

**THE DIFFERENCE THAT MIGRATION AND EMPLOYMENT MAKE:
A CROSS-SECTORAL ANALYSIS OF ACCESS TO EMPLOYMENT SECURITY
AND SOCIAL PROTECTION FOR MIGRANTS IN THE UK**

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Introduction

In a high income country such as the UK the migrant workforce is composed of both European Union and Third Country Nationals (TCNs). However, the relative free movement in the UK labour market enjoyed by EU migrants does not guarantee employment security and social protection. The threat of ‘social dumping’ is widely discussed in the literature, where various cases of exploitative working conditions experienced by migrants and ‘posted workers’ are reported (Lillie and Greer 2007; Krings 2009). Both EU and non-EU migrants continue to be largely employed in sectors with transient and agency employment such as construction and hospitality (Alberti 2014; Meardi et al. 2012; Lucas and Mansfield, 2010, Chan et al 2010).

This paper combines the literature on the effects of migration policy on the UK labour market (Anderson, 2010) with theories of organizational and labour fragmentation (Marchington et al. 2005) as key frameworks to understand the way differentiation and social exclusion are produced across employment and migrant statuses of workers. These processes have been analysed according to migrant categories of entry, arguing that the system of immigration controls produces certain categories of migrants as more vulnerable than others in terms of their employment relationship (Anderson 2010; Fudge 2012). Along with immigration status other dimensions related to the employment arrangements of migrant workers such as the intermediated, transient and fragmented nature of the industry affect their conditions on the ground. How are then insecure employment relations produced in the context of migrant labour *despite* and *through* the regulatory frameworks in place for agency and posted workers? What is the role of the multi-employer relationship and intermediaries in managing

this employment insecurity? And finally, what are the implications for migrant precarious workers' access to social protection, including their right and capacity to join trade unions?

The paper draws from two pieces of qualitative research on migrant workers in the UK conducted by the authors across the hospitality and the construction sectors, namely a participatory study in the London's temporary staffing industry for hospitality jobs (2007-09) and two case studies of construction sites in Northern England (2014)³. Comparing the cases, the authors explore the nexus between the precarious migrant and employment statuses of workers in two typically 'migrant sectors' of the UK economy drawing from the perspectives of workers and trade unionists on the ground. Factors such as the degree of complexity and 'length' of the subcontracting chain and high occupational mobility across multi-employers create a *spectrum* of employment conditions that identify different degrees and forms of employment (in)security.

The main argument is that while the combination of migration and employment status produces different degrees of insecurity beyond the mere distinction EU/non-EU migrants, only by locating the policy and contractual differentiation of migrants in the context of organizational change in these sectors, it is possible to identify useful practices to advance migrants' working and social conditions.

Theoretical background

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Fragmentation through outsourcing and subcontracting has reshaped the relationship between employer and employee and how this is managed and regulated. Subcontracting often involves the shift from a single to a 'multi-employer relationship' whose outcomes include: different terms and conditions for workers employed by different companies or agencies (Marchington, Rubery and Cooke 2005; Lillie and Greer 2007); shifts between different forms of contingent and direct employment (Forde, MacKenzie and Robinson 2009); a twin tension between cooperation and conflict among the different employers and workers (Rubery, Earnshaw and Marchington 2005); uncertainty about the layers of accountability (Gottfried 1991; MacKenzie 2000; Grimshaw and Rubery 2005).

Posting, which currently in Britain is predominantly found in construction (Clark 2012; Fitzgerald 2010), is the result of the subcontracting of outsourced labour with companies bringing their own co-workers to execute the job from overseas. Subcontracting in the case of non-local companies in particular, has created new borders among the workforce, and therefore has been working against the social protection of posted workers by impeding the effective enforcement of their rights (Wagner, forthcoming). Agency employment in an industry such as hospitality can be also considered the result of the fragmentation of the contracting chain, whereby hotel management companies outsource entire departments to contractors (e.g. cleaning and food and beverage), or rely on temporary staffing agencies for the recruitment of the workforce.

As a result of subcontracting and the multi-employer situation, workers, especially non-local, have difficulties in addressing their grievances (Grimshaw and Rubery 2005) and articulating their voice (Marchington, Rubery and Cooke 2005). This makes it easier for them to be exploited, especially when there is no or weak representation in the workplace (Holgate

2005). Wills (2009) argues that subcontracted employment is putting increasing pressure on workers' conditions and wages, disempowering certain categories, in particular migrants. As Meardi et al. (2012: 19) put it '[n]ew migrants' situation of uncertainty is one of maximum risk and minimum 'voice'.

Taking this literature as reference point we develop a fine-grained ethnographic analysis of how these multiple and fragmented employment relations influence migrant workers' access to employment security and social protection. We are interested in the ways in which *different categories of migrants* experience employment insecurity and the transitory nature of their jobs, and how these are *produced* by the complex regulatory contractual arrangements predominant in the construction and hospitality sectors.

