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# **Posting and Agency Work in British Construction and Hospitality: The Role of Regulation in differentiating the Experiences of Migrants**

## **Introduction**

The UK has one of the least regulated employment relations systems in the European Union and a relatively large presence of migrant workers, composed of EU migrants (individual free movers and posted workers), and third country nationals (TCNs) on various visa types. The threat of ‘social dumping’ associated with migrants and posted workers’ lower terms and conditions, in the context of the EU cross-border labour recruitment and service provision, is widely discussed in the literature and central to public debates on migration (Bernaciak, 2015; Berntsen and Lillie, 2015; Cremers, Dølvik and Bosch, 2007; Krings, 2009; Lillie and Greer, 2007). The effects of mobility on the labour market appear intertwined with employment practices, such as subcontracting and agency working, which are common in sectors like construction and hospitality. In both sectors EU migrants, as well as TCNs, tend to constitute a significant part of the workforce (Alberti, 2014; Chan, Clarke and Dainty 2010; Dainty, Grugulis and Langford, 2007; Forde, MacKenzie and Robinson, 2009).

In this article, we engage with current debates in the field of IHRM and cross-border labour regulation by focusing on migrant workers’ experiences of low-paid and insecure employment in ‘transnationalised’ sectors of the UK economy. We use the perspective of individual actors to understand an issue usually overlooked in IHRM literature: the ways in which low-paid and temporary working migrants are affected by internal organisational changes as well as policy changes external to their organisations.

In the context of intensifying internationalisation of trade, production and investment, ‘the movement of people and resources across boundaries’ and work fragmentation constitute major challenges to the maintenance and innovation of national employment systems (Martínez Lucio, 2014: 2). Labour supply practices such as posting and agency work are critical to understanding the relationship between the mobility of labour and capital, the de- and re-regulation of labour markets, and employment relations (Martínez Lucio and MacKenzie, 2004; Peck, Theodore and Ward, 2005). To understand these configurations, however, we cannot ignore the role of government policies in shaping the ‘hierarchical

arrangement of migrant regimes', as well as the strategic agency of migrants engaging with them (Rodriguez and Mearns, 2012). Therefore, in this article we combine insights on labour fragmentation and organisational changes in the IHRM and employment relations literature (Lillie, Wagner and Berntsen 2014; MacKenzie and Martínez Lucio, 2005; Martínez Lucio, 2014; Marchington, Grimshaw, Rubery and Willmott 2005; Rodriguez and Mearns, 2012) with the literature on the effects of migration policy and regulation on employment norms (Anderson, 2010; Fudge, 2012; Vosko, 2010).

The article focuses on three specific regulatory policies: the EU Posted Workers Directive (PWD), which regulates migrant workers' movement as services from one EU country to another for a limited period of time; the 'Tier' or 'Points-based system' for immigration in the UK, which regulates the entry and stay of third country nationals in the UK, and the UK transposition of the EU Directive on Agency Work, which regulates the employment conditions of agency workers. We develop an empirical assessment of the effects of these policies on migrant workers in two migrant-rich sectors of the UK economy, hospitality and construction, using data from two qualitative research projects on migrant labour in the UK conducted by the authors: a participatory study of London's temporary staffing industry in hospitality (2007-2009), and two case studies of construction in Northern England (2014). Both research projects addressed labour migration in different sectors, but while agency labour is used by both EU migrants and TCNs, posting is only used for EU workers.

Bringing together these projects gave us the opportunity to examine the different dimensions of labour mobility into the UK, comparing different categories of migrant agency and posted workers as they are regulated by national and supranational policies. We find that although the two sectors differ remarkably in terms of the nature of work, product market, and specific working arrangements, the common elements of multiple-employer settings and contractual diversity within the same worksite create 'regulatory spaces of exception' where migrant workers, whether posted, EU free movers, or TCNs, experience lower employment security and social protection. The differences between migrant employment in London, as the epicentre of the British economy where most international migrants are concentrated, populating the low-paid service jobs (Wills, Datta, Evans, Herbert, May and McIllwaine, 2010), and Northern England, a region attempting to develop an independent path to economic growth, and a significant new destination for EU migrants employed in a variety of sectors (Ciupijus 2014), although not the focus of the analysis, provide an additional ground for a rich comparison. Overall, while the empirical material does not allow for generalisations

given the different categories of workers, geographical settings, and timeframe of the studies, the heterogeneous nature of the data allows us to identify the patterns of variation in the degrees of insecurity and vulnerability to which migrants are exposed. Our argument is that these variations emerge as a result of the combination of workers' migration and employment statuses, which raises critical questions around equal treatment beyond the simple distinction of EU migrants and TCNs. Highlighting the combined influence of migration regulation and management practices, the article highlights the importance of including migration perspectives in the study of international labour management changes and regulation.

### **Conceptual Framework**

Neoliberal deregulatory policies and practices of the 1980s and 1990s in the UK have created space for new actors such as employment agencies and subcontractors to regulate the labour supply. MacKenzie and Martínez Lucio (2005; 2014) warn against the 'fetish of deregulation', and consider these processes a regulatory change. In the US context, Peck and Theodore (2010) have used the term 'regressive re-regulation' to indicate the role of regulatory forces in facilitating the growth of contingent employment, and the erosion of workers' wages and protections under increasing competition between firms.

