



Caught in a Trap

Temporary Workers in Scotland

**Guidance on temporary contract working from
UNISON Scotland**

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Caught in a Trap –Temporary Workers

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Introduction

When the present Government came to power in 1997 they published the white paper "Fairness at Work". It stated: "The Government wants to see flexibility in the labour market, but it must be coupled with fairness. In the interests of both employers and employees, greater flexibility in both working patterns and contracts must be reflected in employment legislation". Traditionally employment protection legislation has been geared towards individuals with stable, regular full time jobs working for a single employer under an open-ended contract.

However working patterns and norms have changed over the last two decades and there has been a marked increase in the number of individuals whose working arrangements are described as 'atypical'. Around 82% of union reps have also reported that the number of people employed on temporary contracts in their workplace has increased in the last ten years. These include fixed term contracts, agency, casual and sessional workers.

Contributing factors for this change have included:

- an increase in female workers with family responsibilities leading to more part time and job sharing arrangements.
- technological developments which have more people working from home;
- short term funding in the public sector which has encouraged that sector to rely increasingly on atypical workers in an attempt to cut costs;
- and the focus on self-employment during the Thatcher years.

By way of a rough guide, from figures based on the Labour Force survey, out of a workforce of 28 million in the UK there are over 7 million part time workers, three million self employed workers and 1.5 million workers with more than one job. Furthermore 7.1% of workers are in temporary jobs, an increase of 0.4 per cent on 1999 and the number of agency temps has increased from around 70,000 in 1992 to 700,000 in 2002. Around one-third of the temporary agency workers in the EU work in the UK and unlike other member states, where a handful of large agencies dominate, there are around 17,000 temporary work agencies in the UK.

This huge increase in temporary workers and the introduction of employment legislation such as the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 and the Employment Act 2002, has combined to make this an issue of importance to both employers and trade unions alike.

UNISON, Scotland's largest trade union recognises the huge impact much of the new legislation and working practices have had on its members and other temporary workers in the public and private sector. As a result have produced this guide entitled: "Caught in a Trap".

The guide looks at the different type of temporary workers, the legislation affecting them, the implications of a life in temporary employment, the union's role in dealing with temporary workers and explores a positive way forward through the introduction of stable staffing policies.

Overview

Temporary workers traditionally report lower levels of job satisfaction, receive less work-related training and are less well paid than their counterparts in permanent employment. Many also report finding it difficult to plan their financial future with heavier penalties placed on loans and mortgages, they are usually less geographically flexible and are unable to have any sort of long-term career plan. As a result a large proportion of them feel undervalued, exposed and vulnerable.

For employers, temporary contracts are a means of ensuring that the returns to entrepreneurs and the start-up and demise of firms are unconstrained by alleged institutional rigidities such as employment restriction legislation and trade union activity. In periods of rapid technical change or demand volatility, temporary contracts allow firms to hire and fire workers as they wish and as the duration of a temporary job is invariably short of statutory requirements for redundancy pay, workers on temporary contracts can be costlessly laid off in a downturn. Severance costs can also contain a dead-weight element. There is a considerable cost in time and expense to a firm in being brought before an industrial tribunal to defend an unfair dismissal claim from a long serving employee.

As a result many firms may prefer a cushion of workers without employment rights who can be freely discharged in the event of adverse market conditions. In more recent times however there is evidence of decreasing employer enthusiasm for temporary contracts. Much of this has been as a result of the new legislation but also because employers are experiencing low levels of retention and motivation of such staff and the impact it has on overall staff morale. Despite the often high cost of discharging long serving employees there is now no particular reason for avoiding permanent appointments, especially in the public sector where many skills are transferable.

In an ideal competitive market, firms should be willing to pay a premium to gain the employment flexibility that temporary working provides them with. Therefore, all things being equal, temporary jobs should pay a higher wage than permanent jobs. This does not happen in practice. What we have in the UK is a pool of people caught on the temporary employment roundabout with none of the advantages of high wages but all the disadvantages of not having the permanent contracts enjoyed by their permanent counterparts. This translates into them not being able to plan for their future and ultimately being denied any right to proper career development.

WHAT IS A TEMPORARY WORKER?

One general description of a temporary or 'atypical' worker is someone who falls outside the traditional model of a regular, full time job with an open ended contract of employment. This includes agency workers, casual staff, sessional or 'bank' workers and those on fixed term contracts. Overall there are more temporary workers in the private sector, but public sector workers are nearly twice as likely to be in temporary work than their private sector counterparts. The public sector growth areas are health and social work, administration, education and maintenance.

Other characteristics of temporary workers are as follows:

- a substantial proportion of temporary workers are women (54%), women in part-time work (32%), young workers aged under 30 (44%) or from black or ethnic minorities (11%).
- It is no longer the case that temporary work is a characteristic of low-skilled and low-paid groups of workers. During the 1990s the highest growth in temporary employment has been among professionals, managers and technically qualified employees.
- Some workers positively choose to enter into temporary work, welcoming the autonomy and flexibility provided by short-term attachments which also enable them to 'play the field' and to attract higher income levels.
- Other workers can find themselves trapped in temporary work which offers limited career opportunities, exclusion from work-related benefits, high levels of job insecurity and economic insecurity and, in many cases, low pay.