The literature on migration and precarious work adds precious insights to the debate on multi-employer settings by highlighting the role that *migration policies* play in further segmenting the supply of labour. The work of Anderson (2010) is particularly useful since it details how migration controls in the UK give rise to specific precarious employment norms, showing how the differentiation of rights and entitlements for migrant workers through migration policies create specific employment practices that structure migrants' peculiar vulnerability. These elements include, among others, categories of entrants, length of work permit and duration of visa, types of occupations and sectors where migrants tend to be recruited and the degree of migrants' dependency on a particular employer in order to maintain their legal status. A key point already highlighted by Anderson and Ruhs (2010) is the *mutually constituted* nature of migrants' transiency and the segmented nature of the section of the labour market where they become incorporated.

Fudge (2012) has further explored the ways in which the nexus between employment and migration status produces precariousness in the labour market. Beside the categories of entry we need to look at the norms and practices that characterise migrants' employment relations once in the country and those already in place in particular sectors of the economy. Fudge suggests to complement Anderson's classification with Goldring et al. (2009)'s definitions of precarious migrant statuses characterised by a continuum of presence/absence of rights and entitlements, and Vosko (2006: 11)'s emphasis on the 'legal and political categories of citizenship' influencing migrants' exclusion from the 'Standard Employment Relationship'. Fudge's revised 'taxonomy of migrant status' by positioning migrants in their different 'labour market locations' and including conditions of entry and social entitlements appears particularly suitable to our research, which detects the *processes of differentiation* that occur across the employment and migrant status of agency and posted workers in the UK.

Posting and agency working in the UK

Statistics show that the number of non-British born individuals working in the UK has doubled from 7,2% in 1993 to 14,4% in 2011, and foreign citizens increased from 3,5% in 1993 to 9,2% in 2011, with a significant bump in 2006 (Rienzo 2012). This was the year when the UK labour market was opened to workers from the A8 and A2 countries in the context of the EU Enlargement⁴. The figures, however, do not count those who stay in the country for six months or less or the employment of irregular migrants (Fitzgerald 2010).

⁴ The Accession 8 countries include: Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia who entered the EU in 2004. Bulgaria and Romania ('A2') became EU members in 2007, yet workers from these two countries have been subject to restrictions with regard their rights: until 2013 they could come and work in the UK as free moving EU citizens only under specific occupational and quota-based schemes (in the agricultural and food processing sectors).

Since 2008 with the changes in migration policy the number of immigrants has slowly been decreasing. Nevertheless, percentages of categories such as skilled workers, youth mobility and temporary workers have been growing (if only by 2%) (ONS 2013).

The British government does not collect data on entry and departure of the posted workers, and partial inferred data vary from 15,000 for 2007 (Novitz 2010) to 40,000-50,000 yearly for the period 2006-2010 (Clark 2012). Posted workers come mainly from southern and eastern Europe, mostly employed in the construction sector (Clark 2012) and agriculture (Fitzgerald 2010). While numbers for posted workers across the 27 EU Member States can be drawn from the number of E101 social security certificates, they do not include the very temporary forms of posting done via employment agencies (ECORYS 2011).

The scale of agency working associated to other categories of non-posted EU and non-EU migrants is even more difficult to ascertain. Firstly, the *diversity* of statuses included under the category of ‘temporary work’ in official surveys makes it very difficult to collect accurate data about agency employment. The UK Labour Force Surveys (LSF) tend to underestimate numbers because of definitional issues, whereby workers supplied by agencies can be classified as fixed-term workers or self-employed while those who are ‘supplied by an agency but paid by the user’ may be missed in the calculation (Markova and McKay, 2008: 6). Estimates by Forde and Slater (2005) that agency workers made up 16% of all temp workers (about 270,000) may be also miscounting the actual proportion since the figure from the Department of Trade and Industry was closer to 600,000 (McDowell et al. 2008: 755). A TUC report (2008) claims that because of the informal employment practices experienced by migrants, it is even harder to draw statistics on the number of non-EU agency workers in the UK.

Qualitative research in London's hospitality has detected the correspondence between the growing use of agency work by employers and intensified patterns of labour migration, also as a result of the Enlargement (Alberti 2014a; McDowell et al., 2008; McKay 2009; TUC 2007). The assumption that the A8 arrivals would make migration from outside the EU for low skilled jobs unnecessary has had a major impact on government policies on the immigration of TCNs in the UK, as this country did not apply transitional measures. The restrictions introduced by the Points Based System (PBS) since 2008 and the choice not to activate the only channel for 'low-skilled' workers (Tier 3 of the PBS), reflected the government's assumption to fill in the persisting vacancies in low-skilled sectors such as hospitality with the new 'Accession workers' (Krings 2009; McKay 2008a).

Independently from patterns of substitution, the growing numbers of posted, agency workers and free movers who entered the UK upon Enlargement have tended to concentrate in low wage, low skill work, with critical implications for the sectors researched here (Drinkwater et al. 2009; Wills et al. 2010). Some argued how the precariousness of these migrants persisted despite having gained EU free movements rights. Their autonomy in accessing the host state' labour market can be limited by the fact of being employed under posting and agency agreements (Novitz 2011; Heyes and Novitz 2013). It appears therefore that the *contractual arrangements* and employment relations regime under which these migrant workers operate limit the benefits of their relative freer migrant status as compared to non-EU nationals. Posted workers appear to have limited mobility in the UK labour market in that they are a special category of internal EU migrant '...without at any time gaining access to the labour market of the host member state' (Heyes and Novitz 2013: 456).