Instead of the vertically-integrated corporation with directly employed workers, firms are increasingly outsourcing their work via subcontracting, agency work, and self-employment, giving life to the 'network form' organisation (Grimshaw, Willmott and Rubery, 2005). Subcontracting appears to be the predominant form in construction (BIS, 2013; Chan et al., 2010; Forde and MacKenzie, 2007; Forde, MacKenzie and Robinson, 2009) while agency work – alongside other forms of casual and contract employment – is to be found in hospitality (Alberti, 2014; Lai, Soltani and Baum 2008; Lucas and Mansfield, 2010; Maroukis 2015; McDowell, Batnitzky and Dyer, 2008). Furthermore, firms often contract out parts of the labour process to other companies, creating a long subcontracting chain with multiple employers operating at different levels (Harvey, 2003; MacKenzie, 2000). More powerful employers tend to shift risks to their partners or suppliers, who in order to maintain their competitive advantage reduce expenses by cutting wages and other costs (Grimshaw et al., 2005; Lillie and Wagner, 2015). These practices affect the relationship among employers and between employers and workers, making it difficult to locate the source of control, authority, and responsibility within the organisation (Fudge, 2006; Marchington et al., 2005).

Scholars have raised concerns about the combined effects of the dispersion of responsibility and applying different terms and conditions to workers in the same workplace (Forde et al., 2009; Lillie and Greer, 2007; Marchington et al., 2005; Wills, 2009). Uncertainty about the accountability of multiple employers has also negatively influenced workers' ability to address grievances and articulate their voice in the workplace (Fudge, 2006; Hayes, Novitz, and Olsson, 2013; MacKenzie, 2000; Marchington et al., 2005).

In the EU context, the companies that operate and recruit labour transnationally interact with many country-specific as well as supranational regulations. They can navigate these different regulatory spaces, choose whichever one benefits them most, and evade the other(s) (Berntsen and Lillie 2015). As a result, new borders drawn among the workforce create 'spaces of exception' within which EU posted workers are located (Lillie et al., 2014; Wagner, 2015). The selective choice of regulations in transnational workplaces has given rise to forms of degradation or 'de-standardisation' of employment conditions for workers operating across these boundaries (Berntsen and Lillie 2015; Kretsos and Martínez Lucio, 2013). These practices appear to have sharper effects on migrant workers often found in those sectors of the economy characterised by subcontracting (Meardi, Martin and Lozano Riera 2012; Wills, 2009).

IHRM, industrial relations, and migration literatures differ in the way they understand who is a migrant. IHRM research on migration has focused primarily on the ways companies use and manage highly-skilled (temporary) migrants and expatriates, often using the terms interchangeably (Beaverstock and Hall 2012; De Cieri, Cox and Fenwick 2007; Lillie, Wagner and Berntsen, 2014). Therefore the debate has been oriented towards 'talent recruitment', 'cross-cultural adjustments' in MNCs (Bahn, 2015), global city competitiveness and growth (Beaverstock 2012), and the transfer of knowledge and skills of qualified international migrants (Guo and Al Ariss, 2015). In this sense, mainstream business and management studies tend to consider highly-skilled migrants as a 'mobile elite' and sideline low-skilled migration (e.g. Doherty 2013; Guo and Al Ariss, 2015). Critical voices within IHRM underline the narrow focus of the field on expatriates and their lack of engagement with socio-economic questions, such as the difficulties in managing life across national borders and the wider consequences of cross-border labour mobility (De Cieri et al., 2007). Few scholars have drawn from the broader categories of migration scholarship to understand mobility more comprehensively and in relation to the experiences of highly-skilled migrants (Beaverstock and Hall 2012). The few studies that look at non-elite types of migrants tend to

focus on their vulnerabilities, such as job insecurity, underemployment or unemployment (Moriarty, Wickham, Krings, Salamonska and Bobek 2012; Reitz, 2001; Zikic, Bonace and Cerdin, 2010).

Nonetheless, the lack of a comprehensive understanding of the multiple factors that make migrant workers vulnerable (Turchick Hakak and Al Ariss, 2013) has often led to overlooking the impact of national and supranational regulations in creating or managing migrants' vulnerabilities. There have been some efforts in recent IHRM literature to draw attention to the indirect role of the state in facilitating, through 'soft regulation', HRM practices, and structures on learning, benchmarking, dissemination and communication (see Martínez Lucio and Stuart, 2011). Other state policies that affect employment of particular groups, such as migration policy, are still under-researched. More recently, IHRM scholars have considered policy and legal barriers, as well as the hurdles of language, bureaucratic processes, and visa entitlements for migrant employees, and the role of organisations in alleviating them (Guo and Al Ariss, 2015; Hosoda, Stone and Romero, 2010).

The field of employment and industrial relations, at least in the UK, has in turn concentrated on the experiences of Central and Eastern European migrants in low-skilled sectors, highlighting exploitative employment practices, skill degradation and the role of unions (e.g. Lillie and Greer, 2007; MacKenzie and Forde, 2009; Meardi et al 2012; Marino, Martinez Lucio and Connolly 2014). Rodriguez and Mearns (2012) have explicitly tackled the relationship between migration, mobility and employment relations. They underline the role of institutional and societal 'mobility restrictions' faced by migrant workers in a supposedly globalised borderless world, and their impact on career progress, work arrangements, and the employment relationship (Rodriguez and Mearns, 2012: 581).

