Protecting Precarious Workers in a Recession – Social Partners Strategies in the Face of Deregulation in Ireland

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“Social problems are at bottom political; they arise from differences of opinion and interest and, except in trivial circumstances, are difficulties to be coped with (ignored, got around, put up with, exercised by the arts of rhetoric etc) rather than puzzles to be solved” (Banfield, 1980: 18).

Introduction

A key feature of modern capitalist societies is the persistence and growth of precarious work; a phenomenon which has been paid greater academic attention given its associations with globalisation, financialisation, de-unionisation, unemployment and outsourcing (Kalleberg 2009; 2012; Connell and Burgess 2006; Burgess 2000; McKay, Clark and Paraskevopoulou 2011). Studies have highlighted the growth of precarious work and its associated characteristics including insecure employment and working hours, low job quality, low wages, lack of employee access to justice and less regulatory protection than ‘standard’ jobs (Cranford et al., 2003). Precarious work is a significant public policy problem given it can have considerable negative effects on employees’ income, health, well-being and career prospects. Precarious work is also problematic for economies with its associations to lower consumer spending, higher social welfare spending and higher inequality (Vaughan-Whitehead, 2010). The consensus in research indicates that for those in precarious employment, institutions matter and that differing institutional interactions lead to varying outcomes (Bosch et al., 2010; Grimshaw et al., 2013; Lee and Sobeck, 2012).

Examining why and how particular institutions are established, change or remain stable is critical to further our understanding of particular institutional outcomes and their effectiveness in regulating precarious employment.

Opportunities for new or reformed mechanisms to tackle precarious work and low pay in particular are rare and one of the reasons for this is that institutions are inclined towards stability rather than change (Lowndes, 1996; Mahoney and Thelen, 2010). Where opportunities do arise to reform such institutions, a bargaining process can ensue in which stakeholders, notably trade unions, employer associations and other interest groups try to influence the nature and extent of change, often targeted at government where it has the power to establish and define institutions. Of course governments are not neutral but have their own economic and political interests to satisfy. Bargaining theory would suggest that the outcome will be influenced by the nature of the problem, the preferences and strategies of actors, the power available to each and the alternatives available (Lewicki et al., 2010). Drawing on this literature, we examine the strategies of social partners following the collapse of a wage setting institution for precarious work in Ireland. The key contribution of this paper is to use bargaining literature to analyse actors’ strategies following deregulation. Importantly, we contribute to our knowledge of institutional change, a phenomenon which, it has been argued, has received insufficient academic analysis particularly in historical institutionalist perspectives (Peters et al., 2005).

The institution under focus in this study is the system of Joint Labour Committees (JLCs), which has been a central mechanism to regulate precarious work in Ireland since the early 1900s, initially covering small manufacturing establishments and sweatshops and later covering mostly services sector employments. The JLC system
consisted of statutory tripartite bodies which set legally binding pay and conditions for employments in hotels, catering, security, contract cleaning, agriculture, hairdressing and retail amongst others, covering approximately 12 per cent of all employees in 2008 (Turner and O’Sullivan, 2013; CSO, 2012). The JLCs provided unions and employers with a direct role in the setting of minimum pay rates and conditions at industry level, a mechanism familiar to coordinated market economies but which is rare in liberal economies like Ireland. The JLCs remained in existence even after a national minimum wage (NMW) was introduced in 2000 but came under increased scrutiny in a recessionary environment in 2010. As part of the financial aid package from the European Union, European Central Bank and the International Monetary Fund (Troika), the government agreed to review the JLC system with the aim of protecting employment and facilitating re-adjustment in the labour market. In a separate event, six months later, the JLC system effectively collapsed after the High Court found the JLC for the catering sector to be unconstitutional following a legal action taken by an employer association. Two institutional responses eventually emerged from these events. One was a government response to introduce new legislation in 2012 which provided for the re-establishment of a reformed JLC system but the system has yet to become operational. The second response involved trade unions and employer organisations quickly moving towards a voluntary sectoral agreement in two sectors previously covered by JLCs, thereby re-regulating it.