Our studies below further explore the nexus between migrant and employment status in the context of the structural re-organisation of work and employment at the sectoral level.

Methodology

This paper draws from two pieces of qualitative research on migrant precarious workers in the UK conducted separately by the authors between 2007 and 2014 across the hospitality and the construction sectors.

The empirical research on the hospitality industry comprises a two-phase multi-sited ethnography on migrant workers in the hospitality industry conducted in London between 2007 and 2010. One phase involved a period of four months of covert research in two temporary job agencies, specialised in dispatching migrant workers for shift work in restaurants, housekeeping and catering jobs. The second phase involved sixteen months of overt participation in a trade union-led campaign to promote the rights of hotel workers across two establishments of a large international hotel chain in Central London. Fifty among migrant workers, union and community practitioners involved in the industry have been interviewed across the two phases of the research. Part of the findings from both the covert and overt participatory research has been already published elsewhere and are not reproduced here (Alberti 2014a, 2014b).

The empirical research in the construction industry focuses on two case studies of large construction sites in Northern England conducted during 2014. Thirty in-depth interviews were conducted with migrant (posted and agency) workers, union representatives and officials, and managers. These were complemented with participant observations during the visits in the workplaces and accommodation. Posted workers in both sites were recruited

either as co-workers, i.e. people who have been with the same company for years; as newly recruited by the contractor prior to the start of the project; or as agency workers.

All the real names of individuals and organizations, including the trade unionists and employers involved in the sectors, have been replaced with pseudonyms for ethical reasons, including protecting confidentiality and the vulnerable positions of migrant workers.

The discussion draws from the interviews across both pieces of research that covered migrants' experiences of employment under multiple employers and fragmented contractual conditions. The data analysis focuses on the ways in which migrants inhabit these multiple working spaces exploring in particular: the effects of employment regulation differentiating among workers' terms and conditions; the impact of industry/workplace restructuring including subcontracting/outsourcing on workers' employment security; the combined effects of their employment and migrant status; and migrant workers' own understanding of how these fragmented work relations affect their transitory lives as well as their capacity to access social protection.

The two sectors offered a fertile ground for a cross-industry comparison in light of the typically migrant composition of the workforce and the relatively low-paid and transitory and intensive nature of employment in both sectors. However, the authors took into account the structural differences across them and incorporated them into the analysis, including the fixed-term and project-case nature of work in the case of construction as opposed to the continuous, if fluctuating, labour demand characterising the hospitality sector. The study makes a methodological contribution to both the literature on changing employment relations and migration, since there has been a dearth of systematic cross-industry/sectoral comparative research on migrant precarious employment considering migrant workers' own voice and experiences of multi-employer settings.

Analysis

Constructing the exceptionality of agency and posted workers

In this section we explore how the differentiation of migrant labour in the two sectors is produced through the regulation and proliferation of contractual categories, with a focus on subcontracting as a common phenomenon across posting and agency working. As part of these processes of differentiation we consider the ‘exceptional’ status of both posted workers and agency workers to explain their relative greater insecurity as compared to directly employed and permanent employees.

In both industries a wide range of contractual *types* were found in the same working space. Hotel and catering workers in London can be hired directly or indirectly by the hotel or through agencies, or they can be directly employed while remaining ‘casual,’ on a permanent or part-time basis. From research in construction we find that most workers are either hired through subcontracting, employment agencies, or self-employed. Even in the cases when they work continuously for the same subcontractor, they are rather employed with an open-ended *discontinuous contract*, and only rarely provided with direct permanent employment.

A major difference between agency and in-house workers lies in the juridical definition of the employment status of an agency worker in that she is not considered a proper employee but a ‘worker on a contract for services’ (Rubery et al. 2005; TUC 2007). This status implies only statutory minimum entitlements and workers’ exclusion from important rights and benefits

such as protection from unfair dismissal, redundancy protection, a minimum notice period and rights to maternity and paternity leave (TUC 2007).⁵

These aspects have not been fundamentally challenged by the recently introduced Agency Workers Regulations (in force since October 2011). As applied in the UK, the EU Directive from which the Agency Regulations originate does not affect the *employment status* of temporary workers: only ‘after 12 weeks in a given job, an agency worker will be entitled to equal treatment (at least the basic working and employment conditions that would apply to the worker concerned if s/he had been recruited directly by that undertaking to occupy the same job)’ (Forde and Slater 2011:7). Various commentators, including the TUC, expressed their concern that agencies will circumvent the new rights by moving agency workers around within the same workplace, or between employers. Beside the persisting problems with identifying the ‘comparator’ employee providing the reference for applying equal and problems with enforcement conditions (TUC 2013), Novitz (2011) highlighted how the category of agency workers, similarly to EU posted workers, remain excluded from fundamental access to bargaining rights and freedom of association.

The definition of posting in construction also presents challenges for the workers and the unions in the sector. Posted workers differ from the locally-hired workforce, be those natives or individual immigrants, because they are employed through agencies or companies who send their own co-workers to work temporarily in another EU country. Their status is regulated by the Posted Workers Directive (96/71/EC) and the subsequent Enforcement Directive (2014/67/EU).

⁵ The general employment rights that apply to all workers independently from their contractual status are in fact limited to the right to the National Minimum Wage and Working Time Regulation (TUC 2007: 6).