The literature on migration and precarious work adds valuable insights to the debate on multi-employer settings, and the re-regulation of the employment relationship, by highlighting the role migration policies play in further segmenting the supply of labour. Anderson (2010) shows how migration controls and differentiated entitlements to work in the UK create specific employment practices that structure migrants' particular vulnerability, giving rise to 'precarious employment norms'. These elements include, among others: categories of entrants, duration of work permit or visa, the channelling of migrants into certain occupations, and migrants' dependency on a particular employer to maintain their legal status. Additional factors such as labour market locations, precarious statuses, and the legal

definitions of citizenship (Fudge, 2012) define migrants' relative inclusion/exclusion from entitlements in the host country (see also Goldring, Berinstein and Bernhard, 2009; Vosko, 2006). Temporary restrictions attached to some of the workers who move within integrated markets such as the EU have major implications for the conditions under which these migrants enter the labour market and are managed at workplace level; many mobile workers still appear disadvantaged and precarious even if they are free movers in the EU (Ciupijius, 2011; Lillie et al., 2014; Alberti et al., 2015). We can only speculate on what a post- free movement scenario will mean for migrant workers' vulnerability in the UK after it leaves the EU.

Using this interdisciplinary approach, we explore how categories of migrants are created as different through the transnational and national regulation of their particular employment and migration statuses. The intersection of migration and employment regulation, as well as the rules that govern internal labour mobility in the EU illustrated below, constitutes the framework for such differentiation.

### **Posting, the Tier System, and Agency Worker Regulation in the UK**

Free movement of labour is one of the fundamental rights of the European Union. However, this does not preclude the existence of regulation that aims to manage internal labour mobility representing an exception to this fundamental principle. The Posting of Workers Directive (96/71/EC) is an example of EU law that regulates the mobility of outsourced labour for EU companies who bring their own workers to perform a certain job from one EU member state to another for a limited period of time. Posting must therefore be understood as the expression of transnational provision of services in the EU internal market, rather than as free movement of labour (Alberti et al., 2015). Since the introduction of the PWD, political and legal debates have put into question whether posted workers should be granted the terms and conditions of the host or sending country. This has been reflected in a number of cases at the Court of Justice of the European Union. 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 (indigenous or migrant), and posted workers. 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). Recent research has pointed out further informalisation and deregulation of employment when posting and hiring of agency workers intersect (Alberti et al., 2015).

The British government does not collect data on entry and departure of posted workers, and estimates 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, and are concentrated in construction (Clark, 2012) and agriculture (Fitzgerald, 2010). While numbers for posted workers across the 28 EU Member States can be drawn from the number of E101 social security certificates, these do not include the very temporary forms of posting done via employment agencies (ECORYS, 2011).

The entry of migrants from the rest of the world is regulated in the UK by the 'Point-Based 5 Tier system', introduced in 2008, and stratified by different types of visa (divided into five categories of 'high-value', skilled, low-skilled, students, and temporary migrants) according to the level of skills, ability, experience, age and financial criteria (e.g. income to be earned in the UK and held upon arrival). Drawing from International Passenger Data, the Migration Observatory reports that non-EU labour migration increased from 1991 to a peak of 113,000 in 2004 before declining to 44,000 in 2012 and rising again to 67,000 in 2014. Under the PBS, the largest category of work entry visa has been 'skilled workers', with 44 percent of visas (52,500) being issued under Tier 2 in 2014 (Blinder, 2016).

The choice (to date) not to open the only existing channel for 'low-skilled' (Tier 3) workers reflects the government's assumption that the persistent vacancies in low-skilled sectors will be filled by 'accession workers' from newer EU member states: in 2004, the 'Accession 8' (A8) of Poland, Czech Republic, Slovenia, Slovakia, Hungary, Lithuania, Latvia, Estonia; and in 2007, the 'Accession 2' (A2) of Romania and Bulgaria (Krings, 2009; McKay, 2009b). Indeed, qualitative research in hospitality has found a correlation between intensified patterns of post-enlargement labour migration, a growing use of agency temps, and degrading employment practices (Alberti, 2014; Lai et al., 2008; McDowell et al., 2008; McKay, 2009c; TUC, 2007).

Companies' reliance on local and international temporary staffing agencies for the recruitment of the workforce in addition to, or instead, of outsourcing entire departments to contractors (Lai et al., 2008; Purcell and Purcell, 1998), is part of the fragmentation of the labour contracting chain discussed above. Agency workers are relatively convenient as they are governed by different rules from directly-hired employees, and defined as 'workers on a

contract for services' (Rubery, Earnshaw, and Marchington, 2005; TUC, 2007). This status bestows only statutory minimum entitlements and exclusion from important rights and protections, such as protection from unfair dismissal, redundancy, a minimum notice period, and rights to maternity and paternity leave (TUC, 2007). The employment status of agency workers appears relatively unaffected by the changes included in the UK transposition of the EU Directive on Temporary Agency Work. According to the Agency Workers Regulations (in force since October 2011) only "after 12 weeks in a given job, an agency worker will be entitled to equal treatment with the 'comparator'", i.e. as if s/he had been recruited by that undertaking to occupy the same job (see Forde and Slater, 2011: 7). However, agencies tend to circumvent the new rights by moving workers around in the same workplace, or between employers (TUC, 2013).

