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The Agency Workers Directive and its Influence on the UK Economy

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Abstract

The employment rights of temporary agency workers have received significant attention throughout Europe, and debate amongst EU member states culminated in the Agency Workers Directive. The UK's adoption of the Agency Workers Directive (AWD) in October 2011 has met with a mixed response. The aim of the current study was to establish the impact of the AWD by conducting statistical analysis of the Labour Force Survey and in-depth interviews with recruitment consultants. For both quantitative and qualitative studies, data was gathered over a five-year period, allowing findings to provide a 'before and after' insight. Findings did not indicate the reduction in agency worker utilisation or an increase in sub-three-month tenures that were feared by critics. Interviews highlighted motives by some employers for avoiding the AWD. However, the quantitative data demonstrated that such avoidance was unlikely to systematically occur. Benefits were also seen for these typically low-waged individuals as there were significant wage increases for agency workers with three-month or more tenure. These findings suggest the AWD has been effective in its aims.

Introduction

In the years prior to the adoption of the Agency Workers Directive (AWD) in 2008, the European Union witnessed intense debate surrounding the laws governing temporary agency worker usage. Attempts had been made by various EU presidencies to find a solution that would increase the rights of the estimated 8 million 'temps' across Europe since the first proposals by the European Commission in 2002. Advocates of new legislation have typically argued that agency workers experience unfair treatment in aspects relating to pay, training and access to company facilities. Opposition to legislative change has argued that the economy would suffer if severe restrictions were enforced, as businesses would suffer from a reduction in flexible working opportunities (Green 2008). This paper specifically aims to ascertain whether there has been a drop in the number of agency workers since the legislation has been brought in place. The paper also investigates how employers have taken to the new legislation and whether improvements to the employment conditions of the agency worker have been realised as a direct result of the AWD.

The AWD legislation arose from an ongoing concern over the welfare and treatment of temporary agency workers throughout Europe. Temporary workers with the exception of agency workers had been protected under the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, which state that temporary workers (which includes: seasonal workers, fixed-term contractors and casual workers) should not be treated less favourably than comparable permanent employees (Biggs et al 2006). The Agency Workers Directive (2008) was the legislative result of compromising agency workers' better employment rights versus concerns of the industry. The AWD affords agency workers employment rights in relation to the duration of working time, overtime, breaks, rest periods, night work, holidays and public holidays, and perhaps most notably, pay. These rights come into force in the UK after the 12-week qualifying period.

Analysts argued that the 12-week adoption period stipulated in the UK agreement for adoption ensures that around half of agency assignments will remain unaffected. The CBI argued that the final proposal represented the '*least worst outcome available for British business*' (CBI 2008a). After comparing findings from previous CBI and SORA surveys, research by the Department for Business, Innovation and Skills supported these claims by reporting that over half of current agency working assignments would not qualify for the changes outlined in the Directive (BIS 2010).

The agreed implementation of the Directive has led some to question its ability to provide welcome relief for agency workers trapped in insecure working arrangements, and whether it will cut back further on the opportunities of employment that are already hard to come by in a difficult economic climate. Unsurprisingly, debate has been ongoing with regard to the implications that adopting the Agency Workers Directive has upon the UK workforce. This paper seeks to address some of these concerns.

Research method

Design

The aim of the current study is to compare data gathered prior to implementation of the AWD in 2011 with findings gathered three years after adoption in a longitudinal mixed methods design. The study incorporates two main forms of data: the Labour Force Survey (LFS) and semi-structured interviews with recruitment consultants.

Sampling

The Labour Force Survey is described by the Office for National Statistics as the largest household survey in the UK, and is used to provide the official measures of employment and unemployment (ONS 2015a). The data is gathered quarterly, and represents information gathered from over 120,000 individuals representing approximately 55,000 households throughout Great Britain and Northern Ireland (ONS 2015a). The level of detail present within the survey makes it a useful tool in exploring the demographics of the temporary agency worker group seen in other studies (Biggs 2006, Biggs et al 2006).

The approach to participant recruitment for the interview stage of the research took the form of purposive sampling (Clark-Carter 2004), which occurs when the researcher wishes to study a clearly defined sample. The researchers were keen to interview recruitment consultants who encountered the Agency Workers Directive on a daily basis. Adherence to these regulations is a legal requirement for recruitment consultants who place candidates into agency worker roles. The pre-AWD interview sample consisted of six recruitment consultants, and the post-AWD adoption sample included seven recruitment consultants.