Contracts

The type of contract between the parties is the key source of difference when it comes to the legal rights of UK workers and the crux of the issue lies in whether a person is termed a 'worker' or an 'employee'. Many flexible workers tend not to be 'employees' and this restricts the legal protection they enjoy at work.

The second key factor is length of service. Many key legal rights require a minimum amount of qualifying service and this is also a test that flexible workers struggle to meet.

Historically the number of hours worked per week was used as a way of limiting the protection offered to flexible workers. Prior to February 1995 unfair dismissal protection after two years service was only available to people employed for 16 hours or more per week. People working between 8 and 16 hours were required to have five years service whereas people working less than eight hours per week never acquired unfair dismissal protection.

Employee or Worker?

What is an employee?

There is no comprehensive statutory definition of an employee and existing case law discloses a lack of consensus on what criteria is appropriate to determine whether a particular individual is an employee or is self employed. One cause of this uncertainty is the sheer diversity of working arrangements from the self-employed, to freelancers, to those working on a casual basis to seasonal workers. Between the individual who is definitely an employee and the individual who is definitely an independent contractor there exists a wide spectrum of relationships.

It is however more beneficial to be termed an 'employee' rather than a 'worker'. The most significant employment rights, which are confined to employees, are contained in the Employment Rights Act 1996. These include the right to claim unfair dismissal, the right to claim a redundancy payment and the right to take maternity leave.

Section 230 (1) ER defines employee as 'an individual who has entered into or works under a contract of employment.' The purpose of this definition is to distinguish between individuals dependent upon an employer for their livelihood on one hand and self-employed individuals or independent contractors on the other. Between those working under a 'contract of service' and between those who are paid to do the job and those who are paid to get the job done.

What is a 'worker'

The concept of 'worker' in UK domestic legislation is a fairly recent development. Originating from European Law which saw the essential feature of an employment relationship for a worker as being 'for a certain period of time a person performs services for and under the direction of another person for which he/she receives remuneration.'

The definition of a worker which appears in Section 2.30 of the Employment Relations Act and which is relevant to the UK states that a worker is: "an individual who has entered into or works under (a) a contract of employment (b) any other contract, whether express or implied and whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business understanding carried on by the individual."

This definition includes, but is not restricted to, individuals employed under a contract of employment. It also potentially covers a wide range of individuals who provide personal services under a contract, provided the other party to that contract is not a client or customer. Thus many casual, freelance and self-employed workers are included. The definition is intended to exclude self-employed people who are genuinely pursuing a business activity on their own account.

Many of the factors which are relevant for deciding who is an employee is equally relevant for deciding who will be a worker. The DTI guidance on the definition of 'worker' for the purposes of the Working Time Regulations 1998 says that "in general a worker will be someone to whom an employer has a duty to provide work, who controls when and how it is done, supplies the tools and other equipment and pays tax and national insurance contributions."

The majority of agency workers and freelancers are likely to be workers. However there are exceptions and these are explained in more detail in the IDS Employment Law Supplement on 'Part Time and Atypical Workers'. In its simplest format the difference can be defined as follows:

An employee is someone who has an agreement with an employer to do a set amount of hours/work on a regular basis. If an employee is offered work, they have a duty to do that work. A worker does not have a right to receive work. They work 'as and when required'. Also, importantly, a worker can turn down the offer of work without being disciplined or damaging their contract in anyway. This is the key difference between an employee and a worker.

Legislation and the Temporary Worker

The legal rights of UK workers vary considerably depending on the nature of the relationship they have with their employer. The type of contract between the parties is the key source of difference and some flexible workers tend not to be 'employees' and this restricts the legal protection they enjoy at work.

The second key factor is length of service as many key legal rights require a minimum amount of qualifying service and, once again, this is a test that flexible workers struggle to meet. Historically the number of hours worked per week was used as a way of limiting the protection offered to flexible workers. Prior to February 1995 for example, unfair dismissal protection after two years service was only available to people employed for 16 hours or more per week. Part time workers now have full employment rights but there remains a common misconception that part timers have less protection.

Thus the changes in working patterns have left many workers outside the scope of the employment protection legislation and this is a problem that has been recognised and addressed at both European and national level.

In the UK the main pieces of legislation affecting the temporary worker include:

The Employment Rights Act 1996 section 2.30 and part 14, chapter 1,
The Employment Rights Act 1999
The Employment Rights Act 2002,
The Part Time Workers (Prevention of Less Favourable Treatment) Act,
The Fixed Term Workers (Prevention of Less Favourable Treatment) Act 2000
The Flexible Working Regulations 2002.
Conduct of Employment Agencies and Employment Business Regulations 2004.

Much of the drive, however, to introduce legislation which will help equalise temporary workers with permanent staff has come from Europe. The European Union, through the Community Charter of Fundamental Social Rights of Workers and the Social Action programme of 1989, identified the need for action to improve conditions in relation to forms of employment other than open ended contracts, such as fixed term, part time working, temporary work and seasonal work.

The EU were concerned that the growth of atypical working arrangements might lead to social dumping and were concerned that fixed term workers considered themselves on the lowest rung with no right to challenge contractual issues.

As a result the EC Directive No 91/383 on the health and safety of employees with fixed term contracts in temporary employment relationships was adopted. Subsequent employment legislation in Britain has tended to comply with this directive as much as possible.