Officially, posting contracts are supposed to be for a definite time period, and agreements about payment and working terms and conditions are made prior to the transfer to the host country. Since the introduction of the Directive (96/71/EC), political and legal debates have put into question whether posted workers should be granted host or sending country's terms and conditions, which have been reflected in a number of cases at the European Court of Justice. The judgements in these cases have reconfirmed the consideration of the movement of posted workers *as services*, and have, therefore, favoured differentiation between locally-hired and posted workers⁶. Although, the new Posting of Workers Enforcement Directive (2014/67/EU) aims to better safeguard the rights and obligations of workers and companies in an attempt to prevent social dumping, it has been criticised for giving companies more leeway to interpret terms and conditions (ETUC 2014).⁷

It is worth noticing that internal market free movement provisions afford EU workers equal treatment with regards to conditions of employment and access to social security. In contrast posted workers are de facto deprived of the entitlement to equal treatment with workers in the country of employment on the basis of their exceptional status as workers posted by a company to provide a service rather than free individual movers. This exceptionality of employment conditions, where at best posted workers are covered by the lowest minimum wage standards generally applied in the host country, is meant to rather 'protect' the economic freedoms on which the employer relies. In practice, some of the main characteristics of posting have been temporary and unsecure employment, shady contracts with ongoing trial periods during which workers could be fired at any time, longer working

⁶ For example, the judgment in *Rüffert* undermines the request of the trade unions to award service contracts only to those companies that agree to the terms of the collective agreements. And the *Laval* judgment has put significant limitations to the trade unions ability to call for industrial action when it comes to issues about posting (Novitz 2010).

⁷ The price for not 'creating unnecessary administrative burden to service providers' (see paragraphs 4 and 5) puts workers in more vulnerable employment conditions than ever before.

hours, poor living conditions, less holidays, less (or at least unclear) health and social insurance (Lillie and Greer 2007; Lillie, Wagner and Berntsen 2014; Berntsen and Lillie 2014; Wagner 2014). Many of the same issues are suffered by migrant (non-posted) agency workers coming from both within and outside the EU (McDowell et al. 2008; McKay 2008; Alberti 2014a).

The functions of subcontracting and the agency vs. in-house divide

Having considered the wider regulatory constraints that ‘produce’ agency and posted workers as inherently marginal workers (see also Vosko 2010), the section below illustrates how these regulatory differentiations become entrenched as processes of subcontracting unfold in both sectors under the restructuring of business’ supply chains. In this context, agencies, contractors and intermediaries appear to have a key role in the management of agency and posted migrant workers’ everyday conditions. The increasing reliance on subcontracting and agency work has been highlighted as a common trait across different countries and industries (Bernhardt et al. 2003; Forde, MacKenzie and Robinson 2009).

The objective of subcontracting is dual-faceted: *reducing costs* and *outsourcing risks* to the agencies (TUC 2007). In hospitality, it has been seen as part of the cost cutting strategies as hotel businesses are put under pressure by increasing global competition and change their HR strategies in light of corporatisation and merging (Bernhardt et al. 2003; Bolton and Houlihan 2009). One of the union officers from the hotel workers branch helped identify the significant link in the industry between the *wider restructuring* of the global hotel industry and the strategy of outsourcing labour recruitment through the use of agencies. Consolidation and the growing separation of management operations from the ownership of the estates lead indeed

to pressure to reduce labour costs. According to the trade unionist, this creates a situation where:

...workers have *no relation with people* but only agencies as the employee no longer recognises hotel management as her/his immediate employer...

(Tom, part-time officer, London Hotel Worker branch)

Temporary staffing agencies appear particularly congenial to helping hotels reduce labour costs and manage the high turnover of the workforce. Through the transfer from the hotel to the agencies of tasks associated with new hires, hotels decrease expenditure associated with HRM (Lai and Baum 2005: 96). According to research in the sector, even when hotel management doubt the overall advantages of using agency labour, the reliance on temp agencies appears fundamental to recruitment or the *replacement* of leaving or retiring core staff (Vanselow et al. 2008) with workers who are keen to accept lower terms and conditions.

Similarly in construction, numerical flexibility is the main reason for subcontracting, agency and self-employment, followed by the reduction of labour and non-wage labour costs (Forde, MacKenzie and Robinson 2009). These practices seem more prevalent when it comes to foreign subcontractors who hire posted workers (Lillie and Greer 2007), which is supported by our empirical data in construction. Hiring posted workers has financial benefits for main contractors, who hire subcontractors to post workers at lower budgets which they realize at workers' expense:

The Spanish companies want you *to do everything with little money*. So what do they do? They do a project with a low budget. ... Why [company] gives the job to a Spanish company and not to an English one? Because the English company *is more expensive*, they have to comply with everything here in England: paying salaries,

respecting that everyone does his job. ... The Spanish company lowers the budget by ordering people to *work faster* for less salary and that you do a variety of jobs...

(Cervantes, Spain, 7 months in UK posted/agency worker, welder)

Uncertainty about employment roles: extension and intensification of working time

The increasing fragmentation of employment contracts across these sectors does not only shape migrant workers' relative greater employment and social insecurity. Differentiation of contractual and migration status among the workforce appeared to have a direct impact on the ways in which migrant agency and posted workers carried out their daily tasks, inducing them to extend their working day even with no guarantee of over-time payment. *Changes in the nature of work* and the extension of insecurity onto longer-term employees also seem to be a consequence of subcontracting.