Labour Force Survey

Statistical analysis of the Labour Force Survey was used to provide a picture of the UK temporary agency working industry both pre- and post-AWD adoption. This was achieved by examining 21 quarterly datasets collected between Q1 of 2009 and Q1 of 2014 (ONS 2015b). Particular focus was given to the overall number of agency workers, the spread of tenures and the reported wages of the respondents, as these variables were highlighted as the most likely to be influenced by the legislation.

Interviews

Interview questions focused upon the participants' experience with the Agency Workers Directive, and how the legislation affects their role as a recruitment consultant. Participants were encouraged to deviate from questions and expand upon answers whenever they felt it was necessary. Interview length was typically 20–40 minutes, and responses were recorded and transcribed. The interview transcripts were analysed using Interpretative Phenomenological Analysis, whereby the experiences of the individual's construction of reality are considered along with what they say in the interview (Smith et al 2009).

Findings

The demand for temporary employment agencies

Perhaps one of the most significant concerns resulting from the decision to adopt the Agency Workers Directive into UK employment law was an overall reduction in the use of services provided by temporary employment agencies (CBI 2008b, Forde and Slater 2005, Palfery-Smith 2009). Critics of the legislation feared that the cost increases associated with longer-term agency worker usage could encourage employers to look elsewhere for answers to fulfilling the staffing demands of their companies (McNeill 2008). Examples of cited alternatives included a greater reliance upon pre-existing permanent staff, the offer of permanent transitions to temporary staff, or alternative forms of contracts, including fixed-term contracts, zero-hour contracts or part-time employment. Table 1 provides a comparison of the composition of the UK workforce between quarter 1 of 2009 and quarter 1 of 2014.

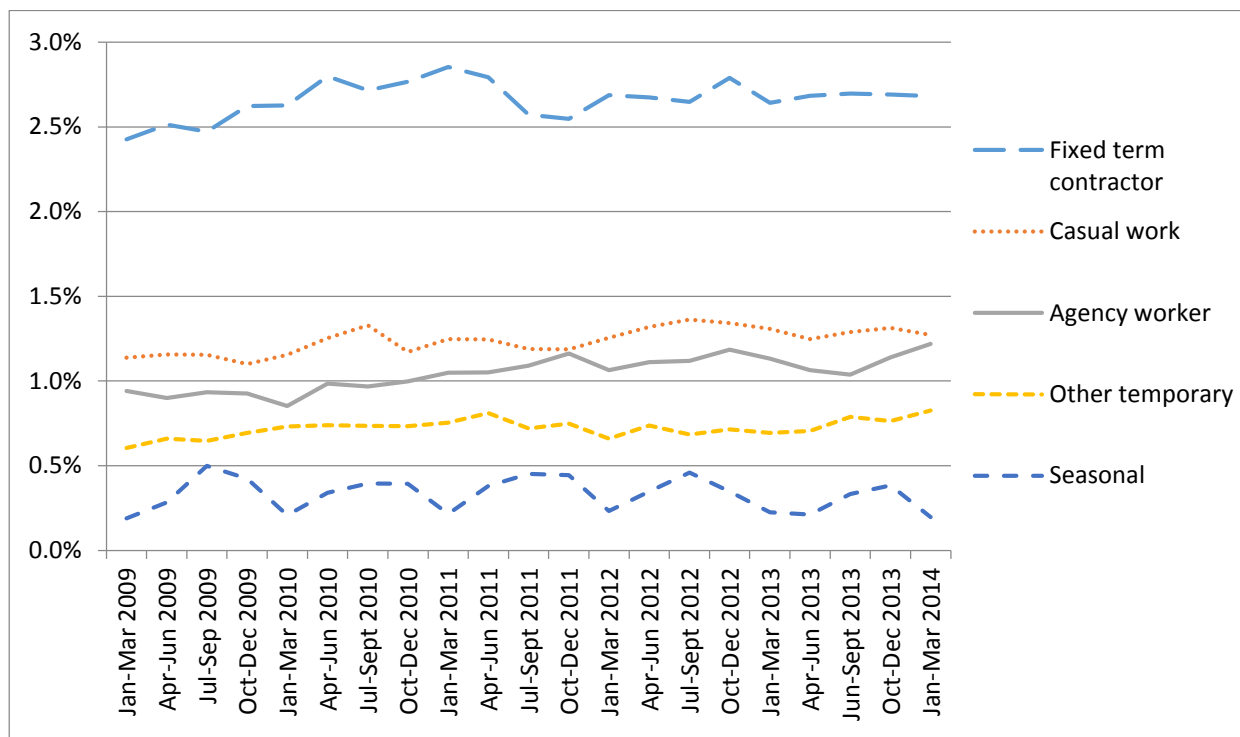
Table 1: LFS data comparing pre- and post-AWD worker group distributions