Despite a drop in the numbers of agency workers during the economic crisis, numbers have risen again since 2009, and by the end of 2012 agency temps reached the highest percentage as a proportion of the workforce since LFS started to record figures: 1.27 percent or 321,165 units (Forde and Slater 2014). The proportion of agency employment associated with TCNs and other categories of EU migrants is more difficult to ascertain than posting. The UK Labour Force Surveys (LSF) tend to underestimate numbers because workers supplied by agencies may be classified as fixed-term or 'self-employed', while those who are 'supplied by an agency but paid by the user' may be missed in the calculation (McKay and Markova, 2008: 6). It is even harder to draw statistics on the number of TCN agency workers in the UK because of informal employment practices (TUC, 2008).

### **Cases and Data Collection**

There has been a dearth of systematic cross-industry/sectoral comparative research considering migrant workers' experiences of regulation in multi-employer settings. The hospitality and construction industries offer a strategic standpoint to develop a comparative analysis of migrants' barriers to employment security in light of the typically migrant composition of the workforce, the relatively low-paid, transitory and intensive nature of employment, and the increasing use of subcontracting in both. Temporal patterns of employment clearly differ across these two industries (project based vs. continuous fluctuation) as do skills and the nature of work. These important structural differences have been considered in our analysis.

The time gap between the two qualitative studies allows for consideration of the changes in the field of migrant employment at the start, and aftermath, of the economic crisis of 2008, and its effects on these sections of the labour market. Net employment in the hospitality industry had grown by 17 percent in 2008-2012 (BHA, 2012), although the extent of contingent employment (especially zero-hours contracts) has also grown during the recession (van Wanrooy et al., 2013). In construction, employment dropped between 2009 - 2010 from 7.1 to 6.6 percent of all jobs in the UK, and since then has been broadly steady (Rhodes 2015), despite three industry recession periods in 2007 - 2012 (BIS 2013).

The empirical research on the hospitality industry comprised a two-phase multi-sited ethnography of migrant workers in one luxury hotel chain and two local employment agencies in London between 2007 and 2010. One phase involved a period of four months of covert research (with approval from the Ethical Board of Cardiff University's School of Social Sciences) in two temporary job agencies dispatching migrant workers to undertake jobs in restaurants, housekeeping and catering. The second phase involved sixteen months of overt participation in a unionisation campaign conducted in a large international hotel chain in London. Fifty migrant workers (including agency and in-house) and ten union and community practitioners have been interviewed during the two research phases.

The empirical research in the construction industry included two case studies of large construction sites with a subcontracting chain of up to twenty-seven companies, located in Northern England in 2014. Thirty in-depth interviews were conducted with migrant (posted and agency) workers from other EU countries, union representatives and managers, and complemented with participant observation. 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 organisations, including the trade unionists and employers involved, have been replaced with pseudonyms for ethical reasons, including protecting confidentiality and the vulnerable position of migrant workers.

The comparison between two migrant-rich sectors under processes of organisational restructuring gave us the opportunity to observe the production of migrant insecurity across them, despite the different nature of work involved. The study in hospitality uncovered different types of migrants from the EU or third countries, whereas the construction case added a new kind of migrant status – posted workers from other EU countries. While the

different economies of London and the North of England or the specific nationality of the migrant groups have not been the focus of the comparison, it is worth highlighting that London as a global city has historically attracted a variety of migrants (Will et al., 2010), and still has the largest share (3.2 million foreign-born people in 2015) compared to all other regions (Migration Observatory, 2017). In turn, mid-sized Northern towns have seen a dramatic increase in immigration, both as a result of governmental dispersal policies for asylum seekers since the 1990s, and of the opening of the market to free movers following the 2004 EU enlargement (Ciupijus 2014; Fitzgerald 2007). While the qualitative nature of both studies prevents any generalisations, the heterogeneous nature of the data allows us to explore the whole spectrum of migration and employment statuses and identify the vulnerabilities faced by all migrants, whether EU or TCNs across these locations.

Accordingly, the excerpts from the interviews across both studies have been selected on the basis of common topics, primarily covering migrants' experiences under fragmented contractual conditions. The data analysis focused in particular on: (1) institutional regulatory outcomes (e.g. the effects of regulation on workers' statuses and their forms of recruitment); (2) management practices (contractual arrangements and workforce fragmentation reflecting organisational change); (3) migrants' own understanding of how these fragmented work relations and regulatory aspects affect their transitory working lives.

For simplicity, and given the layers of internal comparison across migrant and employment categories, we present the analysis of the two sectors separately with the aim of highlighting the interaction of migration and employment status in each.

