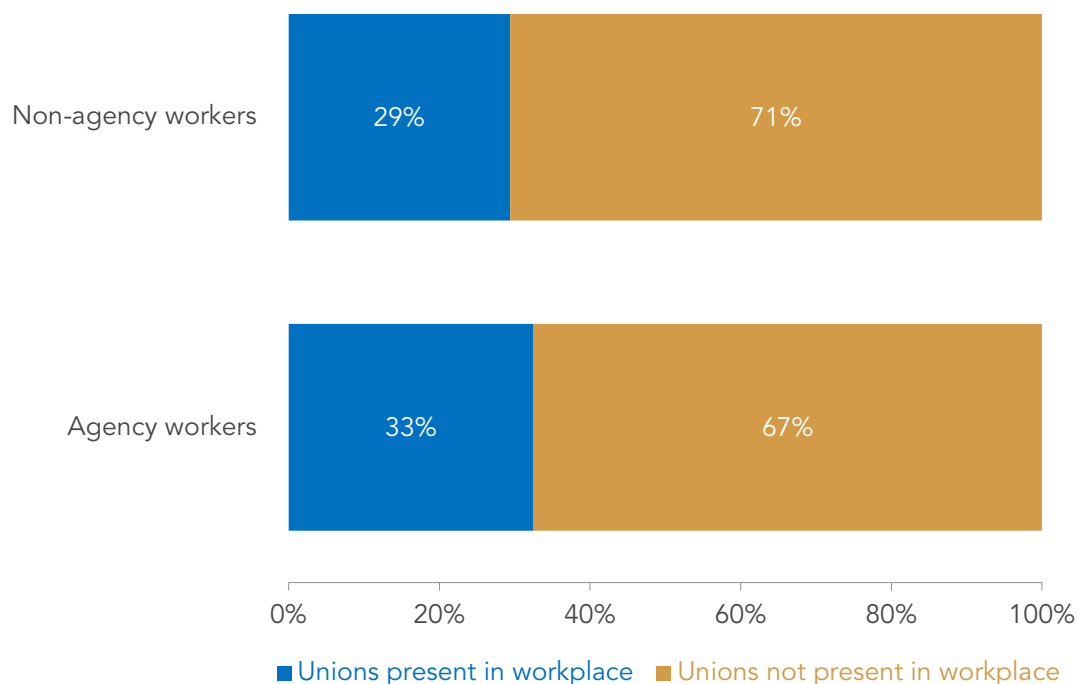
There are two key reasons why this could be the case. First, agency workers are clearly harder to organise than directly employed staff: they are often not present in workplaces or sectors for long, and may dip in and out of work more than others do. Our focus groups indicated that knowledge of unions was low and those who did understand the role they could play did not always think unions would be useful given their particular set-up.

Participant 1: With full time staff, in their jobs they have unions and any problems they just call their union in. The ones on agency, they have nothing – lots don't even know what a union is.

Participant 2: Yes and lots of agencies, well they aren't going to recognise a union are they? You have to pay a fee to join so what's the point?

(Focus group 3, Watford)

Figure 8: Proportion of agency workers in unionised workplaces, 2015-2017: UK



Source: RF analysis of ONS, Labour Force Survey 2015-2017

Second, the relationship between agency workers and unions is not always straightforward. Figure 8 shows that despite their lower rates of membership, agency workers are more likely to work in unionised workplaces than other types of workers. There is evidence to suggest that in some sectors unions accept, if not agree to, companies having a wraparound agency workforce which is easier to shed in downturns, thereby protecting the core, unionised staff.^[29]

[29] See, for example, S O'Connor, *Jaguar Land Rover lay-offs highlight the plight of UK's temporary workers*, Financial Times 1st May 2018

That said, it is important to acknowledge that unions have also been very active on behalf of agency workers in numerous campaigns over many the years, not least with respect to PBA (pan between assignment) contracts.^[30] However, it is interesting to note that new ways are emerging

i Box 2: New forms of organising

In response to the rise of the gig economy, new organisations are emerging which aim to give voice to workers across the labour force. One such group is Organise, an online community for people campaigning to help everyone in the UK get a fair deal at work.^[1] The group provides a free platform open to anyone to start a campaign, circulate a survey or generate a petition, with staff available to help and advise at each stage. Launched in March 2017, today Organise has almost 40,000

members across the UK.

In spring 2018 the group produced a submission to the government's consultation on agency workers. Over 700 Organise members shared their experiences of working with agencies via the platform and showed, for example, that more than one quarter of respondents were regularly hit with hidden fees. Almost without exception respondents thought a written statement explaining the conditions of the jobs they were taking would be a positive move.

[1] For more information see www.organise.org.uk

for agency workers to express and seek redress for their concerns (see Box 2).

The implications for compliance

Based on what we have uncovered so far, it is clear that agency workers have as many, if not more, reasons for grievance as those in the broader workforce. However, perhaps because agency workers are weakly unionised, they are far less likely to assert their rights via formal processes than mainstream workers. In the last twelve months, for example, only 0.2 per cent of Employment Tribunal (ET) claims were made by agency workers despite the fact that they comprise close to 3 per cent of the workforce.^[31] Given this, ongoing government initiatives to penalise those firms who do not abide by ET rulings, while welcome in themselves, look set to do very little to help agency workers who are on the receiving end of unlawful practice.^[32]

It is good to see, then, that the government accepts the case for the state enforcing a basic set of core rights for the most vulnerable workers.^[33] Overall, our focus groups led us to an interesting conclusion when it comes to identifying agency workers most at risk of poor or unlawful practice. Rather than indicating that there is a small group of rogue firms or agencies who wholesale fail to treat their workers well and provide full entitlements (although such firms may exist), such behaviour appears to be spread widely through the agency worker world. Whether agencies and hiring firms feel they can get away with less than optimum treatment appears to be largely

[30] See, for example, TUC, *Ending the Undercutters' Charter: Why agency workers deserve better jobs*, TUC March 2018

[31] See HM Courts and Tribunals Service, *Employment tribunal decisions* at <https://www.gov.uk/employment-tribunal-decisions>. Accessed 19/11/2018

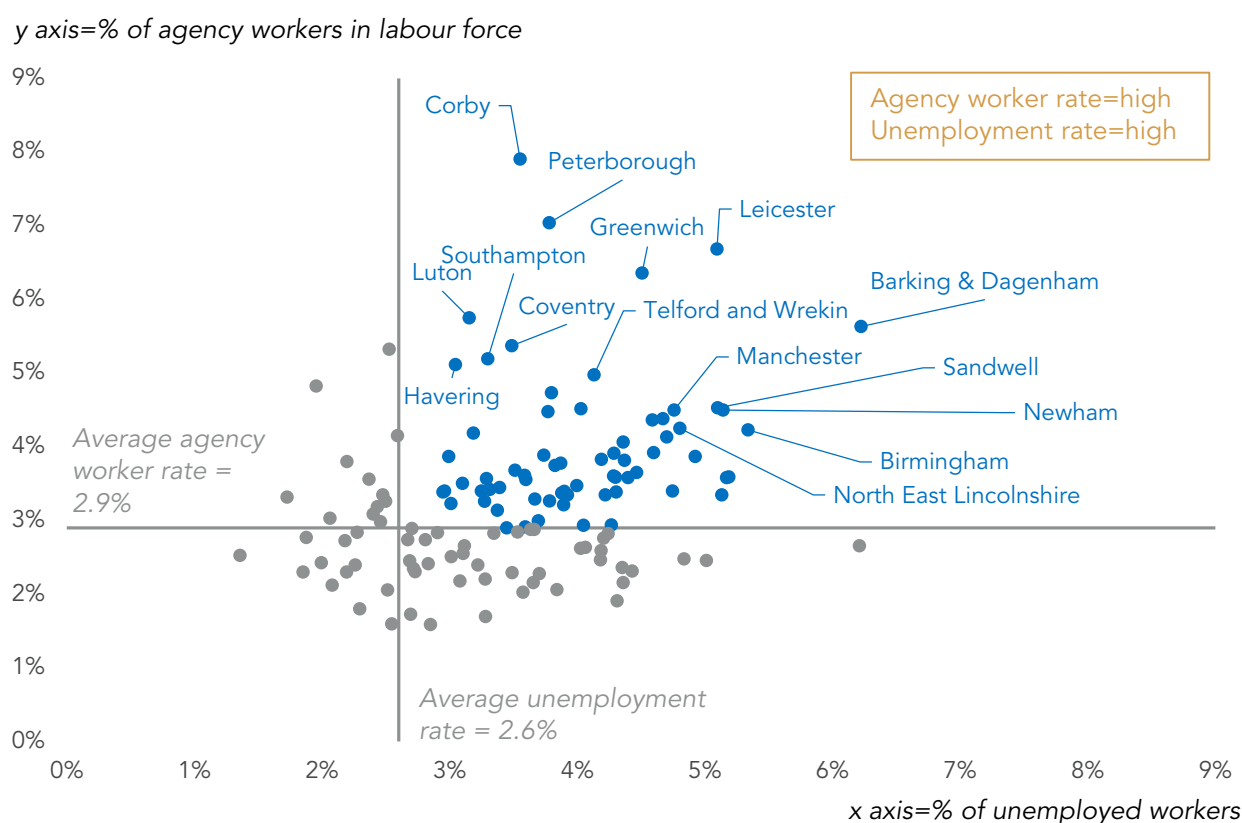
[32] The government is currently considering, for example, making it easier for claimants to recover ET awards, naming and shaming those firms who fail to pay up after a ruling against them at an ET, and aggravated penalties and cost orders in cases where firms have already lost a previous claim on similar facts. See BEIS, *Consultation on enforcement of employment rights recommendations*, February 2018 for further details