The intermediary role played by the staffing agency acting as a 'third party' between the hotel workers and the main employer leads to the long-debated issues associated with the triangular employment relationship. While the agency tries in different ways to preserve its status as the employer of record, the employer exerts forms of direct control on the actual labour process such that workers themselves often perceive supervisors as being the real boss (Gottfried 1991). Confusion and uncertainty over employment roles can lead to an *intensification* of the pace of work and an inclination to accepting poor conditions on the part of the agency worker, who cannot discern who is responsible for retaining them.

Qualitative studies in other countries have also shown how through the 'institutionalisation of uncertainty', agencies limit temp-workers' capacity to resist their poor conditions of employment (Vosko 2000).

We found a similar situation among posted workers. As the Spanish welder explained, the contracts are secured thanks to a competitive (lower) budget proposal that can be achieved only if the overall time for the execution of the work is decreased, achieved only if work intensity is increased. Furthermore, workers are asked to work on tasks beyond the scope of their trade.

Agency workers disclosed the subtle mechanism of blackmail intrinsic to their intermediated or relatively more precarious employment status at the origin of their assumed ‘availability’ to extend their working day and do unpaid overtime. For one casual worker there was simply no alternative but to finish the amount of work assigned in the Food and Beverage department, even when this implied longer working hours:

... there are times when I am forced to stay until late in the evening... I mean I am not forced but in practice, even if it means to stay two or four hours over time... it is better to stay if you want to keep the job.

(Informal interview with Fabio, Brazil, 3 years in London, casual worker)

Both agency and ‘casual’ workers reported regular cases of unpaid overtime. In some cases they would work 17 hours a day as a result of combining different shifts, with a few hours in between needed for transportation (Informal interview with Bella, Eritrea, 7 years in London, agency worker).

Extreme ‘stretching’ of workers’ physical capacities in order to complete their working day appeared a relatively common phenomenon, which partly emerged from the very structure of agency work and the workers’ need to combine different jobs and shifts in order to obtain a sufficient income to survive. ‘Long and anti-social hours’ is indeed a problem often mentioned by the literature focusing on the hospitality sector (TUC 2007; TUC 2008; Wills et

al. 2010). Agency workers were expected to be ready to accept strenuous and irregular patterns of work because of their precarious employment status. Still, the issue of long and anti-social hours and the impossibility for workers to manage their working time according to their own needs were of great concern *for both* agency and in-house, relatively long-term, hotel workers and appeared to be a trait of the style of the new management company as it will be further discussed below.

The question of extension of the working time for agency workers is also related to the ways in which the Working Time regulation is enforced. National Minimum Wage and Working Time regulations are already applied to agency workers as workers. However, in the course of the participatory research in the agencies (Jan-May 2008), the signing off of the ‘opt out form’ from the 48 hours working time limits was witnessed as normal practice. Despite the fact that it is unlawful for the agency to put pressure on anyone to opt out, this was normal practice at the point of registration with the agency.⁸ Despite the fact that agency workers cannot be required to work longer shifts than those directly employed, this is a pattern that appears embedded in the inferiorized worker status of this category. Overall the equal treatment principle of the new Agency Regulations is likely to have only limited effects in terms of working time for these workers (TUC 2013; see also Forde et al. 2008).

Overtime was typical in construction, as well. Although we did not find any examples of non-paid overtime in our cases, the mechanism of blackmail became evident in the pressure to finish within a tight schedule that obliged workers to work overtime and throughout the whole weekend in various occasions. When interviewed, they explained that it was because they had a deadline to meet:

⁸ According to the new Agency Regulations after completing the 12 weeks qualifying period agency workers are now entitled to equal treatment on the duration of working time, that is they cannot opt out any longer, although this still depends on whether the hirer’s employees are not also asked to opt-out. Arguably the opting out of the weekly time limits remains a common practice even for those directly employed in such low-paid sectors, and especially at times of increasing competition at the bottom end of the labour market (TUC 2013).

S: How many hours usually? Like on average?

C: 68 hrs.

S: so you work 7 days or 6?

C: currently 7, because of deadline. Some parts of the job need to be finished soon, so this is why. We have to finish some work at the pressure sector as they are planning some test on it soon so it needs to be done, and then we will continue doing some different work.

(Czaykowski, Poland, 5 months in UK, posted worker, welder)

Paid or unpaid extra workload appears easier to impose on workers employed through a third party precisely due to their more insecure status and under the condition of easier dismissal.

During the visits in the two construction sites, there was the opportunity to observe the agency workers employed in the civil construction works. Speaking of the agency workers' conditions, shop stewards on site spoke of 'a good deal of exploitation' and described it like a 'regime of fear most of the time' where workers 'can be picked up and dropped at the drop of a hat' (Group interview with shop stewards, 29 April 2014).

The 'migrant divide'

The data showed how the combination of the migrant and employment status of the workers created specific circumstances for making them vulnerable and particularly attractive to employers.

P:... People keep on coming and going! So they decided to employ agency...