The United Kingdom's main thrust in addressing inequalities in the temporary/permanent workers equation is covered the Government's 2002 legislation – The Fixed Term Employees (Less Favourable Treatment) Regulations which gives new rights to people in fixed term employment.

The key points of this legislation are as follows:

Fixed term employees should not be treated less favourably than comparable permanent employees on the grounds they are fixed term employees unless it is objectively justified.

The Regulations apply to employees on contracts that last for a specified period of time or will end when a specified task has been completed or a specified event does or does not happen. Examples include employees covering for maternity leave and peaks in demand and employees on task contracts such as setting up a database.

Fixed term employees can compare their conditions to employees who are not on fixed term contracts and are employed with the same employer to do the same or broadly similar work. Where relevant the comparator should have similar skills and qualifications to the fixed term employees. If there is no comparator in the establishment, a comparison can be made with a similar permanent employee working for the same employer in a different establishment.

Less favourable treatment can be assessed in one of two ways: either each of the fixed term employee's terms and conditions of employment should not be less favourable than the equivalent treatment given to their comparator or the fixed term employee's overall package of conditions should not be less favourable. In both instances any less favourable treatment would need to be justified on objective grounds.

Clarifying treatment: a fixed term employee has a right to ask their employer for a written statement setting out the reasons for less favourable treatment if they believe that this may have occurred. The employer must provide this statement within 21 days.

The use of successive fixed term contracts is limited to four years, unless the use of further fixed term contracts is justified on objective grounds. However it will be possible for employers and employees to increase or decrease this period or agree a different way to limit the use of successive fixed term contracts via collective or workforce agreements. For this part of the Regulations, service accumulated from July 10 2002 will count towards the four-year limit. There is no limit on the duration of the first fixed term contract, although if a contract of four years or more is renewed, it will be treated from then on as permanent unless the use of fixed term contract is objectively justified.

If a fixed term contract is renewed after the four year period it will be treated as a contract for an indefinite period (unless the use of a fixed term contract is objectively justified). A fixed term employee has a right to ask their employer for a written statement confirming that their contract is permanent, or setting out

objective reasons for the use of a fixed term contract beyond the four year period. The employer must provide this statement within 21 days.

Any redundancy or unfair dismissal or unfair dismissal waiver that is included in a fixed term contract which is agreed, extended or renewed after October 1 2002 will be invalid.

Fixed term employees should receive information on permanent vacancies in their organisations.

The end of a contract that expires when a specific task has been completed or a specific event does or does not happen will be a dismissal in law. The non-renewal of a fixed term contract concluded for a specified period of time is already a dismissal in law. Employees on these task contracts of one year or more will have a right to a written statement of reasons for this dismissal and the right not to be unfairly dismissed. If the contract last two years or more and the contract is not renewed by reason of redundancy the employee will have a right to a statutory redundancy payment.

Employees on fixed term contracts of three months or less will have a right to statutory sick pay and to payments on medical suspension, guaranteed payments and the right to receive and duty to give a week's notice after one month's continuous service. These new notice requirements only apply to a termination of the contract before it is due to expire. This will put these fixed term employees on the same footing as permanent and fixed term employees on longer contracts.

If fixed term employees believe they are being less favourably treated than a comparable permanent employee because they are fixed term so that their employer has infringed their rights under the Regulations, then they may present their case to an employment tribunal.

Equal Treatment

At the heart of the Fixed Term Regulations 2002 is the principle of equal treatment. This principle provides that fixed term employees have the right not to be treated less favourable than comparable permanent employees because they are fixed term, unless this can be objectively justified. As a result objective justification provides a potential legal loophole for employers in finding a way round the regulations. However before this can be ascertained, the employee has to find a comparable full time, permanent employee against which he or she can compare themselves to, to justify their own complaint that they have been treated unfairly as a direct result of them being a fixed term contract worker.

Comparable Employees

In order to determine whether a fixed term employee has been treated less favourably, it is necessary first to compare the way in which they have been treated compared to comparable permanent employees. This raises the question as to who is an appropriate comparator for these purposes.

There are three criteria when determining an appropriate comparator:

- are both employees employed by the same employer?
- are both employees engaged in the same or similar work?
- do both employees work at the same establishment?

Many have noted that the definition of comparable employees in the Regulations could prove to be the first hurdle for fixed term employees seeking to bring claims of less favourable treatment. If the employee chooses the wrong comparator his or her claim could fail. Moreover fixed term employees must choose an actual comparator and cannot rely on a hypothetical comparator. The strictness of the definition means that a fixed term employee may be unable to find an appropriate comparator with the result that their claim will fail before it gets off the ground

Once a comparable permanent employee has been identified and it has been established that the fixed term employee has received less favourable treatment than the comparable employee has, two further issues have to be addressed. That the treatment is on the grounds that the employee is a fixed term employee and the treatment cannot be objectively justified.

It is not sufficient for a fixed term employee simply to show that he or she has been treated less favourably than a comparable permanent employee. The reason for that treatment is crucial. The employee will only succeed where the less favourable treatment was 'on the grounds that the employee is a fixed term employee.' So an employee's claim will fail where the employer can show that the reason for treating the employee less favourably was some other factor. i.e. level of qualification or skills or a difference in work (this will also bring into account whether a proper comparator was used.) and so the claim will fail on two counts.