[33] BEIS, *Consultation on enforcement of employment rights recommendations*, February 2018

contingent on the personal circumstances of an individual (for example, do they need the agency income? Are they a migrant with weak language skills?) *and* the prevailing local labour market.

This has implications for action on compliance, given it is much harder to root out poor practice that is widely dispersed rather than concentrated in specific sectors or occupations. So how could the government's limited budget for agency worker enforcement best be targeted? Our analysis suggests attention would best be focused in those areas with high levels of agency work (where the simple volume of agency workers increases the likelihood that poor practice will be found in that area) and a weak local labour market (given this means agency workers have fewer opportunities to walk away from the bad and ugly sides of this type of work). Putting data on the proportion of agency workers in the workforce side by side with the unemployment rate as an indicator of labour market strength gives us Figure 9. This identifies areas where, in our view, the

Figure 9: Average unemployment rate and proportion of agency workers in the workforce by local authority, 2011-2018: UK



Notes: Local authorities where agency workers in sample < 80 excluded from the analysis. Also excluded from the chart is Boston, an outlier with an above average agency worker rate of 12% but a below average unemployment rate of 2.3%

Source: RF analysis of ONS, Labour Force Survey 2011-2018

enforcement activities of both the EAS and HMRC would most usefully be directed.

Presented slightly differently, Table 2 ranks the local authorities we highlight in the chart above according to the compound strength of their agency worker concentration and the local unemployment rate, again with the aim of providing a useful steer to enforcement agencies.

Table 2: Top 20 local authorities by agency worker concentration and labour market weakness, 2011-2018: UK

Rank	Local authority	% of agency workers in local workforce	% unemployed in local workforce
1	Barking & Dagenham	5.63%	6.22%
2	Leicester	6.69%	5.09%
3	Newham	4.50%	5.14%
4	Sandwell	4.53%	5.10%
5	Greenwich	6.36%	4.51%
6	Birmingham	4.23%	5.34%
7	Manchester	4.50%	4.76%
8	North East Lincolnshire	4.25%	4.80%
9	Rochdale	4.38%	4.67%
10	Southwark	4.36%	4.59%
11	Nottingham	4.13%	4.70%
12	Lambeth	3.87%	4.92%
13	Wolverhampton	3.92%	4.60%
14	Telford and Wrekin	4.98%	4.13%
15	Brent	3.59%	5.19%
16	Peterborough	7.04%	3.78%
17	Kingston upon Hull	3.58%	5.17%
18	Doncaster	4.06%	4.36%
19	Fenland	4.51%	4.03%
20	Haringey	3.91%	4.29%

Notes: Local authorities where agency workers in sample < 80 excluded from the analysis. Rankings produced by summing rank of local authority by agency worker rate with rank by unemployment rate. Local authority refers to place of residence.

Source: RF analysis of ONS, Labour Force Survey 2011-2018

But what would more intense enforcement action in these hotspots actually look like? Given that the EAS (Employment Agencies Standards Inspectorate) is the dedicated body for enforcing employment agencies regulation, it makes sense for them to take a lead role. However, with limited resources at their disposal, it is clear that efforts of others need to be leveraged. To begin, EAS could pilot a task force comprising the local authority, HMRC, the police and the Health and Safety Executive and Jobcentre Plus in five key areas we have identified.^[34] Together, this group should take co-ordinated action to ensure every agency in the area has been reminded of their responsibilities and the potential for those breaching the rules to be barred from operating;

^[34] According to Director of Labour Market Enforcement, United Kingdom labour market enforcement strategy 2018/19, May 2018, EAS has 12 FTE staff in 2017/18 and a budget of £0.75 million, one-third of which is for a one-off capital investment

target job-seekers coming into JCP with information about their rights and entitlements if they go on to undertake agency work; and ensure those conducting wider enforcement action (HMRC, the police and HSE) have been trained to check for signs of non-compliance with agency worker rights in firms breaching wider rules, with a remit to pass such cases onto the EAS.

To conclude, the question of agency workers' power in the labour market does not lend itself to a simple answer. Without a doubt many agency workers in the labour force do not struggle to demand respect in the workplace: those that use agency work as a 'filler' or who work in more buoyant areas will simply vote with their feet if they are treated poorly. However, there are clearly steps that need to be taken to provide greater protection for those who are less able to resist poor and unlawful practice. Table 3 summarises our thoughts on the policy proposals currently on the table, while in the next section we turn to consider whether low levels of knowledge and power conspire to depress agency workers' pay.

Table 3: Improving agency workers' power

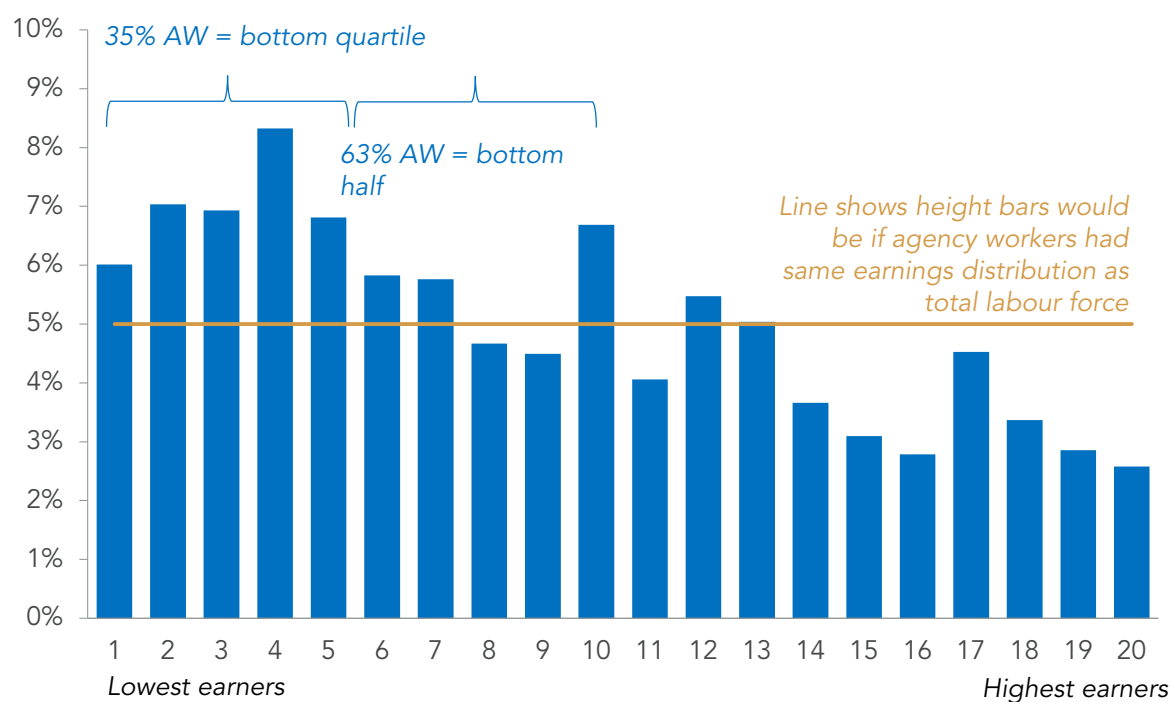
Current policy position	Our view
The government accepts the principle of agency workers having a right to request direct contract of employment after 12 months service with the same hirer and are considering how best to implement this	Alongside this policy change the government should consider how to stop firms breaking service close to the 12 month mark to evade the right to request, and could usefully look to international practice where the number of assignments with a single hirer is limited
The government is currently considering whether the remit of the Employment Agencies Standards (EAS) ought to be extended to cover policing umbrella companies and other intermediaries in the supply chain	The growing number of agency workers that identify as self-employed suggests this would be a good move and EAS should be given the same powers to regulate umbrellas and other intermediaries as it currently has for agencies
HMRC will have responsibility for enforcing the basic set of core pay rights that apply to all workers such as the NMW/NLW, sick pay and holiday pay for the lowest paid workers	To be cost-effective efforts should be focused on those areas with high levels of agency workers <i>and</i> a weak local labour market