R: And, for you, why do people *leave*?

P: Because the workers do not accept poor wages! (...) the employers of *these foreigners* did not even pay the minimum wage ...these workers are willing to work from morning to night! That is why they *called them in* now. (They work) 6-7 days a week... and when they finish morning they go to the evening shift 'cause they want to have *extra money*...

(Priscilla, Nigeria, 17 years in London, in-house, housekeeper)

It emerged that the labour intensive nature of both industries is maintained through some key characteristics of these workers as migrant workers. Beside their employment conditions, the *migrant and mobile status of these workers* explains their assumed willingness to work longer hours per week, extend their working day and being more compliant to their employer/agency. Research exploring employers' preference for migrant labour has highlighted how migrants are perceived as working harder because of their interest in maximising income in the shortest time possible (MacKenzie and Forde 2009); because they need to send money back home (Dench et al. 2006); or because they plan to stay only for a short period (Janta et al. 2009).

Non-EU migrants under student visa appeared *even more dependable* on their agency employer and willing to work hard and long hours paradoxically because of fear of being reported if they were found breaching the 20 hours of work limit. We found indeed a proliferation not only of employment statuses in the same working space, but also of migratory statuses that have a major impact on workers' sense of insecurity. In hospitality for instance migrant agency workers entered the country on a variety of visa/non-visa types with different entitlements to work attached to them. For example: non-EU migrants entered on a temporary student visa were allowed to work only 20 hours per week; the EU migrant agency

workers from A8 enjoyed free movement rights in the UK labour market; some other non-EU migrants holders of temporary work permits, did not fit neatly in any category as their status had become uncertain after the changes in the immigration system and appeared more submissive.

Another major source of cost cutting for employers hiring contingent workforce, is the possibility of avoiding or minimizing benefits, which was possible both due to their migrant and employment status. In the hotel industry, the advantage of hiring agency staff lies in the possibility of avoiding those ‘fringe benefits’ (i.e. maternity leave payments and holiday entitlements)⁹ that hotels would normally pay to their permanent staff (Lai and Baum 2005: 96).

In construction, we observed two simultaneous strategies of reducing social insurance related expenses. Most workers were offered an open-ended discontinuous contract, and therefore were not paid many benefits apart from basic unemployment in their home country. Secondly, some of the companies who hired them preferred to ‘post’ workers for a period of *less than six months* in order to be able to pay social insurance in the country of origin. In the case of workers from Southern Europe this meant less than what companies would have to pay in the UK.

Again, we can see how *the combination* of migrant and employment status shapes these workers’ peculiar employment relations. Their condition as migrant posted workers staying for a defined period of 6 months and the fact that they tend to pay their social insurance contribution back in their country of origin, underlines the important difference that migration makes in producing their precarious condition and relative greater attractiveness to

⁹ Although we considered how holiday rights are now guaranteed under the new Agency Workers Regulations, we also noted how employers will easily circumvent them by dismissing the temps just before the end of the 12th week.

employers. In the context of the hospitality sector, EEA migrants tended to pay their contributions in the UK if employed directly. Still there were other features of these workers such as their highly transient status, especially for those employed casually or via different agencies, which fundamentally shaped their working experiences.

Uncertainty embedded in the transient nature of work and migration

Interviews highlighted how migrant workers are aware of the *transient nature* of their work in both sectors. Transiency and the uncertain duration of employment appeared to be doubly linked to the subjective migratory trajectories of the workers interviewed.

In construction, when asked about how long they were going to work in the current project, most workers answered that they did not know. They display a similar uncertainty about their future employment:

S. Can you tell us a little bit about your future plans, In terms of work career?

F. No. I mean, it's not that I can't tell you, it's that I don't know myself. I have no future. Because here you don't. Because here it's about the present, you don't know what's gonna happen. Now I'm telling you that *I might be leaving but maybe not*. I didn't plan to come here, I was gonna go to a different place. What I usually say is that until I'm not on a plane or on a car I'm not sure where I go. Because very often I've been stopped and told: 'go wherever'. Sometimes they've called me around 7-8 in the morning and told me to go somewhere.

(Fausto, Spain, 1 month in UK, posted worker, mounter)

In the above quote we observe the level of uncertainty of employability experienced by posted workers in construction and how it affected their responsiveness to employers' calls, increasing their availability as the only way to secure employment.

Similarly workers in the hotel sector witnessed the impossibility of planning for the longer term. Yet, the insecure and temporary nature of their employment identified also a relative sense of openness and weak commitment. As stated by one recently arrived chambermaid casually employed in a hotel in West London:

I am trying to look for something else. I want to start an English course...and then there will be more possibilities. But for the moment... 'trabajar como una mora!'

(Cecilia, Brazil, 9 months in London, casual, chambermaid)

The Brazilian chambermaid suggested that these types of jobs are bearable only in the short term given their intensive and exploitative nature. Despite the unpredictability of the near future, this worker appears confident that by improving language skills she will work out an exit strategy and be able to develop her 'mobility plans' moving out of the current industry.