Type of Job	Jan–Mar 2009		Jan–Mar 2014	
	N	%	N	%
Permanent	43,041	94.69%	37,267	93.80%
Temporary	2,413	5.31%	2,462	6.20%
Seasonal work	86	0.19%	78	0.20%
Fixed-term contract	1,103	2.43%	1,065	2.68%
Agency work	428	0.94%	484	1.22%
Casual work	517	1.14%	505	1.27%
Not permanent in other way	275	0.61%	328	0.83%

The most notable finding displayed in Table 1 is the small increase in agency workers, contradicting the key concern of reduced demand from the temporary employment industry forwarded by legislative critics. A further analysis focusing upon temporary worker subgroups was conducted on 21 consecutive quarterly datasets beginning January–March 2009. Findings from this longitudinal analysis are displayed in Figure 1.

While Figure 1 displays no overarching trends over a five-year period, findings do indicate a slight dip in the proportion of agency workers in the UK workforce in the quarter immediately following the AWD's adoption in October 2011. This dip coincides with slight increases in the proportions of fixed-term contractors and casual workers employed within the UK workforce. However, this trend had discontinued some 12 months later, supporting the findings in Table 1.

Figure 1: Temporary worker subgroups as a proportion of the overall UK workforce



Exploring large-scale national statistics can provide a useful perspective upon any changes resulting from legislative change. However, in-depth semi-structured interviews with recruitment consultants were also conducted to further interpret the statistical findings. The results of the interviews broadly aligned with those of the LFS. Recruitment consultants had reported that the demand for their services had remained largely unaffected with the introduction of the Agency Workers Directive. This was due to the degree of flexibility provided by temporary employment agencies, which was a significant motive for client companies. Two of the recruitment consultants explained it as such:

There's a lot of benefits from temporary work: if the work slows down they [the employer] can say 'you're not in tomorrow', and you don't have to pay them holiday. (Ross)

...people don't want the responsibility of taking them [the agency workers] on permanently, they'd rather use [name of agency] to handle the national insurance, holiday, and the sick pay, and all the stuff that comes with it. (Stuart)

Smaller firms may have little, if any, HR personnel and, as such, recruitment agencies can act almost as an external HR department in employing additional staff. The potentially higher costs associated with the Agency Workers Directive can often be negated in small firms for this absorption of HR cost.

For larger clients, the absence of an on-site HR department is less likely to be an issue; yet, recruitment consultants found that the greater resources larger firms possessed meant that they could 'absorb' the added costs outlined in the legislation, as in the following example:

They [name of large employer] just take that [the costs of the AWD] on the chin, whereas there's a possibility that smaller companies may be a bit more cunning about things ... the smaller companies probably are going to be the ones that will feel the financial pressure of having to pay the AWR [Agency Workers Directive regulations], but because they're small enough there's less usage. (Simon)

These interviews demonstrate that the size and wealth of the company may influence an organisation’s underlying perspective of the Agency Workers Directive, even though the resulting actions are often broadly similar. This can be attributed to the degree of staffing flexibility offered by temporary employment agencies in an unpredictable economic context.

Comparing the level of demand for the services of temporary employment agencies pre- and post-AWD can provide a good indication of the legislation’s overall impact, but concerns have also arisen over variations in individual assignment patterns. Preferences for tenure length can vary based upon individual circumstances, but longer ‘open-ended’ assignments are often highly regarded by agency workers who desire secure long-term stable employment or opportunities for permanent transition (Storrie 2002, Toms 2012, Toms and Biggs 2014). Critics of the Agency Workers Directive have argued it would encourage companies to opt for sub-12-week assignments that avoid activating some of the demands of the legislation.