Section 4: The question of pay

The questions of knowledge and of power that we have explored in the preceding sections come together most markedly when we look at the issue of agency worker pay. In this section we explore whether agency workers' living standards are depressed and if so, whether this is a result of the way that they work. Are they, for example, being paid a fair rate for the work they do? Are their salaries eroded by unlawful deductions? And how do the volatile incomes that are often the hallmark of agency work affect their ability to budget, to save and to make more strategic living standards decisions?

To begin, Figure 10 makes the point that agency workers are, on average, paid less than the employed workforce. More than one third of agency workers are in the lowest earnings quartile while close to two thirds are in the bottom half.

Figure 10: Distribution of agency workers across the overall earnings distribution, 2017: UK



Notes: All pay analysis excludes self-employed agency workers

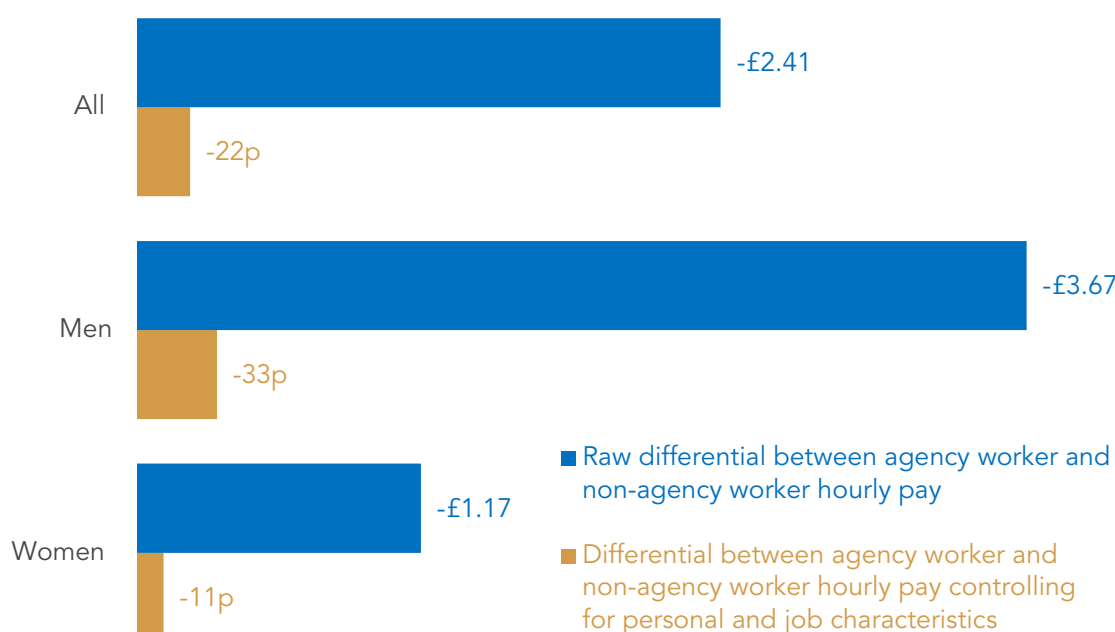
Source: RF analysis of ONS, Labour Force Survey 2017

However, it is worth noting that agency workers are found right through the wage distribution: for example, 1 in 6 agency workers have earnings in the top quartile. That said, agency workers are on average younger and less highly skilled than the workforce overall, as well as more densely concentrated in lower level occupations and lower paid sectors. So is the skew in pay we observe simply a function of these different characteristics? Or are agency workers sometimes being short-changed for other reasons including, perhaps, their lack of knowledge and power?

Agency workers and equal pay

We explore this question in Figure 11. As this makes clear, agency workers overall have a *pay gap* of £2.41 an hour less than non-agency workers. At the outset of this project we estimated that agency workers across the board experience a *pay penalty* of 22p an hour compared to other types of workers that cannot be explained by their different personal or job characteristics. With eight more quarters of pay data now available to us than we had in 2016, we can see that the agency worker pay penalty has endured and remained stable over time. Interestingly, the agency worker pay penalty is three times as deep for men than women, a finding that resonates with the mood in our focus groups where women were largely more satisfied with agency work than men. Collectively, we estimate that in 2017 agency workers missed out on around £290 million of pay as a result of this penalty, or an average of £400 per worker.

Figure 11: Estimated hourly agency worker pay gap and pay penalty, by sex, 2011-2018: UK



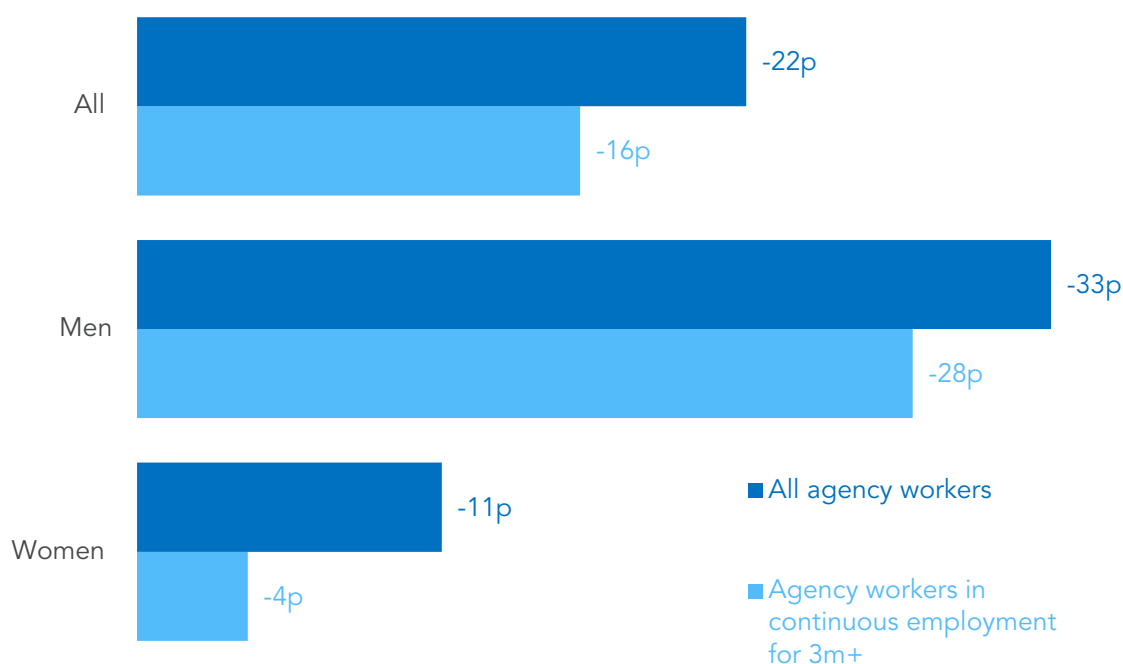
Notes: See Annex 4 for details of methodology

Source: RF analysis of ONS, Labour Force Survey 2011-2018

There may be factors that we cannot model which explain why agency workers do not appear to be paid the same hourly rate as a like-for-like employee. One theory we can discount, however, is that it is the behaviour of a small group of a non-compliant agencies who are dragging down the average rate of pay. When we look at under-payment with the National Minimum Wage (NMW) and National Living Wage (NLW) we find that agency workers are only marginally more likely than other types of workers to not be getting the legal going rate (3.1 per cent to 2.9 per cent).