## **Analysis**

### **Migrant Temporary Labour in the UK Hospitality Sector**

Hotel and catering workers in London were either hired directly on a permanent, informal or casual basis, or indirectly through agencies or contractors. Hospitality employers tend to favour the recruitment of migrants, as they are assumed to provide the HR attributes needed to respond to the 'needs for flexibility' in hospitality, characterised by seasonal fluctuations in demand (Janta, Ladkin, Brown, and Lugosi 2011; McKay, 2009a; People 1st, 2009; 2013). Migrants' short-term plans are supposed to match employers' preferences, who rely on a 'constant turnover of unskilled employees' to reduce recruitment and labour costs (Janta et

al., 2011: 1007). The high transiency of labour, however, is also an issue for an industry which faces challenges to labour retention: while gaps persist mainly for some skilled trades such as culinary skills for chefs, shortages in elementary jobs, such as cleaning, remain due to the unattractive nature of work and employment in the sector (People 1<sup>st</sup>, 2013).

Common trends in the industry such as ‘in-sourcing’ (the use of temps) and the outsourcing of entire in-house functions to contractors operating on the company’s premises (Purcell and Purcell, 1998) are increasing because of fiercer competition. Hotels develop longer-term supply contracts with agencies to cut labour costs (Lai et al., 2008), and to fill sudden shortages. In our study, both EU and TCN migrant agency workers were used mainly for waiting, catering and portering jobs. In housekeeping, the newly-arrived A8 and A2 migrants, working alongside longer-term black minority ethnic (BME) and other non-EU migrants on a variety of visas, tended to be hired on a casual basis or through contractors.

#### Institutional Regulatory Outcomes: Agency Employment and Migrant Status

The data showed how the combination of the migrant and employment status of workers created specific situations of vulnerability and attractiveness to employers:

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

R: ...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 in the morning they go to the evening shift 'cause they want to have extra money... (Priscilla, Nigeria, 17 years in London, housekeeper, in-house)

Employers’ preference for migrant labour depends on the fact that 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, Hurstfield, Hill and Akroyd, 2006); or because they plan to stay only for a short period (Janta et al., 2011).

In hospitality, migrant agency workers entered the country on various visas, with varying entitlements and restrictions to work. TCNs under student visas appeared relatively more dependent on their agency employer, and willing to work intensive and long shifts, paradoxically because of fear of being reported to the immigration authorities if they were found breaching the 20-hour-per-week work limit imposed on this type of visa (Tier 4). Other non-EU holders of temporary work permits, whose status had become uncertain after the changes in the immigration system in 2008, appeared more submissive to employers (Fieldnotes, Temporary agency 1).

Agency workers from Accession 8 countries enjoyed free movement rights in the UK and could therefore afford periods of unemployment while registered with agencies without losing their right to stay. And yet even within the category of EU workers, we found a critical example illustrating how the differential regulation of migrant status becomes restrictive of employment rights: differently from the A8 migrants, Bulgarian and Romanian workers (A2) were subject to employment restrictions (lifted only in January 2014), and could therefore only work as self-employed (outside of the Seasonal Agricultural Workers Scheme). Those holding a self-employment permit would still get through to agency work in the hospitality industry. Maroukis (2015) also highlights that workers from Eastern Europe with limited access to employment have been brought in by brokering agencies charging hotel maids and cleaners very high fees, thus increasing migrants' bondage to employers. The migrant status of these workers provided a further cost-cutting strategy for employers, involving bogus deduction of National Insurance contributions and non-payment of holiday pay: EU migrants tended to pay their contributions in the UK if employed directly, while TCN agency workers did not make any mention of social insurance or contributory payments. Some migrants (both EU and TCNs) were victims of extra charges by agencies. During the covert participant observation, a prospective worker in training was pressured to pay an additional fee in order to be sent to work (Fieldnotes, Temporary Agency 1).

Even when the rules were formally respected, they were manipulated for cost advantage. We found regulatory conformance (Berntsen and Lillie 2015) in the case of workers who describe themselves as 'temps', but are in fact hired on zero-hours contracts, or self-employed 'without any contract just like agencies' (Maroukis, 2015: 27), making it easier to circumvent the requirements of the Agency Workers Regulations.

Due to the more precarious employment status, migrant agency workers tended to extend their working day and undertake unpaid overtime:

... 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 (Fabio, Brazil, 3 years in London, casual worker, Food and Beverage).

Both agency and directly-hired casual workers reported cases of unpaid overtime: they would work 17 hours a day as a result of combining different shifts in order to obtain a sufficient income to survive (see Wills, Datta, Evans, Herbert, May and McIllwaine, 2010), with a few hours in between needed for transportation (Informal interview with Bella, Eritrea, 7 years in London, agency worker, Food and Beverage).

While it is unlawful for the agency to put pressure on anyone to opt out at the point of registration, and despite the fact that Working Time regulations are applied to agency workers as workers, the research disclosed that opting out from the 48-hour working time limit<sup>1</sup> was common practice among agency workers. This finding confirmed how 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, Slater and Green, 2008).

Extreme 'stretching' of workers' capacities in order to complete their working day, long working hours and overtime, combined with the physical nature of work in hospitality, are at the centre of the poor health-and-safety conditions in this sector.

### Management Practices and Labour Fragmentation

There is a significant link between the restructuring of the global hotel industry, where internationalisation and corporatisation lead to an ever-more competitive market

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<sup>1</sup>Working Time Regulations in the UK set the limit to working time hours, rest breaks and paid leave for almost all categories of workers including the majority of agency workers. They establish a maximum average of 48 hours a week that workers can be expected to work, and yet the UK is the only EU member state allowing workers to 'opt out' from the 48-hour threshold (ACAS 2017).