Objective Justification

Even if the reason for the less favourable treatment is the fact that the employee is on a fixed term contract the treatment will not be unlawful if it is justified on objective grounds.

Under the regulations there are two ways in which an employer can objectively justify less favourable treatment of a fixed term employee.

- by showing that there is an objective reason for not giving the fixed term employee a particular benefit or for giving him or her the benefit on inferior terms or
- by showing that the value of the fixed term employee's total package of terms and conditions is at least equal to the value of the comparable permanent employee's total package of terms and conditions.

Objective Reason

According to the DTI guide, employers need to ask themselves the question: “is there a good reason for treating this employee less favourably?” In asking this, they should give due regard to the needs and rights of individual employees and try to balance these against business objectives.

The Guide goes on to say that less favourable treatment will be justified on objective grounds if it can be shown that the treatment is:

- aimed at achieving a legitimate goal, for example a genuine business objective necessary to achieve that goal and
- an appropriate way to achieve that goal.

The Guide stresses that objective justification may be a matter of degree. Therefore, employers should consider whether it is possible to offer fixed term employees certain benefits on a pro rata basis rather than totally denying them the benefits.

One way in which employers are likely to seek to justify less favourable treatment of fixed term employees is on the basis of the cost of providing the benefit to them. The Guide notes that there are times when the cost of providing a particular benefit to a fixed term employee may be disproportionate to the benefit the employee would receive. In these circumstances the different treatment would be justified.

For example where a fixed term employee is on a three month contract and a comparable permanent employee has a company car, the employer may decide not to offer the fixed term employee a car if the cost of doing so is high and the need of the business for the employee to travel can be met in some other way. Such treatment would be objectively justified.

The Total Package

Regulation 4 states that where a fixed term employee is treated less favourably as regards the terms of their contract, this will be taken to be justified if the contractual terms, taken as a whole, are at least as favourable as those of the comparator.

What this means is that an employer can show that less favourable treatment of a fixed term employee is objectively justified if the value of the fixed term employee’s total package of terms and conditions is at least equal to the value of that of the comparable permanent employee.

What this means in essence is that the employer will be able to balance a less favourable condition against a more favourable one, so long as the fixed term employee’s over all employment package is not less favourable than that of the comparable permanent employee. For example an employer who wishes to restrict FT employees access to a company pension scheme may do so provided

the employees are adequately compensated in other ways i.e. by receiving an additional payment.

The impact of this legislation will clearly be a reduction in the number of people on fixed term contracts. However it will present management with fresh challenges, the most obvious being the need to re-deploy staff to minimise the possible need for redundancy. Equally there are real gains in the quality of recruitment, retention and performance and savings in costs.

The Regulations will apply to existing and new contracts and employers will now need to revise their existing arrangements to meet their legal obligations as well as review existing procedures for indefinite staff to accommodate the working arrangements of those formerly on fixed term contracts that become permanent.

Specific Categories of Workers

Casual Workers

Genuine casual workers are generally classified as independent contractors rather than employees. It is a characteristic of these relationships that there is no obligation to provide work and no obligation to accept it. Workers are free to work when they wish and employers are free to hire when they wish. Claims by casual staff to employee status, therefore, generally founder through lack of mutuality of obligation, which is now understood to be an essential prerequisite of the existence of a contract of service.

However informal working relationships encompass a wide spectrum of different situations. On the one hand, an individual may supply a few days' work to one employer or another here and there; on the other hand, an individual who begins to work on a casual basis may end up working, for example, every summer for the same employer over a period of years. Where a working arrangement settles into an informal but regular pattern over a period of time, it may be possible for an individual to argue that a contract of service exists.

A casual worker may be classified as an employee if:

He or she can show that the 'casual' label is simply an inaccurate description of a stable employment relationship.

He or she can point to the existence of a 'global' or 'umbrella' contract of employment, which continues to exist during periods when he or she is not working. Such a contract may be implied in circumstances where there is a relationship of such a long standing nature, even though work is done on a casual or piece work basis. The truth of the matter is that the employer is under a continuing obligation to provide work, which the worker is likewise obliged to accept. Continuity of employment can be established in these circumstances. The fact that an individual is free to work for another employer during periods when he or she is not required will be a relevant but not conclusive factor.

He or she can successfully argue that he or she worked under a succession of short-term contracts of service. Some courts have taken the view that very short-term hirings are incompatible with employee status so that, unless there is a global contract of employment spanning the gaps between jobs, the individual hirings must take the form of contracts for services. However, on another view, a particular hiring may take the form of a contract of employment and duration is not a decisive factor. The difficulty with this approach, in contrast to the 'global' approach is that it may not be possible to establish sufficient continuity of employment for the purposes of many rights under the Employment Rights Act. A gap between contracts will operate to break continuity unless it can be seen as a temporary cessation of work or an arrangement whereby the individual in question is to be regarded as continuing in employment.

Term time workers

In most cases these people are engaged under a contract of employment, usually on a fixed term designed to reflect school teaching terms or University semesters. These employees therefore enjoy full employment rights including protection against less favourable treatment on grounds of their fixed term contract status. However, there is an obvious issue about continuous service as these employees tend to have regular gaps in service. The law on continuous service bridges these gaps because the gap between terms is viewed as a temporary cessation in work, or because the person is regarded as continuing in an employment relationship (s.212(3) ERA 1996).