Our pay work is consistent with another (albeit legal) form of under-payment and that is the use of 'Swedish derogation' or pay between assignment (PBA) contracts. As we saw in Section 2, by signing this type of contract an agency worker trades off the right to equal pay with a comparable employee after 12 weeks of continuous service for pay when there is no suitable work available. If large numbers of agency workers have signed such contracts it would be natural to see this reflected in the pay data. So do we think this is the case?

Figure 12: Estimated hourly agency worker pay penalty, by sex and employment length, 2011-2018: UK



Notes: See Annex 4 for details of methodology

If we look at the data just for those agency workers who report they have been continuously employed for more than three months we still observe a pay penalty although this drops from 22p to 16p an hour (Figure 12). We should be cautious in over-interpreting this finding, not least because it is unclear whether all agency workers who say they have been employed for three month-plus have truly been in the same role for that time. Nevertheless, given that asking agency workers themselves if they on PBA contracts is inconclusive, and research that has explored this issue from the business side has proved equally unrevealing, this is our view this the best evidence available to indicate if not the prevalence then at least the living standards impact of

PBA contracts.^[35] Added up, we estimate agency workers who had been in post for three months or more lost more than £173 million pay in 2017, or an average of £275 each.

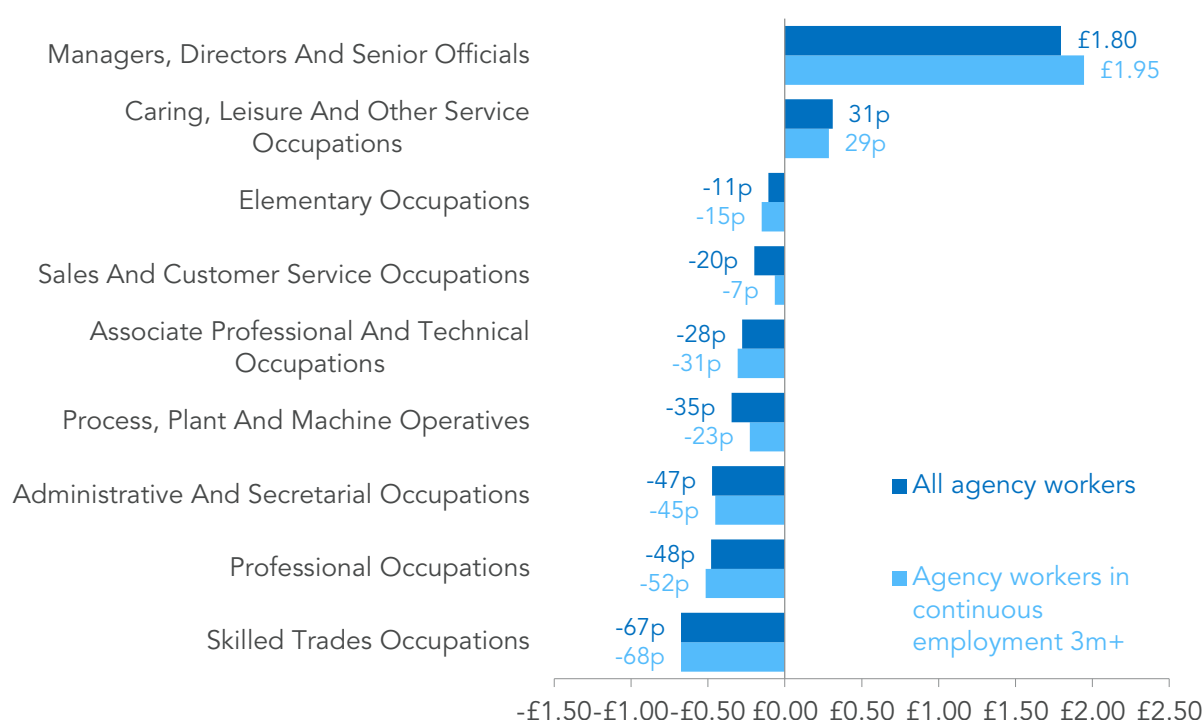
An agency pay premium for some obscures the depth of the penalty for others

Digging beneath this headline pay penalty finding, participants in our focus groups drew attention to the fact that their experience of equal pay is very mixed. Some reported receiving better pay than their directly employed colleagues, others about the same, while still others knew they were paid less.

In our industry [IT], I always get a bit more than the others [who are directly employed]. This makes up for my pension and sick pay
(Focus group 1, Manchester)

In the warehouse, the permanent staff are on £9.50 an hour and we're on £8.50 and we're not getting the benefits but we do exactly the same work
(Focus group 2, Leicester).

Figure 13: Estimated hourly agency worker pay penalty, by occupation and employment length, 2011-2018: UK



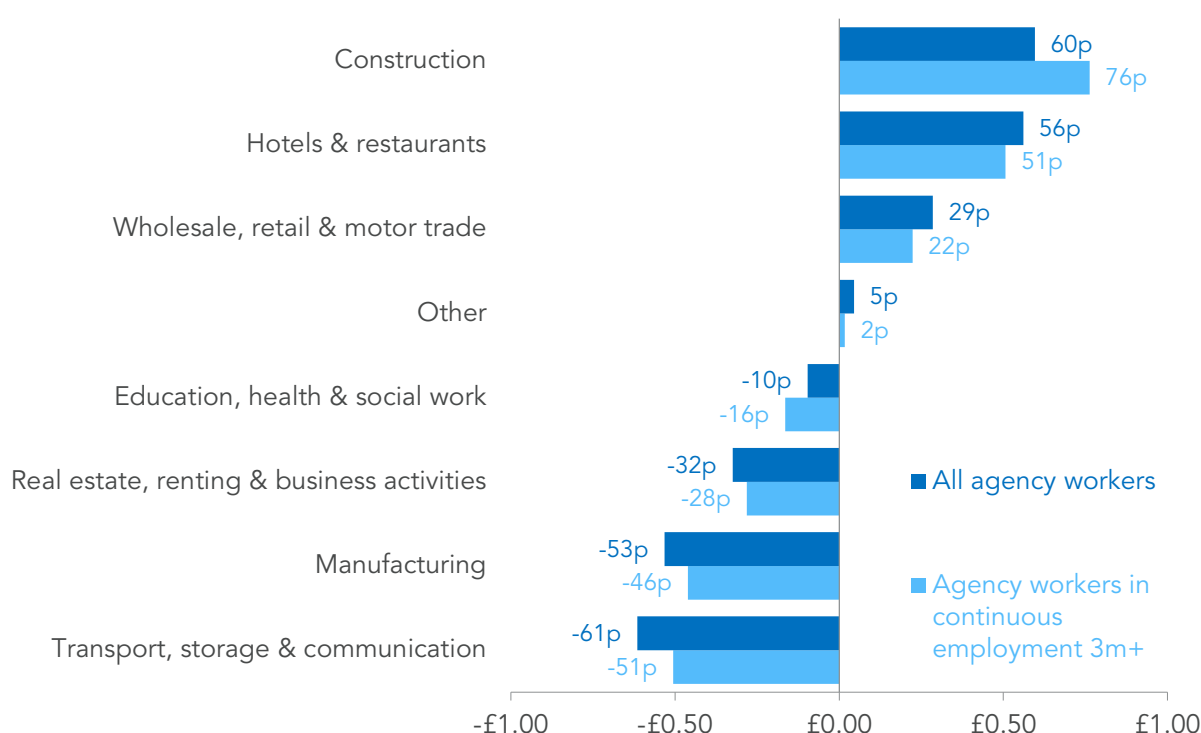
Notes: See Annex 4 for details of methodology

Source: RF analysis of ONS, Labour Force Survey 2011-2018

[35] D Berry-Lound, D Greatbatch and S Tate, *Qualitative analysis of the use of Pay Between Assignment contracts for agency workers including the role of umbrella organisations*, HOST Policy Research July 2015

This perception of variation is supported by a more detailed look at the data. Figure 13 unpacks the agency worker pay penalty by occupation and shows that there are some types of jobs where agency workers command a premium compared to direct employees with the same characteristics. Managers and senior staff who work through agencies appear particularly good at leveraging additional pay, perhaps as a way of compensating for other benefits. More surprising, we observe those in caring and leisure occupations also being paid more than directly employed staff, although both our focus groups and previous Resolution Foundation research suggest that these are occupations where legally required staff ratios could be obliging firms to pay a premium for staff needed at short notice.^[36] Finally, the smaller penalties we observe in elementary and other low paid jobs may simply be because so many in those occupations are at the wage floor that the difference between the pay of agency workers and other staff is naturally slight.