(Appelbaum, Bernhardt, and Murnane 2003; Seifert and Messing, 2006), strategies of outsourcing/in-sourcing of labour, and the overall casualisation of employment. As one union officer explained:

The practice of 'outsourcing', especially in Food and Beverage but also in other jobs, creates a situation where workers have no relation with people, but only agencies. This division can be called 'the split-up of bricks and brains', whereas bricks refer to the physical infrastructure of the hotels and the brains to the managerial skills (...) private management companies... even though they own the buildings, they don't mind about anything else than the rent, in fact more rent means more return (Part-time officer, London Hotel Worker branch).

Through the transfer of tasks associated with new hires from the hotels to the agencies, the hotels decrease expenditure associated with HRM (Lai and Baum, 2005: 96). The reliance on temp agencies appears fundamental to the replacement of leaving or retiring core staff with workers who accept lower terms and conditions (Vanselow, Warhurst, Bernhardt, and Dresser 2009).

These gains, however, do not detract from the problems that also come with the use of temporary agency staff. As emerged in the case of a Lithuanian agency worker, the researcher during the fieldwork could observe how she slowed down the work and avoided tasks whenever possible, risking being fired rather than showing any interest in the assignment. And yet the same worker also tended to stay longer than the foreseen schedule and work anti-social hours, sometimes for shifts of up to 15 hours in a row (Fieldnotes, Temporary Agency 2, catering shift). Her behaviour showcases a contradictory pattern where a certain degree of job control co-exists with constraints typical of this sector, such as problems associated with long working hours, fragmentation, and shift working.

Because of the shortfalls associated with the use of temps, such as high labour churn, low motivation and productivity, time lost to induction, and fees paid to the agency, we have seen how hotels may prefer not to hire through agencies, and contract out entire functions instead (Maroukis 2015).

Changes in the governance structure at the Magnus Hotel when a new management company took over from the previous one in 2008 accentuated contractual fragmentation and triggered shifts in employment status within the same workplace: the workers hired under the previous

company maintained the old conditions, and others were employed directly but with new terms and conditions, while growing numbers were hired for entry-level jobs through agencies. These changes were associated with changes in the hotel's rulebook including cuts in retirement benefits, annual service bonus, and bereavement leave. Permanent staff complained particularly about the intensification of housekeeping shifts and the perceived 'threat of substitution' represented by the incoming migrant agency workers, willing to work longer hours (Interview with Arianna, Portugal, 28 years in London, housekeeper, in-house).

### Migrant Perspectives on Insecure and Transient Work

On the other side, migrant hospitality workers, especially the recently-arrived, were aware of the transient nature of their work and the effects of regulation on their terms and conditions. While witnessing the impossibility of planning for the longer term, migrant hospitality workers developed a relative sense of openness and weak commitment. Their perception of insecurity also varied according to their subjective migratory trajectories. As stated by one chambermaid casually employed in a West London hotel:

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 we just need to work very hard!  
(Cecilia, Brazil, 9 months in London, casual, chambermaid)

Cecilia suggests that – given their intensive and exploitative nature – these types of jobs are bearable only in the short term. On the one hand, this contingent and temporary workforce tends not to aspire to permanent positions, as these come with low pay and long working hours (see also Maroukis, 2015: 26). On the other hand, while these poor terms and conditions are typical features of employment in the hospitality sector independently from contractual status, agency workers tend to earn even less than in-house and still experience more precarity. In fact, there is no compulsion for the temporary agency as the main employer to provide work, nor a certain number of hours. In the case above, despite the unpredictability of the near future, the respondent appeared confident that by improving language skills, she would work out an exit strategy, develop her 'mobility plans', and move out of the hospitality sector altogether.

## **Migrant Posted Labour in British Engineering Construction**

The construction industry in the UK is cyclical, seasonal, mainly project-based, highly fragmented, and with most workers hired temporarily (BMG Research, 2015; Dainty et al., 2007; Gibson, 2009). Similarly to hospitality, casual employment and demanding conditions have made this industry less attractive to the local workforce, leading to shortages estimated to increase in the near future (UKCES, 2012). The demand has been supplied by migrant labour. Although there is some direct employment in the sector, most workers are hired indirectly through employment agencies, contractors, and self-employment (Forde, MacKenzie and Robinson, 2009), with some agencies and contractors, especially foreign ones, bringing workers from other EU countries via posting.

At both construction sites studied, around 20 percent of the workforce was brought from Eastern or Southern European countries of the EU, where there are fewer and/or less well-paid employment opportunities. While coming to the UK to work in a power plant construction site was described as a good opportunity, in-depth interviews with these migrants reveal the insecurities and vulnerabilities they face working in a fragmented multi-employer and transnational workplace.

### **Institutional Regulatory Outcomes: Posted Work and Migrant Status**

Hiring foreign subcontractors that post their workers from other EU countries has financial benefits for the main contractors in construction:

Why [the 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 (Cervantes, Spain, 7 months in UK, posted/agency worker, welder).