Agency workers

Increasingly popular is the hiring of workers through employment agencies. These arrangements are usually made pursuant to a third party contract in which the bureau contracts with the worker to provide work for a third party (business). Often the written terms of such contracts stipulate there will be no entitlement to holiday or sick pay, that there will be periods when no work is available and that the agency is not obliged to find work or to pay the worker at those times.

The supply of labour by agencies is governed by the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Business Regulations 1976.

The term 'employment agency' is defined as the business of 'providing services' for the purpose of finding workers employment with employers or of supplying employers with workers for employment by them. In practice this covers recruitment agencies whose business is to find employment for workers with another employer. Following this, their relationship with the worker generally comes to an end. It is unlikely that a tribunal would decide that a worker was an employee of an employment agency because under the definition the agency supplies the worker to another business for employment by that business. The worker's contract is with the organisation for whom he or she carries out work and the question of whether he or she is an employee or self-employed will depend on the usual common law principles.

The term 'employment business' is defined as a business of 'supplying persons in the employment of the person carrying on the business, to act for, and under the control of, other persons in any capacity'. In practice, this is concerned with bodies who business it is to supply labour to other businesses for particular jobs or periods of time. Their relationship with the worker is maintained. The common example could be the nursing agency who maintain lists of nurses and care workers and supply them to hirers for temporary periods. It is the tripartite nature of this arrangement, which often causes difficulties and, depending on the circumstances, a tribunal may find that a worker has a contract of employment with an employment business, with the hirer, or with no-one at all. The term 'employment agency' is often used as a generic term to encompass both types of organisation.

Temporary Workers – The Survey

UNISON Scotland's Policy and Information team carried out a snapshot survey of temporary workers within the public sector. The survey was designed to get a flavour of the conditions and expectations of the employees in this kind of work and should be viewed in this context. Survey forms were forwarded to temporary workers within all the public sector areas and we received responses from a wide cross section of temporary workers. The full survey results are set out in Appendix 1.

Summary

The survey threw up a number of issues for consideration.

It showed that major steps forward had been taken on the issue of induction and ongoing training for temporary workers.

Women were still the main 'victims' of this system of working with some never having the opportunity to return to permanent employment after maternity leave.

Many respondents appear to have found themselves trapped in low pay temporary jobs with little chance of career progression. One respondent surveyed had been in temporary post for 38 years and has been in her current temporary position for 15 years. She had left to have a baby and on return had simply moved from one temporary contract to another all within the same area of work.

Out of all those surveyed 36 per cent had not been in permanent employment for 10 years or more. Many of these people cited maternity or marriage for the reason they gave up their last permanent job again highlighting the fact that women are still having to make a choice between family and career and suffering in the workplace as a result.

Other reasons cited for leaving their last permanent post included:

- difficulties with employers;
- early retirement and relocation;
- The survey also highlighted the fact that some had more than one job.

Around 36 per cent of those surveyed had been in temporary contracts for less than a year with a further 9 per cent in their current temporary position for 2 years or less. A further 55 per cent were in temporary position for 2 years or more and therefore eligible - if they are on fixed term contracts - to have their positions made permanent under the new legislation as soon as it comes into effect.

Out of those surveyed, 40 per cent were on this type of contract while 50 per cent were sessional workers. Casual workers only took in 4.5 per cent of the respondents and another 4.5 per cent fell under the locum category.

68 per cent of the respondents were doing temporary work out of necessity while the remaining 31.8 per cent were doing this type of work through choice.

Out of those surveyed 68 per cent thought that there were no advantages to temporary contract working while 25 per cent cited lack of job security, inconsistency of hours and less rights than the full time workers as the main disadvantages.

Out of all the respondents 68 per cent were union members leaving a further 32 per cent with no formal representation in the workplace. Amongst the non-members it was level pegging on those who thought the union could make a difference and those who did not.

Another interesting factor was that none of the non-members had ever been approached by a union representative and invited to join a union posing the question of why unions are not recruiting this type of worker as effectively as permanent workers.

Treatment of temporary workers within the public sector seemed to be an area of some improvement in recent times with 77.3 per cent of the respondents having received the same induction process and 68.2 per cent have received the same ongoing training. These figures could be higher as 13.6 per cent didn't know what the induction scheme was for permanent employees and 18.2 per cent did not know what training facilities were on offer to their permanent colleagues.

On the issue of holiday pay and contributions to pensions 77.3 per cent claimed to have received some benefits and on further investigation of those who answered YES, 31.8 per cent received holiday pay and 9 per cent received a pension in some form and 4.5 % per cent received both. However 54 per cent failed to give a breakdown.

Advantages v Disadvantages

A snapshot of what respondents' claim are the advantages of temporary working:

- Suits lifestyle
- Can assess job before committing to it.
- Variable work opportunities

However, 82% of respondents said there were no advantages to temporary working.