Also posting can, under certain conditions, be used as a 'stepping stone' by some migrants. Coming to the UK with a posting contract allows them limited access to the British market. Yet, for those with high or specialised skills, such as welders or pipefitters, there may be was a chance to quit the posting job and convert into individuals freely navigating the EU labour market. Four of our respondents were about to make the shift at the time of the interviews (Group interview with Spanish workers, 30 March 2014). They had all come to the UK on a posting assignment at least twice, some even three times, with different contractors. Through

the advice and support of a settled migrant friend, they had taken a skill test, which they were all expecting to pass based on their long-term experience. Later we found out that they had already left the site and signed a contract with a British company.

Their story pinpoints to the contradiction of posting when compared to non-EU migration. While EU workers remain within a posting situation, their mobility is bound by their employer (Heyes and Novitz 2013). Yet, although posting limits and conditions the workers' mobility, as EU citizens they can, in principle, exit the posting condition and become individual migrants enjoying the freedom to move within the EU. Non-EU migrants who are working in the UK with a visa that tie them to their employer do not have that option, unless their migration status becomes permanent residence, which seems less likely under the Tier system in place since 2008. However, in order to successfully access the labour market, posted workers need to have the 'right skills', including language skills, knowledge of the local labour market, and a support network. Most of them, in particular in construction, do not fulfil these criteria. In particular, access to the labour market is usually channelled by their subcontracting employers who have no interest in this as they are able to maintain their advantage by offering competitively cheaper and compliant labour.

Extending and perpetuating precarity: moving across contractual statuses

In those organisations characterised by the expansion of subcontracting/agency/posting, the *perception of insecurity* increased across the spectrum for all workers, as they witnessed material changes to their terms and conditions or simply in the organisation of their work.

For instance, in the construction industry, insecurity is found in the new workers but also in the senior ones working with the same company for many years. This phenomenon can be explained by the type of contractual agreement they usually have in construction:

It's called *open-ended discontinuous contract*, basically. I always work and in fact I've never stopped working. If it was the case that the company wouldn't have that much work due to the crisis and this sort of things, so that there would be less work, then there is always holidays and if not... well, in Spain it's a normal contract. If there's more you continue and if not you are unemployed.

(Jose, Spain, 3 months in UK, posted worker, mechanic)

But as senior workers are employed subsequently, with fewer gaps, younger and newer employees experience more precarious conditions. As one of them put it:

F. They don't give me work one after the other. I might work for three months, then I stop for one and then I work another one. Then I stop another two, so I can't be happy, as you might understand. ... I'd be happy if I would always work.

(Fausto, Spain, 1 month in UK, posted worker, moulder)

As part of the perpetuation and 'blurring of precarity' in the same worksite, a further source of employment insecurity that migrant workers in these sectors experienced was the *rearrangement of their contractual agreement* while in the same workplace, whether because of the multiple employers setting typical of the sector or because of shifts in the management and governance structure of the organisation.

This phenomenon of shifting contractual arrangements emerged more strikingly in the context of the construction industry, where not only migrants happen to be working side by

side with workers under different conditions, but they also appear to move employer while working on the same site/workplace. Indeed in a multi-employer working environment such as the one characterising the construction sector, some workers are hired through a subcontractor, rehired through employment agencies and returned under another subcontractor, while continuing to be paid by one employment agency or another. *Mobility between contractual statuses* had happened to four of our interviewees:

I1. We got here through a Spanish company and the Spanish company left, and that's how then a short term employment agency hired us in England...

A1. ...now working with [a] contract [for] [Xagency], ... the English agency and were ceded to a Spanish company. The Spanish company pays [Xagency] and [Xagency] pays us. Previously [Acompany] paid [Xagency] and [Xagency] paid us. But now our foreman is not Belgian, ... he's Spanish.

(Group interview with Spanish workers)

Changes in management in the case of the Magnus hotel led to a series of alterations in workers' terms and conditions and a proliferation of employment contracts. Since the new management company took over the Intercontinental one at the Magnus hotel, a fragmentation of employment conditions emerged. The previous 'Intercontinental employees' maintained the old conditions, others were hired directly but under the new management company's rulebook and a growing number were hired through agency as the new management appeared to favour outsourcing of recruitment for entry-level jobs.

As a result also the more established employees felt that their terms and conditions were under threat:

...a housekeeper from Portugal expressed her preoccupation that the previous contractual conditions of the permanent workers were being 'pushed down' to the level of 'people who have just come'.

(Ethnographic diary, Arianna, Portugal, 28 years in London, in-house, housekeeper)

More specifically the permanent staff of the Magnus hotel feared that their working conditions had been threatened by the management's attempt to change the hotel's rulebook regulating their terms and conditions of employment (including retirement benefits, annual service bonus, and bereavement leave), the introduction of new management rules in the housekeeping department making work harder, and the perceived 'threat of substitution' of agency workers for in-house employees.

Past literature has already highlighted the impossibility to draw a defined line between permanent and non-standard workers in organisations where subcontracting is common. In an early study of temporary agency employment exploring dilemmas of managing the day-to-day issues of contractually divided workforce, Ward et al. (2001) put into question the view of a 'core and periphery' labour market, traditionally utilised to describe agency workers' marginalised position in the organization as they work side-by-side with in-house employees. Their research on the growing use of agency staff in the banking and telephone industries rather highlighted the contradictory patterns that hiring temporary agency workers entailed for workers already on site, arguing that changed recruitment practice would send a negative signal to the longer term employees. They argued therefore the 'need to move beyond the rather stylised core and periphery dichotomy and to recognise not only that each group is itself highly differentiated but also that the policies for one group affect the other' (Ward et al. 2001: 9). Our research further develops this argument by highlighting the emergence of a *pervasive sense of insecurity*, through the extension and blurring of precarity in the

employment relationship that concerns different categories of workers and employees in the same worksite.