From this quotation, we understand foreign subcontractors are chosen because of their comparatively smaller cost, which is achieved by not applying the same terms-and-conditions as to a British contractor. The practice of posting as a form of temporary labour migration suggests that being an EU citizen operating in the single market does not guarantee equal labour rights across borders (Lillie 2012; Wagner 2015). Previous research has already underlined the occurrence of questionably legal practices, such as regulatory arbitrage,

evasion and conformance used by employers to reduce costs through posting (Berntsen and Lillie 2015). During fieldwork, we found that regulatory arbitrage was a common practice, as some contractors posted workers for a period of less than six months in order to be able to pay social insurance in the country of origin, less than what companies would have to pay in the UK. There were also cases of regulatory evasion, in which some subcontractors did not pay their workers the agreed collectively-bargained wage rates.

Furthermore, the employment of posted workers implies two fundamental conditions: hiring workers on a temporary basis, and their return upon the completion of the assignment, which make them not only more appealing for the main contractor, but also highly dependent on the subcontractors. The first condition makes their situation similar to that of the agency workers seen in hospitality; the second makes their dependency starker.

Leveraging this kind of power, employers have been able to exert pressure on posted workers to work harder and longer. The contracts are secured thanks to a competitive (lower) budget bidding that can be achieved only by decreasing the overall time for execution of the assignment and increasing work intensity:

The Spanish company lowers the budget by ordering people to work faster for less salary and do a variety of jobs... (Cervantes, Spain, 7 months in UK, posted/agency worker, welder).

Although we did not find any examples of unpaid overtime in construction, compliance with pressure to work overtime was linked to the relatively more insecure status. The mechanism of working under the tacit threat of dismissal became evident in the pressure to finish within a tight schedule that obliged workers to work overtime and throughout the whole weekend to be able to meet deadlines:

S: How many hours usually? Like on average?

C: 68 hours.

S: So, you work 7 days or 6?

C: Currently 7, because of deadlines. Some parts of the job need to be finished soon, so this is why. (Czaykowski, Poland, 5 months in UK, posted worker, welder)

As in the case of hospitality, intensification and extension of working time affected these workers' occupational health and safety. Although some would mention the financial benefit of working more hours, they were tired and often felt they could not refuse to work overtime.

OHS concerns were also raised by both unions and workers about the way subcontractors used posted workers. Foremen repeatedly asked posted workers to perform other tasks beyond their trade, and many felt obliged to comply. We were told this happened due to a working culture of not questioning the employer and the fear of dismissal, revealing the high level of dependency of the posted workers on their contractor.

If the posted worker status of migrants led to vulnerable and exploitable working conditions, the situation appeared even more strenuous for those migrant workers hired via employment agencies. During the visits in the two construction sites, shop stewards spoke of 'a good deal of exploitation' of agency workers and described it as 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).

### Management Practices and Labour Fragmentation

Casualisation and fragmentation of work are typical of the construction industry. Our empirical data supports past evidence that management strategies strive to achieve numerical flexibility and cost reduction through temporary employment (cf. Forde, MacKenzie and Robinson, 2009). Contractual agreements among some posted workers were weak, and did not guarantee continuous employment and its benefits:

It's called [an] 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).

Although some of the workers had worked for the same contractor for up to twenty years, most did not have permanent full-time contracts. Uncertain about the extent of the contracts

and the continuation of employment upon the completion of each project, these workers agreed to be sent anywhere just to have the opportunity to work.

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

While the insecurities related to casualisation and contractual fragmentation are typical of the sector, the overlapping of agency and posting situations made migrant workers more insecure and compliant to the subcontractors. In one case, a subcontractor did not pay the posted workers for fifty days before one of them eventually reported the company to the trade unions, who then brought the issue to the main contractor. Compliance to work without pay for long periods is indicative of the level of dependency of this type of labour migrant on their contractors.

Another source of employment insecurity was the change in the inter-organisational contractual arrangements while at the same workplace, whether because of the multiple-employer setting typical of the sector, or because of shifts in the organisation's management and governance structure (as in hospitality). In a few cases, our respondents had found themselves working first for one subcontractor, then for an employment agency, later to be formally hired by another company, and supervised by a fourth. These contractual shifts caused confusion about who their real employer was, and where to address their grievances.

### Migrant Perspectives on Insecure and Transient Work

Posted workers were aware of their dependency on the subcontractor, and the uncertainty of their employment. As one of them put it:

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'd always work (Fausto, Spain, 1 month in UK, posted worker, mounter).

Yet, although posting limits and conditions the workers' mobility, as EU citizens they can in principle become independent migrant workers, enjoying freedom of movement within the EU. However, in order to successfully access employment, posted workers need to have the 'right skills,' including language skills, knowledge of the local labour market, and a support network. Four of the posted worker respondents were about to make the shift into free movers at the time of interview. Through the advice and support of a settled migrant friend, they had taken a skills test, which they were all expecting to pass, based on their long work experience (Group interview with Spanish workers, 30 March 2014). Later we found out that they had already left the site and signed a contract directly with a British company.

## **Discussion and Conclusion**

Observations of the experiences of migrant agency and posted workers in British construction and hospitality have revealed how their inferior conditions are produced through the regulation of specific employment and migrant categories. We also observed instances of rule evasion and rule arbitrage, reflecting typical patterns of de-regulation. And yet the 'exceptional' status of both posted and agency workers appeared to be constructed by regulatory interventions, which explained migrants' relative greater insecurity as compared to in-house permanent workers.