Snapshot of what respondents' claim are the disadvantages:

- Lack of job security (23%)
- No long term career planning or forward planing (15%) – ring fenced funding
- Less rights than full time workers: unsociable hours, sick pay, holiday pay, pensions (23%)
- Financial implications i.e. poor wages, mortgage and loan difficulties, poor credit ratings due to short length and indefinite nature of contact, where to live

and if to buy, extra deposits on car as have to find payment before contract ends. (15%)

- Contractual issues (5%)
- Geographical inflexibility: family planning and care responsibilities: elderly relatives and children at school. (5%)

Where improvements could be made

The following comments were made in the survey as to areas where respondents would like to see improvements in temporary workers' conditions:

- Posts should be made permanent
- National Insurance rate of payment is too high especially when they are working two jobs
- Proper contracts
- Pay and conditions
- Equity with permanent staff
- Induction
- Equal pension rights
- Pay linked to years of service
- To be kept informed of changes in the workplace and involved in meetings
- If job is stopped because of issues outwith the workers' control even if they have FTC they are not paid (i.e. janitors - schools closed due to bad weather)
- Would like same respect, trust and consideration.

UNISON AND TEMPORARY WORKERS

An upsurge in the number of temporary workers coming into the workplace either through agencies or through fixed term contracts has been witnessed in recent times in the UK. In the last ten years around 82% of union representatives have reported an increase in the number of people employed on temporary contracts in their workplace. According to the European Information Service around 2.2 million people in the EU or 1.4% of the workforce are employed through temporary employment agencies. Around one third of the temporary agency workers in the EU, work in the UK and in the UK the DTI estimate that the number of people working in temporary jobs through agencies was approximately 700,000 in 2002.

This represents a major task for UNISON in the coming years as trade union issues raised by such a large and virtually untapped workforce are substantial. If UNISON is to deal effectively with this every increasing sector of the labour market then a number of challenges have to be taken on board.

Recruitment and retention

This requires workplace organisation in the shape of proper mapping exercises. This will identify where the temporary workers are in the organisation, what hours they work, the length of the contracts, the start and finish dates and whether the positions can eventually be identified as permanent. They will also have to counteract any emergence of a 'them and us' attitude amongst permanent and temporary members.

Legislation

There will be an increased workload with the understanding and implementation of the both the UK and the EU legislation which has come on the back of the increased number of temporary workers and their different contracts and methods of working.

Training and career development

Between 24% and 52% of people entering temporary work were previously unemployed according to one report and this raises issues on a potential membership which will put further pressure on the training and development resources of the union.

Agency workers

This will be the biggest challenge for any trade union. According to the DTI the number of people working in temporary jobs through agencies was approximately 700,000 in 2002 and around one third of the temporary agency workers in the EU work in the United Kingdom. The fact remains that the public sector is using more and more agency workers to fill posts. Therefore there has to be a determined effort by workplace representatives through effective monitoring and organisation to curtail the use of agency workers and to seek for permanent solutions to vacancies when they occur.

There is strength in numbers in any trade union and over the next few years the temporary workforce in the United Kingdom is going to continue to grow at a rapid rate especially in the public sector with the increase in PFI/PPP funded initiatives. As a result many firms may prefer a cushion of workers without employment rights who can be freely discharged in the event of adverse market conditions. It will now be up to the trade unions to be vigilant against the influx of temporary jobs and a downturn in permanent positions.

The Labour Force Survey of Spring 2002 found the distribution by industrial sector of temporary workers to be as follows:

Manufacturing	22.9%
Real estate, renting and business sector	21.1%
Health and social work	10.8%
Transport and communication	9.1%
Financial	6.9%
Construction	6.8%
Public admin and defence	6 %
Education	4.5%
Other	11.9%

ORGANISING TEMPORARY WORKERS

MAPPING YOUR WORKPLACE

From the survey results it can be seen that 100 per cent of the non-trade union employees had never been approached by a trade union representative and asked to join any union. There could be a number of reasons for this including the short term basis of many posts and the use of temporary staff in a workforce reduction context.

On further investigation it would also appear that temporary workers, by the very nature of their working patterns, have never been a priority in recruitment by trade union representatives. Indeed many organisers spoken to during the course of the research were, in fact, unaware as to how many temporary or fixed term contract workers were actually in their workplaces and what types of contracts they were on.

Other challenges which face the temporary worker and the union representative is the difficulty in communicating. The very nature of the work at times makes it difficult to enjoy the normal lines of communication open to other work colleagues if they are sessional, casual, shift, evening or 'bank' workers. Human resources departments are also singularly reluctant to release any information or statistics on how many temporary or fixed term workers exist within their organisations.

This 'out of sight, out of mind' approach raises a number of questions for trade unions and their organising and recruitment of staff. Organising the workplace has to be a key element in tackling this problem and one of the ways to do this is through mapping.

Mapping is a useful metaphor to describe collecting and analysing information about your workplace and the people in it. The information gleaned from this exercise will help workplace organisers:

- work out the extent of temporary working within their organisation,
- the different types of contracts people are on,
- the length of time they have been on these contracts
- and the level of trade union membership amongst this group.

Once gathered this information will provide the UNISON representative with enough intelligence to allow them to decide what the union's organising goals should be and also measure the amount of success they have in achieving them.

Some mapping information can be done as a desktop exercise. However, mapping is essentially something that can only be done by getting out and talking to people. Mapping is an organising tool and not a method of compiling dossiers for the filing cabinet and therefore has to involve all of the union team.

By involving the team and getting them out and about in the workplace, talking to people, seeking information and asking opinions you instantly raise the profile of the union, of the temporary workers issue and raise the stakes on recruitment as a result.