In terms of the extension of precarity, at one extreme end of the spectrum, in the construction industry some migrants worked in the absence of a formal contract. Many of them have been in a long-term situation of intermittent employment and consider it 'normal'. Sometimes their compliance goes to the point of accepting a job, moving to another country and starting to work without actually having a signed contract.

S. What language is the contract written in?

H. Hmmm, the contract?

S. Yeah, the text of the contract.

H. I don't know because I don't signature the contract now.

S. So you haven't seen the contract yet? But you started work? How does that work?

H. I'm working and I don't signature the contract. In this company it's usually. When I work in Spain maybe pass one week and you put the signature in the contract.

...

H. Yes, you have a verbal contract. After I travel ... I talk with.... eh... my boss in Spain and we talked the conditions.

...

S. ...And what about when you came here, did they explain how this works, like the contract, and the site, and things like that?

H. No, we don't talk... the conditions are explained in Spain.

(Hernan, Spain, posted worker, mechanical fitter)

Discussion and Conclusion

The present research shows how the reality of the labour market and its new stratification after Enlargement *complicate our* understandings of labour migration and its effects on local employment (recently further complicated by new migration from southern Europe following the economic downturn). Rather than a simple ‘race to the bottom’ and downward spiral on wages and conditions because of the recruitment of ‘migrant labour’, the studies in hospitality and construction show how it is the combination of particular inferiorized employment categories and the specific migrant status of these workers that give rise to their higher vulnerability. Constrains to migrants’ mobility in the labour market appear critical in constituting relative ‘unfree’ employment relations by lowering and/or fragmenting terms and conditions in particular working spaces and sectors.

Both EU posted workers and non-EU agency workers are indeed excluded from free circulation within the host state labour market; they do not enjoy the same social entitlements of citizens; and have limited access to collective voice and unionisation mechanisms in the workplace. Thus, looking back at Fudge’s revised taxonomy of ‘migrant status’, the factors that appear more relevant for shaping the insecurity of posted and agency workers in our studies are: dependence on an employer; (lack of) access to free mobility within the host state labour market; duration of the employment relationship; terms and conditions of employment including the intense nature of work; and finally social (in)security – which we understood here in the broad sense, including access to the social protection provided by collective union rights. The effects of ‘institutionalised uncertainty’ (Vosko 2010) on posted and agency workers’ access to social protection became apparent in our illustration of how existing regulatory frameworks contribute to construct their marginality.

And indeed, due to their employment status, these categories of migrants are in a position of *vulnerability* and *dependability* from the employer that poses a direct threat to their unionisation. Such dependency derives both from the employer-bound mobility of workers because of their employment status, (in the case of posted workers who are formally excluded from the host country labour market and remain tied to their posting employer, see Heyes and Novitz 2013), and from the limitations of the migrant status for other categories of non-EU migrant agency workers.

The *proliferation* of migrant and contractual statuses in the same workplace put into question a simplistic reading of the labour market situation affected by recent patterns of immigration as polarised between ‘indigenous’ versus ‘migrants; ‘new migrants’ versus ‘old immigrants’; EU and non-EU (Wills et al. 2010); or along the in-house vs. agency worker divide within the changing structure of the organisation (see also Ward et al. 2001). A deterministic understanding of migrant workers’ exploitation, whether simply based on their more recent migration or on their willingness to accept lower wages, appears unable to grasp a changing situation where *multiple* levels of discrimination, management practices and processes of marginalisation take place in such fragmented working spaces. These employment relations practices and dynamics occur *despite* and sometimes precisely *through the regulation* of their ‘exceptional statuses’, which limits migrant agency and posted workers’ access to social security and collective voice (Novitz 2011).

Still, as our data showed even the more precarious categories of migrant and employment status appear to shift (at times voluntarily), within the limits and along the spectrum of these different categories of employment. This point suggests a move away from what appears to be a relatively rigid classification of migrant statuses towards a spectrum or ‘continuum’ of migrant precariousness (cf. Fudge 2012). Our argument is that the positionality of migrant along this continuum can be only qualified in the context of the specific processes of

employment fragmentation and changes in the organizational structure and management practices characterising the particular sector observed.

The testimonies of migrants showed how it is their status as transient workers and individuals ‘on the move’ that hinders the development of secure and stable employment conditions. It is also what makes them more attractive to employers wishing to reduce their labour costs and ‘manage’ high turnover. The intrinsic unpredictability and intermittent nature of employment in hospitality and construction constitutes at the same time a ground for migrants’ availability and compliances while offering an opportunity for exit and mobility across statuses. There was no space here to explore the extent to which migrants’ transiency and uncertain employment affect their willingness to unionize. The question of migrants’ ‘precarious voice’ needs therefore to be further explored in light of the combined effects of these workers’ migrant and employment status, as they emerge from changing sectoral employment relations.

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