Changes in the management of large enterprises and their internationalisation and corporatisation in the last two decades have made work in both sectors highly fragmented. In hospitality, we found both in-sourcing and outsourcing strategies, whereas in construction we found mainly outsourcing with agency work used at the subcontractor level. A wide range of contractual types were found in the same working space in both industries: directly employed (permanent or casual) and indirectly hired via agencies or (sub)contractors. Furthermore, many went through continuous contractual changes and shifts. The casualisation of employment in both sectors, along with their low-pay status and labour-intensive nature, have resulted in increasing shortages that tend to be filled with migrant labour recruited both locally and internationally via employment agencies, subcontracting, and posting (see also Coe, Johns, and Ward 2009).

In terms of regulatory outcomes, migration regulation appeared to have a direct influence on recruitment practices. TCNs seemed particularly vulnerable, especially when their rights to

reside and work in the UK were time-limited (Anderson, 2010; Rodriguez and Mearns, 2012). Despite the free movement of labour within the single European market, not all EU migrants enjoy equal rights across national labour markets. For instance, at the time of the research EU workers from Romania and Bulgaria had limited employment rights (except when entering as self-employed), while EU posted workers are explicitly devised as an exceptional category. This is because they move across the border as ‘services’ rather than as EU citizens exercising their free movement and labour rights, and are excluded from equal treatment rules. The recruitment of TCN and EU migrants with limited access to the British labour market can be understood as a profitable strategy for employers to access cheaper and more compliant labour. While employment in the two sectors has been differently affected by the crisis (with a continued growth in net employment in hospitality and a small drop in construction), it is plausible that UK employers have favoured the use of migrant contingent labour as a measure to control costs and maintain flexibility during times of uncertainty (see Rogers, Anderson, and Clark 2009). The rise in the overall number of agency workers since 2009 may be an indication of this (Forde and Slater 2014).

Recruiting labour transnationally also means that employers navigate different national and transnational regulatory spaces and exploit legal loopholes to reduce costs (Berntsen and Lillie 2015). In hospitality we found instances of regulatory conformance when employers circumvented TAW regulation by hiring workers on zero-hours contracts or as self-employed (cf. Mourakis 2015), as well as regulatory evasion when workers were hired informally. In construction, regulatory arbitrage was common among posted workers, as employers preferred to pay social benefits schemes in the country where benefits were cheapest. Regulatory evasion emerged when, despite having agreed on a collective bargaining wage system, some employers still found ways to pay their posted workers less.

Migrants were aware of the differential treatment reserved for them because of the multiple regulatory frameworks, and developed various approaches according to their other migration plans, specific skills, and support networks. EU migrant workers may quit the posting job and convert into individuals freely navigating the EU labour market. But TCNs, who work in the UK with a visa that ties them to their employer, do not have that option unless they obtain permanent leave to remain, which seems less likely under the PBS. In the case of hospitality, agency migrants on student visas with strong social networks and social skills would still manage to draw from their transient status and low commitment, and move out of insecure

and low-paid positions.

Constraints to their mobility in the labour market appeared therefore to give rise to ‘unfree’ employment relations (Fudge and Strauss, 2013) by lowering, fragmenting and ‘multiplying’ terms and conditions for individuals in the same workplace (Mezzadra and Neilson, 2013). In this regard, we found striking similarities between categories of EU and non-EU (TCNs) migrants. Both EU posted workers in construction and non-EU agency workers in hospitality are excluded from free circulation within the host state labour market; they do not enjoy the same social entitlements of citizens; and (an aspect under-explored in this article) have limited access to trade unions in the workplace (Hayes et al. 2013; Marchington et al., 2005). These categories of migrants are in a position of vulnerability and dependence on the employer, either because of being tied to a temporary work permit for TCNs, or, in the case of posted workers, because they are formally excluded from the host country labour market. Their temporary status and dependency on work permits augmented their consent and willingness to work intensively and overtime, although this had implications for occupational health and safety. It therefore emerged across the two sectors that the labour intensity and low pay in both industries is maintained through some key characteristics of these workers as migrant workers.

This article highlights the importance of migration perspectives in the study of labour management and regulation. The cases show how low-paid temporary migrant workers present HRM with specific challenges such as issues of recruitment, labour turnover, and commitment that are different from those of highly-skilled migrants or expats (De Cieri et al., 2007; Lillie et al. 2014). While actors like temporary agencies play an important role as new HR managers of the mobility of labour across borders (Alberti 2014; Peck et al. 2005), state migration policy and supranational regulation such as the EU Directive on Posting appear to contribute to employment fragmentation through the production of differentiated categories of workers.

While our article uncovered the similarities between EU migrants and TCNs, confronting the new scenario of possible withdrawal of free movement rights for internal migrants in the UK following this country’s decision to leave the EU, it is crucial to emphasise that impediments to mobility rights and social protections tend to increase precarity in the labour market (Anderson 2010; Fudge 2012; Rodriguez and Mearns 2012). The employment constraints

reserved for A2 workers in the UK, and their relatively disadvantaged position, illustrates the persisting importance of free movement and full access to employment for migrants in order to avoid forms of dependency or bondage to employers and labour brokers. It is our view that similar explorations of policy and contractual differentiation in the context of organisational change constitute a step towards identifying useful practices for improving migrants' working and social conditions, advancing IHRM research toward more equitable employment and management practices.

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