Unsurprisingly, avoidance of the 12-week activation period could prove highly lucrative for companies who may be heavy users of temporary agency workers, and collusion between the temporary employment agency and the third party employer was a concern of legislators. The current study compared pre-AWD Labour Force Survey data from Q1 of 2009 with post-AWD Labour Force Survey data from Q1 of 2014 to assess the degree to which these practices may exist (see Table 2).

Table 2: LFS data comparing pre- and post-AWD tenure of agency workers

Tenure	Jan–Mar 2009		Jan–Mar 2014	
	N	%	N	%
Less than 3 months	89	20.8	89	18.4
3 months but less than 6	90	21	99	20.5
6 months but less than 12	89	20.8	82	16.9
1 year but less than 2	71	16.6	107	22.1
2 years but less than 5	51	11.9	72	14.9
5 years but less than 10	27	6.3	25	5.2
10 years but less than 20	6	1.4	8	1.7
20 years or more	5	1.2	2	0.4
Total	428	100	484	100

Labour Force Survey findings in the context of tenure appear to refute the suggestion that a greater proportion of agency workers will find themselves employed on shorter-term tenures. The share of agency workers residing on sub-three-month tenures has slightly declined, which may reflect greater employer confidence in the economy. The experiences of recruitment consultants that were reported during the interviews coincided with the estimates of previous surveys over the proportion of agency workers who ultimately qualify for the Agency Workers Directive. The consensus was that only a minority of the assignments supplied to client companies extended past the 12-week qualifying period. This was estimated by some of the recruitment consultants to be approximately 20% of assignments activating the Agency Workers Directive regulations.

Providing staffing solutions at an affordable price is a key objective for recruitment consultants. Yet for longer-term assignments, the potentially significant increase in price resulting from the

implementation of the Agency Workers Directive may prove problematic. Nevertheless, all the recruitment consultants do operate by the regulation, as seen in the following quote:

All I can say is that this agency goes by the book, because I don't want to break the law. (Sarah)

One significant obstacle in the implementation of the regulations is the 12-week qualifying period stipulated in the UK's agreement for adoption. Unjustified avoidance of the Directive's activation is outlawed by the legislation, yet implementing methods that avoid the law may save the company significant sums of money. Examples of avoidance could include replacing an individual after three months with another agency worker in the same role, or creating a hypothetical permanent position with lower pay and using this as a comparable benchmark for agency workers whose tenure exceeds 12 weeks.

Sarah makes it clear that her agency would not take part in any deliberate avoidance of the Directive, yet a client's desire to avoid extra costs and an agency's desire to attract and secure future business may lead to such instances. It would be the responsibility of the agency to challenge the client on behalf of the affected individual in such cases, but the priority of clients in a marketplace of competitors could instil reticence. The illegality of such practices makes assessing their prevalence problematic, yet the Labour Force Survey data relating to weekly wages in Table 3 provides a greater understanding.

Table 3: LFS data comparing pre- and post-AWD weekly wage of agency workers

Length of time with current employer	Jan–Mar 2009		Jan–Mar 2014		Percentage increase
	N	Mean weekly wage (£)	N	Mean weekly wage (£)	
Less than 3 months	25	275	29	282	2.55%
3 months but less than 6	26	289	23	460	59.17%
6 months but less than 12	19	284	17	482	69.72%
1 year but less than 2	16	258	22	431	67.05%
2 years but less than 5	10	287	15	385	34.15%
5 years but less than 10	8	270	9	277	2.59%

The most significant finding displayed in Table 3 relates to post-AWD agency workers in the 3–6-month tenure category. The mean weekly wage reported by these participants was over 59% greater than their pre-AWD counterparts from five years earlier. As a result, Table 3 appears to indicate that the Agency Workers Directive has had an influential impact upon the levels of pay received by agency workers. This assertion is further supported by the reported increase in pay apparent in the post-AWD sample.

Despite its clear significance, Labour Force Survey data from Table 3 cannot decisively refute the allegation that some organisations and temporary employment agencies may collude in order to avoid paying the AWD, yet it does suggest – alongside other evidence in this paper – that such avoidance is unlikely to occur upon a grand scale.

Conclusions

The current study contributes to the ongoing debate surrounding the adoption of the Agency Workers Directive. The methodology and timing of the current study has enabled us to address many of the issues raised. Perhaps most significantly, no clear reduction in agency worker usage was observed. The current research also paints a broadly positive picture for agency workers, as Labour Force Survey data highlights a significant increase in the weekly wages of these workers once they have exceeded the 12-week qualifying period.

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