Figure 14: Estimated hourly agency worker pay penalty, by sectors and employment length, 2011-2018: UK



Notes: See Annex 4 for details of methodology

Source: RF analysis of ONS, Labour Force Survey 2011-2018

Figure 14 repeats the exercise using sectors, and once again we do not see a straightforward picture when it comes to the agency worker pay effect. The reasons for the presence of pay premiums in some industries are unclear, and indicate a need for further research. We could speculate, however, that pressure on building firms to deliver to deadline could lie behind the premium we observe in construction (as could the shortage of builders that has been noted elsewhere recently) while hotels, restaurants and shops may all need to fill staff gaps at short notice and have to offer better pay to agency workers especially in busy seasons such as

[36] L Gardiner & S Hussein, [As if we cared The costs and benefits of a living wage for social care workers](#), Resolution Foundation March 2015

Christmas to achieve this end.

Our findings on equal pay have significant implications for the government as it thinks through its position on PBA contracts. If it decides to place the emphasis on enforcing such contracts rather than banning them across the board, it would make sense to look to those occupations or sectors with the deepest pay penalties in the first instance.

It is worth noting, however, that many of the participants in our focus groups had experience of each and every pay scenario. Put differently, the higher, equal or lower rates of pay compared to directly employed colleagues did not appear to be directly correlated with specific industries or occupations but rather resulted from different firm practice. This, the scale of the losses that agency workers are experiencing in their pay packets, and the fact that a tight labour market suggests there would be little employment effect means that in our view, repealing rather than trying to enforce PBA contracts is a more sensible option.

Facilitator: Do you get paid the same as the employed staff you are working next to?

Participant: It depends. In some places I'd definitely say more but in others much, much less.
(Focus group 3, Watford)

I've been offered the same job by two agencies and there was a £1.50 difference between them. Different agencies are definitely taking different approaches. But if I get offered the same job as someone else I want to the same money, don't I?
(Focus group 2, Leicester)

Overt and covert deductions also erode agency workers' pay

The agency workers in our focus groups highlighted other areas in which they felt badly treated when it came to pay. Several reported that they often had to cover costs that were intrinsic to their assignments such as uniforms or administrative processes. Others spoke of schemes they could opt out of but which they were signed up to without their prior consent. Overall, when we asked the groups what changes they would most like government to make to improve their position as agency workers, ending deductions of these types was high up the list.

Participant 1: I've been asked for money to do my security checks.

Participant 2: Oh yes. You have to buy a T shirt. If you turn up for a shift and borrow one they really don't like that
(Focus group 1, Manchester)

I really hate the things that I have to opt out of. They put me in an insurance policy. Don't enrol me – don't take money from me for things I never asked them to take. And I had to tell them in the first month to get that money refunded
(Focus group 3, Watford)

Our participants also reported that they did not always feel fairly compensated for overtime or working on public holidays. Sometimes this was a clearly a function of how the rules had been set; at other times it appeared to be a result of oversight or non-compliance on the part of the agency.

I was off for a doctor's appointment and I took holiday pay – and then I didn't get overtime. If you physically don't do the 40 hour week you don't get overtime rate. That's cheeky.
(Focus group 2, Leicester)

Participant: They said I would get time and a half on Saturday but when I looked, I got paid my normal rate.

Facilitator: Did you complain?

Participant: I didn't like to.

(Focus group 3, Watford)

Finally, one other issue that participants viewed as a tax on their pay was travel costs. In many cases there was no public transport to the place of work and agency workers without access to a car had both to pay for company transport and often spend dead time waiting to return. On other occasions they had been assigned to places a substantial distance from home and felt that they should have been compensated for the time they spent travelling long distances.

They [the agency] charge you for transport when the company is paying them for the bus to transport you. At [place of work] in the peak season it is £3 a bus ride but off peak it was £7 a day. I get a ride now with [a friend].

(Focus group 2, Leicester)

We have venues that are an hour, two hours away and you have to pay transport to get there. At [work location] if I have finished my shift at 6pm I have sometimes waited three hours for others to finish and get back. But I'm not paid for that.

(Focus group 1, Manchester)

Pay volatility was the biggest headache for many agency workers

Unequal pay for the same work and unexpected deductions angered the agency workers in our focus groups, but arguably a bigger impact on their living standards was the way that fluctuating hours and, to a lesser extent, varying rates of pay meant that many had volatile incomes. While this was sometimes by choice – for example, several in our groups did not want to work school holidays – it often stemmed from the common practice of agencies promising hours which did not then materialise.

For the past few weeks I've had 10 hours of work then last week I did 60 hours. I'm with two agencies but one of them gives a lower rate of pay. Well I need to know at least roughly how many hours I'm going to get on a job. I might get guaranteed work for a week but no guaranteed hours - it's really cheeky just to get you in there.

(Focus group 2, Leicester)

Let's say an event needs 50 agency staff, well they book in that many and some 'spares'. If you aren't there half an hour before you are supposed to start work you're dropped even though you've paid for transport. If you're there early and still dropped you are supposed to be paid two hours pay. But I've never been paid that in two and a half years.

(Focus group 1, Manchester)

Those on higher incomes or with additional sources of support such as a pension or savings were generally able to weather the pay ups and downs that are often associated with agency work. But for others, their unpredictable income had serious effects both in terms of managing on a day-to-day basis as well as making longer term decisions.

Budgeting's terrible. We try to cut down, we try and live off the wife's wage and hope I get a good week next week. But my wife has fixed hours in a school and she can't do anything to make it up.
(Focus group 1, Manchester)

I went for a flat and got turned down because I'm really on a zero hours contract and have no guaranteed hours. But I don't want to house share any more – and I threw away £300 I hadn't got on all the references and everything. I didn't even know [I was on a ZHC] until the searches came back!
(Focus group 2, Leicester)

Getting sick was also a key cause of income volatility and a significant worry especially for older agency workers in our groups. Some worked when unwell, while others tried to smooth their incomes by drawing down on holiday entitlement.

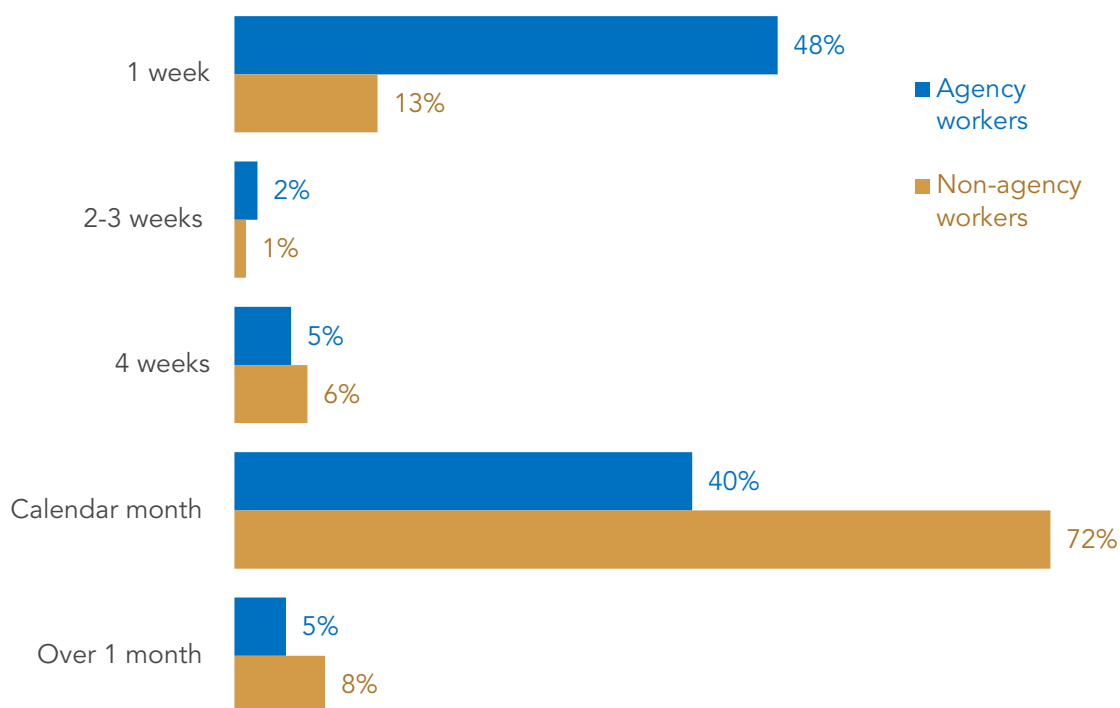
Well if I get ill, I try to make it in otherwise I just have to take it as a loss, I write it off. It's ok if it's a day but not if it's two months. I worry as I'm not getting any younger.
(Focus group 3, Watford)