All this information does not have to be gathered at one go. A matrix map database can be built up over a period of time and extended as necessary. The best place to start is by drawing a basic matrix map, which shows the overall organisational position in your workplace. From this you can expand your matrix map to build in whatever information you will find useful for the mapping of temporary workers in the workplace. In this case it might be who the temporary workers are, which, if any department or area they are particularly prevalent in, the type of contracts they are on and the date which the job becomes permanent under the new legislation.

BUILDING A MATRIX MAP DATABASE

BASIC INFORMATION ABOUT THE WORKPLACE

You can begin to build up your matrix map database by collecting some key information about the staffing set up and the level of temporary workers and union membership in your workplace. This will give you an overall picture of the organisation’s human resources needs and allows you to gauge the level of temporary contract workers in each occupational group, in each department or area of work. It also tells you whether a group has a UNISON representative that can be a focal point for organising.

Department or Area of Work.....

Job or occupational group	No or % of members	No or % of non members	No of UNISON reps	No of fixed term contract workers	No of sessional, bank, agency workers

EXPANDING THE MATRIX MAP

You can expand the database by recording the pay system they have, aspects of their terms and conditions, aspects of their treatment in comparison to permanent members of staff and the issues, which affect them.

Type of contract	Working patterns	Pay system	Differences compared to permanent colleagues	Terms and conditions	Issues which affect them

MAPPING PEOPLE

Organising succeeds by making direct personal contact with people. You therefore need to continue to build your database by filling in the details for each person for each area of work or department. You may find it useful to record:

- a person’s gender or ethnic background - this may indicate any other issues which might affect them
- which people are members and which are not - this will influence your recruitment priorities and using this issue may influence their attitude towards UNISON - this will affect how you would approach them either to involve them in union activities or to join if they are not a member
- whether they seem to be a natural leader - this may indicate who could be an organising contact or future representative in this particular area.

There may be other useful items of information, which you would want to map also:

Department or Area of Work:

Attitude to UNISON	Member’s Rep	Non-active supporter	Anti-union		

The information in any matrix map will be constantly changing, especially when dealing with temporary workers. Some people will leave, new people will be taken on, and people’s attitudes will change as the union becomes more active on this issue. For example, representatives will no doubt hope to change some attitudes and increase levels of involvement and commitment.

It is therefore essential to keep the database up to date or it will ultimately be a wasted exercise.

SOCIOGRAMS

As the working habits of a temporary worker can vary enormously a sociogram may be another useful tool. The workplace organiser can use it to map the workplace and identify the different types of workers. A sociogram shows who comes into contact with whom in a workplace. A sociogram is particularly useful in a small workplace, or a workplace which has scattered workers who work in a variety of departments across a large area i.e. in a university or in a hospital.

The best way to start drawing a sociogram is for a small group of union reps and activists from your organising team to start identifying, who they come into contact with. This will help you to assess your organising potential and help you plan the quickest way of communicating with the largest number of people on a face-to-face basis

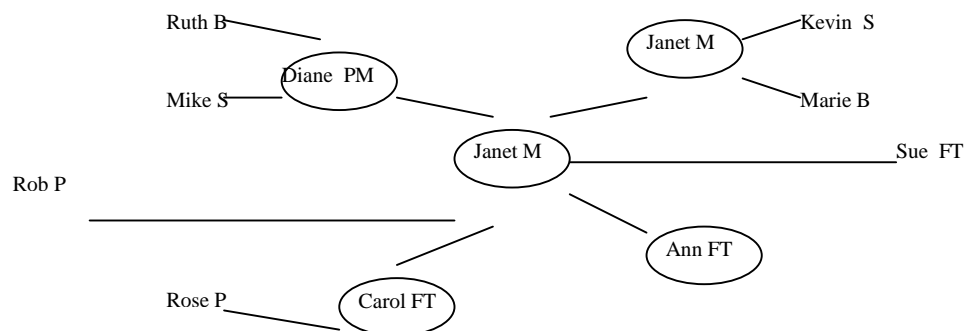
To draw up a sociogram, follow these steps:

on a piece of paper list all of the names of people in your workplace or work area you come into contact with.

draw a circle or circles representing yourself and the representatives

draw connecting lines to other workers you come in contact with at work.

draw more lines to those outside your work area that you: take a tea-break or meal-break with talk to at any time meet after work, socialise with and so on mark each of these people as members (M), potential members (PM) fixed term contracts (FT), sessional (S), bank(B), permanent(P).



MAPPING and ORGANISING

All of this information means that it will probably be necessary to have a number of different maps. The maps and analysis give a picture of where your efforts have to be concentrated in order to get more feedback from the temporary workforce. If you follow up on people in this field who would make leaders and continually look for workers with leadership and communication skills then you will be able to build up more UNISON contacts and reps as part of your organising team in all departments and work locations.

MANDATE FOR THE WORKPLACE – Stable Staffing Policies

UNISON recognises the ever increasing number of people working on fixed term and temporary contracts and is committed to ensuring that they receive the same equal and fair treatment from their employers as their permanent colleagues.

As a trade union, UNISON are also committed to reducing the existing number of fixed term and temporary contracts limiting them in the future through bargaining and the effective use of the legislation available. To carry out these objectives UNISON believes that the way forward for most organisations is the introduction of a stable staffing policy through negotiation and agreement with the employers.