If you're working for my agency the first three days you're off you don't get nothing, then you get your stat [statutory sick pay]. So basically you're scared of taking sick aren't you, you're begging "Can I use some of my holiday pay to cover this?"
(Focus group 1, Manchester)

The question of income volatility is one the Resolution Foundation has looked at in some depth recently in other research.^[37] This work examined how the state supports those on variable incomes and concluded that while Universal Credit is more responsive to fluctuations in pay than the tax credit system, there are still ways that the new benefit will penalise those without a regular salary. Critically, those who are paid on a weekly basis will have four months in a year when they receive five pay packets, depressing their UC award which is assessed on a monthly cycle (and in the event that their UC award falls to zero, terminating their claim). As Figure 15 shows, close to half of all agency workers could potentially be in such a situation given the prevalence of weekly pay for this part of the workforce.

[37] D Tomlinson, [Irregular Payments: Assessing the breadth and depth of month to month earnings volatility](#), Resolution Foundation October 2018

Figure 15: Pay periods of agency and non-agency workers, 2017-2018: UK



Source: RF analysis of ONS, Labour Force Survey 2017-2018

This points to the need for the DWP to review more thoroughly the interaction between those on volatile incomes and UC. Moreover, there are other issues that could usefully be thought through by the DWP when it comes low income agency workers. For example, when UC is fully rolled out the in-work conditionality regime will affect those agency workers whose pay falls below a certain threshold in an assessment period. They will be required to show they have actively searched for additional work in this time if they are to avoid a sanction, but just how work coaches will implement such rules is not yet clear. For example, will they penalise agency workers who have had a slow month because promised work did not materialise?

Finally, there is a wider question that the DWP may want to consider in its deliberations about UC and agency workers. At present, the Department takes a positive view of agency work: it has recently renewed its partnership agreement with the Recruitment and Employment Confederation,^[38] for example, and an estimated 17 per cent of postings advertised recently on its 'Find a Job' website are vacancies fielded by agencies.^[39] While such work clearly suits many, our research has also shown that for others agency work is not an active choice.

[38] Recruitment and Employment Confederation, REC and DWP continue partnership to 2025 with focus on future of jobs, Press release April 2018

[39] DWP, Find a Job website <https://findajob.dwp.gov.uk/>, accessed 11/11/18

In such cases, DWP needs a clear view on whether agency work is something claimants should be required to do in the long term, or whether it should do more to support such workers so that agency work truly is a stepping stone to jobs that gives them the income security they need.

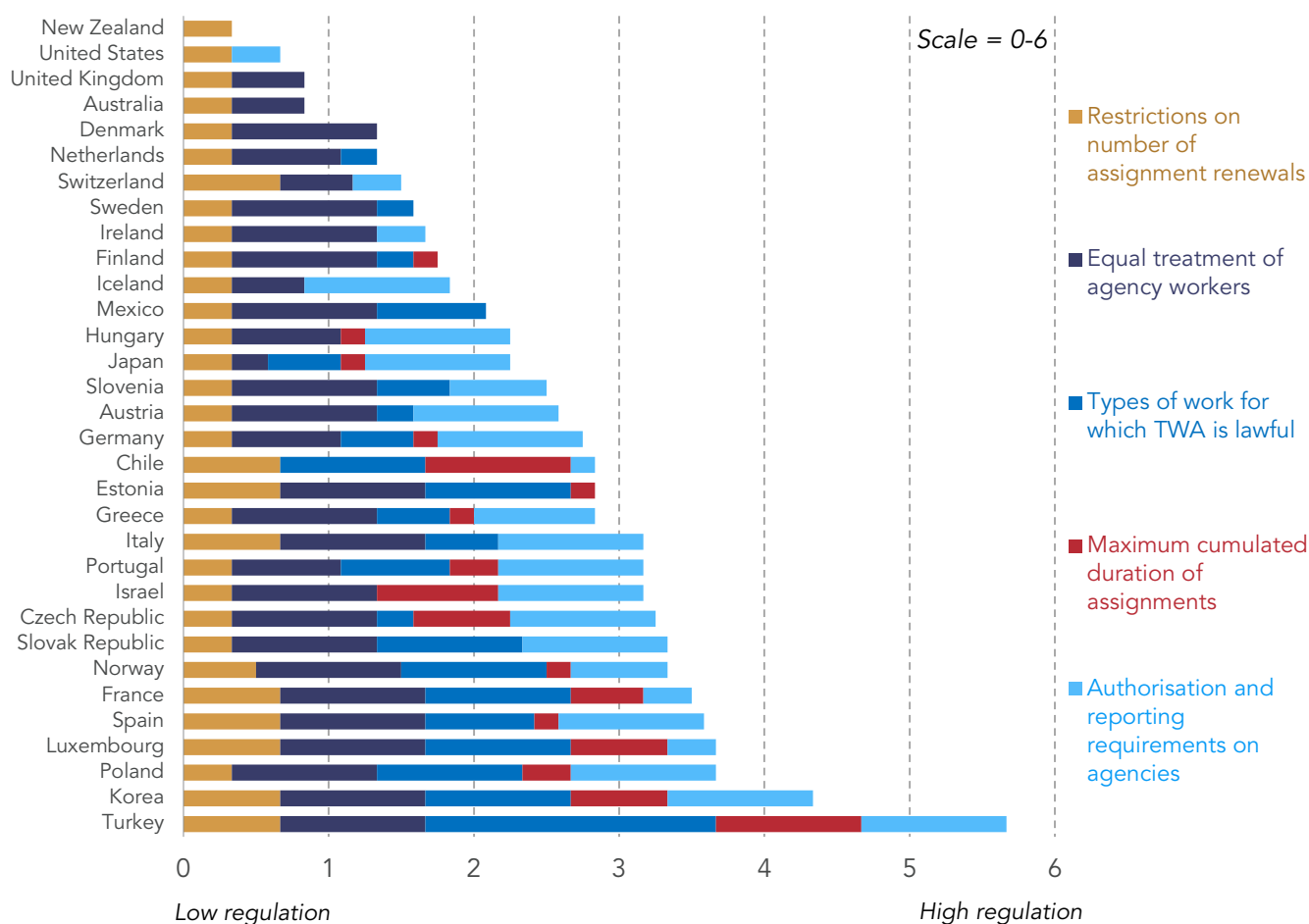
Table 4: Increasing agency workers' pay

Current policy position	Our view
The government wants to understand the extent of any problem with the use of pay-between-assignment (PBA) contracts and if it discovers widespread evidence of abuse, then Government's initial view is that repeal of this provision may be appropriate	Agency workers have a poor understanding of their contract type, and firms and agencies are reluctant to share information on the prevalence of PBAs. Given this, the presence of an 'agency worker' pay penalty for those working 3 month-plus is in our view best evidence of the impact of PBAs on agency workers living standards and suggests the Swedish Derogation should be repealed
If abuse of PBAs appears to be more limited, the government has indicated that it would consider extending the remit of the Employment Agencies Standards Inspectorate (EAS) to include enforcement of the Agency Worker Regulations 2010	In such an event the EAS should target its enforcement activities at those industries and occupations where the deepest agency worker pay penalties are observed
The government takes a positive view of agency work for those on lower incomes and actively advertises significant numbers of agency jobs through its job search portal for claimants	While agency work often suits those with an additional source of income such as another job, a working partner or a pension, those who rely on it for their main income often struggle with fluctuating levels of pay. The DWP should review the interaction of UC with agency work with especial attention paid to the monthly assessment process and the in-work conditionality regime.

Section 5: Conclusion

Throughout this report we have shown that the agency worker's experience is often very mixed. There are aspects to this way of working that can be positive: many prize the flexibility, the variety and the ability to shut off from work at the end of the day that is associated with agency work. At the same time, there is a negative side to agency work: fluctuating and often unequal pay, limited entitlements and a sense of being a second class citizen can clearly rile. And finally, improper, if not outright unlawful, practice is widely encountered, with agency workers often unaware that they are being poorly treated.

Figure 16: Regulation of temporary agency working, 2013: OECD countries



Notes: This chart draws on synthetic indicators used by the OECD to construct an index of employment protection for temporary agency workers. A 0.5 score for 'restrictions on number of assignments renewals' indicates no restrictions are present for example

Source: OECD Employment Protection database

But the ambiguous nature of the agency worker experience does present a challenge to policy makers who wish to maintain the flexibility of the UK labour market while also ensuring such workers are not on the receiving end of unacceptable practice. However, as the government deliberates on both the Taylor Review and the Director of Labour Market Enforcement's recommendations, it is worth their remembering that agency work in the UK is very lightly regulated compared to other OECD countries. As Figure 16 shows, tightening up on agency worker protections would not set us apart from other Anglosphere countries to any significant degree.

So what should the government do in order to improve agency workers' living standards and ensure they are decently treated in the workplace? To begin, it is clear that action needs to be taken to raise agency workers' awareness of the contract types and entitlements that they have. The government's plans to extend the right to a written statement to all workers is a sensible step, although such a statement should be produced in standard form and provided on day one if agency workers (if not all workers) are to get the full benefit from this policy change. Critically, it should emphasise holiday pay entitlements and the agency worker's position with respect to auto-enrolment. Second, the presence of an agency worker pay penalty even for those who indicate they have been continuously employed for three months-plus is sufficient evidence, in our view, to justify the repeal of PBA contracts.

Beyond these two changes, however, improving the agency worker experience relies less on greater regulation and more on better enforcement of existing provisions. Cracking down on agencies who do not provide paid holidays would be a good start, as would making sure that firms do not break contracts at the 12 week point in order to evade the equal pay provisions of the *AWR 2010*. (If the right to request a permanent contract is introduced after 12 months of continuous service the action to ensure there is no deliberate breaking of this period will also be important). Extending the remit of the EAS to oversee umbrella companies is also clearly sensible given the growing number of agency workers who identify as self-employed.

Finally, this report has highlighted that those agency workers who are most at risk of being on the receiving end of poor and unlawful practice are those who work in areas where there are few other job opportunities *and* rely on agency assignments for the bulk if not all of their income. This has implications for enforcement agencies, who most sensibly be targeted in such areas with a weak local labour market. But it also has implications for the DWP which should think through how Universal Credit can best support low-income agency workers in the short term by better smoothing volatile pay, but also longer term by helping them progress into more stable forms of employment.

Table 5 summarises our thoughts on policy and agency workers. In our view, an agenda for action of this nature would go a long way to increasing the good, decreasing the bad and eliminating the ugly that we have uncovered in the agency worker world.

Table 5: Summary of current policy positions and action required to improve agency workers' experience

Knowledge

The government has accepted that all workers should have a right to a written statement and is currently considering whether this should become a 'day 1' right.

The government rejected the idea that written statements should be provided in a standard format on the grounds that firms should be able to make own judgment about best way to communicate with workers

The government plans to amend legislation to improve the transparency of information which must be provided to agency workers both in terms of rates of pay and those responsible for paying them and is currently consulting on appropriate content

Given the short term nature of many of their assignments, agency workers should be issued with a written statement from day 1

Agency workers need to be able to compare terms and conditions offered by different assignments and agencies. A standard format written statement should be used by all agencies to increase transparency and reduce administration

Providing clarity over holiday entitlement and agency workers' position with respect to auto-enrolment are both key

Power

The government accepts the principle of agency workers having the right to request a direct contract of employment after 12 months service with the same hirer and are considering how best to implement this

The government is currently considering whether the remit of the Employment Agencies Standards Inspectorate (EAS) should be extended to cover umbrella companies and other intermediaries in the supply chain

HMRC will take responsibility for enforcing the basic set of core pay rights that apply to all workers such as the National Living Wage/National Minimum Wage (NLW/NMW), sick pay and holiday pay for the lowest paid workers

Alongside this policy change government should consider how to stop firms breaking service close to the 12 month mark to evade the right to request, and could usefully look to international practice where the number of assignments with a single hirer is limited

The growing number of agency workers that identify as self-employed suggests this would be a good move and EAS should be given the same powers to regulate umbrellas and other intermediaries as it currently has for agencies

To be cost-effective both HMRC and EAS efforts should be focused on those areas with high levels of agency workers *and* a weak labour market

Pay and income

The government wants to understand the extent of any problem with the use of pay-between-assignment (PBA) contracts and if it discovers widespread evidence of abuse, then Government's initial view is that repeal of this provision may be appropriate

If abuse of PBAs appears to be more limited, the government has indicated that it would consider extending the remit of the EAS to include enforcement of the Agency Worker Regulations 2010

The government takes a positive view of agency work for those on lower incomes and actively advertises significant numbers of agency jobs through its job search portal for claimants

Agency workers have a poor understanding of their contract type, and firms and agencies are reluctant to share information on the prevalence of PBAs. Given this, the presence of an 'agency worker' pay penalty for those working 3 month-plus is in our view best evidence of the impact of PBAs on agency workers living standards and suggests the Swedish Derogation should be repealed

In such an event the EAS should target its enforcement activities at those industries and occupations where the deepest agency worker pay penalties are observed

While agency work often suits those with an additional source of income such as another job, a working partner or a pension, those who rely on it for their main income often struggle with fluctuating levels of pay. The DWP should review the interaction of UC with agency work with especial attention paid to the monthly assessment process and the in-work conditionality regime.

Annex 1: Focus group methodology

In December 2017 we ran three focus groups with a total of 35 participants. Participants were recruited using a selection grid to ensure a good balance of men/women, migrant/non-migrants, short-term/long-term agency workers and higher paid/lower paid agency workers. We selected the three locations (Manchester, Leicester and Watford) based on NOMIS UK business count data that showed these were areas with a high concentration of employment agencies.

Each focus group was semi-structured but followed the same topic guide below:

- Focus groups explained and participants consented
- Introductions – brief overview of name, current job and where agency work fits into working life
- Do you think of yourself as a temporary or permanent agency worker? Why?
- Write down three things you like about agency work and three things you dislike
- Using these notes, discuss the positive sides of agency work
- Using these notes, discuss the negative sides of agency work
- Poll group on choice between flexibility and stability
- What type of contract do you work upon (provide prompts). What are the implications for rights of the different ways of working?
- If has not yet emerged, explore awareness of holiday pay
- If has not yet emerged, explore awareness of auto-enrolment
- If has not yet emerged, explore deductions from pay
- If has not yet emerged, explore hours of work and volatile pay
- If has not yet emerged, explore health and safety
- What could policy makers do to most improve your lives as agency workers?

The groups were recorded and then transcribed, with all data managed and stored in a GDPR compliant manner.

Annex 2: Revisiting our agency worker numbers

In the opening report of our agency worker project we analysed this part of the workforce by building up a new identifier in the Labour Force Survey from several other variables.^[40] Our original definition of an agency worker was constructed as follows.