The Reality of the Labour Market Situation

From the outset it has to be recognised that many departments and organisations have to operate in an ever-increasing competitive market. Often they can depend on a range of funding sources, some of them variable and insecure. They need to make full use of modern and flexible work organisation and to adopt patterns of work that will fit challenges in the future.

However just as important is the need to treat all employees fairly and to offer opportunities for staff in all the occupation groups to pursue and develop their careers. Where funding is insecure, they should aim to ensure that the diverse arrangements for resourcing do not lead to an over-reliance on fixed term and casual contracts. Nor should it lead to disjointed human resource planning, with the contingent risk of losing expert staff for whom there continues to be a valuable role.

The aim of any good stable staffing policy must be to achieve a proper balance between flexible working and organisational efficiency on the one hand and security of employment and fair treatment of employees on the other. Departmental and organisational objectives and resources will therefore vary and it is recommended that trade union representatives identify in partnership with their employers how the policy should be implemented and how progress can be monitored.

STABLE STAFFING POLICIES

Efforts to establish a stable staffing policy within the department/organisation should be made and should provide guidance on:

1. Implementing the legislation.
2. Encouraging employers to employ staff on indefinite contracts as the normal form of employment and to use fixed term and casual contracts only where there are transparent, necessary and objective reasons for doing so. In some workplaces they have introduced a ratio of permanent workers to temporary workers, while in others they can only use temporary workers when it is for maternity and ill health cover.

3. Identifying and assisting in the development of good practice in the use and management of fixed term and casual employment.
4. Where organisations or departments continue to use fixed term and casual employment in appropriate circumstances they should be aware of the different ways in which other employment legislation has a direct impact on this, as well as on indefinite employment. They will then need to put into place measures to meet these requirements.
5. Departments and organisations are recommended to examine their own particular circumstances which will vary according to their mission and available resources and are recommended to identify in partnership with the trade unions how the guidance can be implemented and how progress can be monitored.

In addition it is also recommended that all organisations should:

- Review and update their staff development policies to ensure they address the changing roles of staff. It is recommended that all institutions should, as part of their human resources policy, maintain equal opportunities policies, and, over the medium term, should identify and remove barriers which inhibit recruitment and progression for particular groups and monitor and publish their progress towards greater equality of opportunity for all groups.
- Publish their policies and make them readily available for all staff;
- Consider whether to seek the Investors in People award.

For further details contact:

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Temporary Workers Survey Results

TYPE OF CONTRACTS:

Fixed Term Contract:	40.9%
Sessional:	50%
Casual:	4.5%
Locum:	4.5%

Are you a temporary worker through choice or necessity?

Necessity:	68.18%
Choice:	31.8%

How long have you been in your current temporary post?

One year or under:	36.4%
1-2 years:	9.1%
3-5 years:	22.7%
5-10 years:	13.6%
10 years plus:	18.2%

Were you employed by the same employer as now in your previous job?

YES:	18.2%	NO:	31.8%	N/A:	50%
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When was the last time you had a permanent position and what was the reason for leaving?

Never:	5 %
Up to 1 year:	22.7 %
10-14 years:	13.6 %
15-20 years:	9.1 %
20 years plus:	18 %
No answer:	35 %

REASON FOR LEAVING

Retiral:	9 %
Relocation:	4.5 %
First job:	4.5 %
More than one job:	9 %
Difficulties with previous employer:	9 %
Maternity/marriage:	22.7 %
No reason given:	40.9 %

Did you receive the same induction process as permanent staff?

YES: 77.3% NO: 9.1% DON'T KNOW: 13.6%

Have you received the same ongoing training as permanent staff?

YES: 68.2% NO: 13.6% DON'T KNOW: 18.2%

Have you ever had holiday pay or contributed to a pension?

YES: 77.3% NO: 22.7%

BREAKDOWN OF THOSE WHO RESPONDED YES:

Holiday pay:	31.8%
Pension scheme:	9.1%
Both:	4.5%
No breakdown:	54 %

What are the advantages and the disadvantages of being a temporary worker?

Advantages:

Suits lifestyle
Can assess job first

Disadvantages

No job security
Less rights than full time workers i.e: lower pay, unsociable hours, sick pay, holiday pay, pensions.
Financial implications: mortgage and loan difficulties
Geographical implications; need to be near elderly relatives, schools etc
Contractual issues
Unable to plan your future.

Are you a trade union member?

YES; 68% NO: 35%

If you are not a member have you ever been asked to join

YES: 0% NO: 100%

Do you think being a member of a union would help your position?

Amongst members:

YES: 53.3% NO: 6.6% DON'T KNOW: 40%

Amongst non members:

YES: 43% NO: 28.6% DON'T KNOW: 28.6%

What areas would you like to see improvement in as regards temporary working.
(Topics are ranked in order of preference.)

- Proper contracts
- Wages
- All temporary posts made permanent after a set period of time
- National insurance rate changed for people with more than one job.
- Proper inductions and kept informed of changes and involved in meetings
- Salary linked to the number of years worked
- Opportunities to enter permanent employment
- Equity in all things with permanent staff i.e. holidays, pensions, respect and consideration.
- Paid wages if work is stopped because of issues outwith workers control.