Group 1: Temporary agency workers - those employees who are not permanently employed (JOBTYP=2) who are also working for an employment agency (JBTP10=1);

Group 2: Permanent agency workers - those respondents who say that they are permanently employed (JOBTYP=1) but who then indicate they are working for an employment agency (AGWRK=1);

Group 3: Those paid by an employment agency - who indicate that they are paid by a different organisation or company (PDWG10=2) and paid a salary or wage by an employment agency (SELF=1) but who are not already picked up in 1) or 2). This group is primarily comprised of self-employed respondents. However, we then filtered this 'paid by an agency' group further and kept only those who indicate that their tax and/or NI are deducted by an organisation (NITAX=3) in order to exclude those who are definitively self-employed. In this we followed similar practice to that used by the ONS;

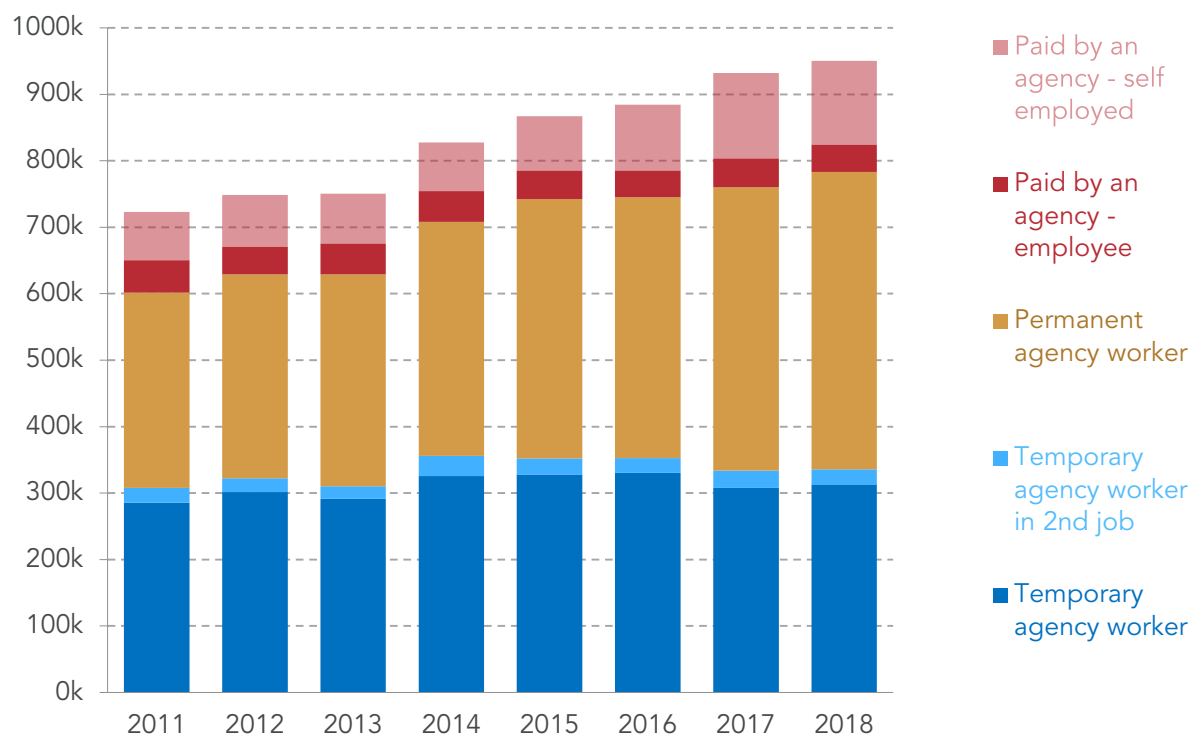
Group 4: Temporary agency workers in their second job - those employees who indicate they are not permanently employed in a second job (JOBTYP2=2) who are also working for an employment agency (JB2T10=1) and who have not already been counted in 1), 2) or 3).

However, our focus groups have subsequently shown that there are many people who are to all intents and purposes agency workers, but who are classified as self-employed and do their own self-assessment. This has led us to question our previous approach of filtering out those who are paid by an agency but administer their own tax and NI. Instead, we now believe a better approach is to create an expansive and a restrictive agency worker variable, the first including all those in group 3 above without the NI/tax filter, the second all those in group 3 above who are employees.

Using this new approach, our restrictive definition gives us a lower bound estimate of 824,000 agency workers in the UK in 2018; our expansive definition gives us an upper bound of 950,000 (see Figure 17 for more details).

[40] L Judge and D Tomlinson, [Secret agents: agency workers in the new world of work](#), Resolution Foundation December 2016

Figure 17: Number of agency workers 2011-2018: UK



Notes: Figures for 2018 are q1 and q2 only

Source: RF analysis of ONS, Labour Force Survey, 2011-2018

Annex 3: Holiday pay calculations

All full time agency workers who are not classified as self-employed are entitled to 28 days of paid holiday a year which is pro-rated accordingly. We assume that a full time job means working 52.14 weeks a year, 5 days a week which is the equivalent of 260.7 days a year. This means that for every 9.3 full days worked an agency worker accumulates 1 full day of paid holiday. Expressed in hourly terms, every hour worked should mean the agency worker clocks up 0.11 hours of paid holiday entitlement.

We calculate our lower band for lost holiday pay as follows. Looking only at those agency workers who definitively say they have no holiday pay (HOLS=0) we take their usual working hours a week and calculate how many hours of holiday pay they should therefore be entitled to ($BUSHR \times 0.11$).

Holiday entitlement should be paid at a rate equivalent to the agency worker's weekly pay averaged over a 13 week reference period (with any weeks in which the agency worker did not work at all discounted). However, data limitations mean that we do not know whether an agency worker's rate has varied over time. In our calculations we simply use the hourly pay rate reported (HOURPAY).

We then take this number of hours and multiply it by the hourly pay figure of each agency worker. We then sum this missing weekly holiday pay and annualise the figure.

To establish an upper band of lost holiday pay we conduct the same series of calculations as above but for all those agency workers who either say they have no holiday entitlement or do not know whether they have an entitlement or not (HOLS=0 or HOLS>97).

Full results are set out in Table 6 below.

Table 6: Estimates of agency worker missing holiday pay, 2011-2017

year	weekly		annual	
	lower range	upper range	lower range	upper range
2011	£3,305,898	£7,817,940	£172,369,532	£407,627,398
2012	£3,715,092	n/a	£193,704,907	n/a
2013	£3,827,264	£8,171,128	£199,553,535	£426,042,601
2014	£6,030,939	£11,424,654	£314,453,153	£595,681,459
2015	£4,950,506	£9,381,643	£258,119,391	£489,158,845
2016	£3,911,644	£7,973,104	£203,953,140	£415,717,657
2017	£5,430,772	£8,843,806	£283,160,447	£461,116,030

Notes: Data unavailable in 2012 to estimate upper range

Source: RF analysis of ONS, Labour Force Survey, 2011-2017

Annex 4: Estimating the agency worker pay penalty

The approach we take in our regression analysis is based on that used by J Cribb, C Emmerson & L Sibiet, Public Sector Pay in the UK, Institute for Fiscal Studies, October 2014 and is specified as follows:

- Results are calculated using estimated coefficients from an ordinary least squares regression of the natural logarithm of real pay on an agency employee indicator.
- Coefficients are converted to percentages and cash values following R Halverson & R Palmquist, 'The interpretation of dummy variables in semi logarithmic equations,' American Economic Review 70:3, 1979.
- Raw differential (and all other specifications) include a dummy variable for each quarter of the year.
- Region is a 12-category variable; education a seven-category variable based on highest qualification; country of birth a four-category variable; ethnicity a six-category variable; and occupation and industry are based on the standard coding at the one-digit level. Experience is measured by age minus age of leaving education, and is interacted with a three-category qualification variable (indicating higher education, secondary education or other/no education).
- In contrast to the IFS approach we do not use length of continuous employment (EMPLN) as an indicator of experience given the ambiguity of this question for agency workers.
- For the results including all employees, all controls are interacted with a sex dummy variable, and a temporary/permanent status dummy variable for the fixed and non-fixed characteristics models.
- Similarly, in the male and female models all controls are interacted with the temporary/permanent status dummy variable, and in the permanent and temporary models all controls are interacted with the sex dummy variable.
- All standard errors are robust to heteroscedasticity. *, ** and *** indicate statistical significance at the 10 per cent, 5 per cent and 1 per cent levels, respectively.
- Weighted using LFS income weights.

Resolution Foundation

Resolution Foundation is an independent research and policy organisation. Our goal is to improve the lives of people with low to middle incomes by delivering change in areas where they are currently disadvantaged. We do this by:

- » *undertaking research and economic analysis to understand the challenges facing people on a low to middle income;*
- » *developing practical and effective policy proposals; and*
- » *engaging with policy makers and stakeholders to influence decision-making and bring about change.*

For more information on this report, contact:

Lindsay Judge

Senior Research and Policy Analyst

Lindsay.judge@resolutionfoundation.org

0203 372 2951