The paper aims to address two research questions: 1. why the JLC system was re-established?; 2. why did voluntary collective bargaining emerge in some sectors? The findings are based on interviews with representatives from trade unions and employer associations and documentary analysis of union and employer association submissions to government bodies. The paper is structured as follows. The next section reviews the importance of institutions for precarious work in a comparative context. The subsequent section explains the conceptual framework used to analyse actor strategies by drawing on bargaining theory. This is followed by an outline of the methodology and the findings.

Institutions and Precarious Work

There are clearly common pressures on employment regulation systems across countries exacerbated by the trends of globalisation, financialisation and de-unionisation (Kalleberg, 2011). In the US context, Kalleberg (2012: 428) argues that the rise in precarity and inequality “are not merely temporary features of the business cycle but represent structural transformations such that bad jobs are no longer vestigial but a central component of U.S. employment”. Applebaum and Schmitt (2009) too pessimistically point to the trend internationally of employers seeking to drive down wages and sidestep inclusive institutions. Certainly evidence from some European countries points to significant levels of precarity and institutions under pressure. Like the US, there is a high level of low pay and insecure employment in the UK which has been attributed to low union density, low collective bargaining coverage, a lack of multi-employer industry bargaining and the pursuit of neo-liberal policies by governments (Bosch et al., 2010). Some improvements in wages in precarious employments have been made in the UK as a result the living wage campaign and minimum regulations included in public sector subcontracting law but their effectiveness is restricted by their lack of coverage across the economy (Applebaum and Schmitt 2009; Roberts, 2012). Germany also has a relatively high
level of low pay which has been accounted for by declining employer density and a
shift in attitude by employers towards centralised bargaining (Bosch et al., 2010;
Bispinck et al., 2010). Further afield, in Australia and New Zealand, it has been
argued that neo-liberal government policies, including the erosion of national wage
and conditions minima under the awards system, and rise in workplace regulation has
led to less secure conditions for many workers (Burgess, 2000; Ryan and Herod,
2006). Yet research also highlights that poor quality jobs and low pay are not
inevitable consequences of modern capitalism and particular institutional mechanisms
can be effective barriers to precarious work. In Denmark, where 8 per cent of
employees are low paid, strong unions have sufficient power to pursue a solidaristic
wage policy and high minimum wages in collective agreements (Bosch et al., 2010).
Similarly, union power in Sweden countries allows them to pursue increases in
minimum wages in collective agreements and enforce these. Evidence indicates that
minimum wages has compressed the bottom part of the wage distributions in retail
and hotels/restaurants in Sweden, where real minimum wages increased by 49 and 44
per cent respectively, between 1995 and 2007 (Skedinge, 2008). High employer
density in France and the Netherlands along with extended collective agreements
inhibits the growth of low pay in those countries (Bosch et al., 2010). Overall research
indicates that institutions with a high level of centralisation, coordination and
inclusiveness are considered the most effective at protecting workers and these in turn
are influenced by the union density rate, the presence of collective agreement
extension mechanisms, high collective bargaining coverage rate and strong employer
organisations at industry level (Bosch et al., 2010). In coordinated market economies,
social dialogue in regulating work and setting minimum wages is institutionally
embedded. However, in liberal market economies, this is often not the case and
instances of social dialogue at sectoral level are limited (Gospel and Druker, 1998;
Wallace et al., 2013). Ireland represents an interesting subject for study where the
Joint Labour Committee system has been a form of legislatively forced sectoral social
dialogue, the relevance of which had to be reassessed following its collapse. The next
section draws concepts from bargaining theory with which to analyse social partner
strategies regarding the JLC system.

Bargaining Theory
Negotiation has been recognised as ‘a central component of national policy-making
processes from setting agendas, to determining what issues are to be addressed by
policy makers, exploring options, finding solutions and securing needed support from
relevant parties…’ (Alfredson and Cungu, 2008: 2). Bargaining theory focuses on a
micro level process of how outcomes are produced following negotiation between
parties with varying interests. Critical to the study of negotiation is the strategic
choices of the parties which are predicated on their conception of the problem to be
solved, their sources and strength of their power, the institutional alternatives
available, and tactical skill. Of course parties do not make decisions in a vacuum but
are made in particular historical, economic and political contexts which constrain their
choices.

Conception of the Problem
In policy making, the problem definition stage is important because this ‘generates
virtually everything that happens in a policy process’ (DeLeon, 1994: 89). Bargaining
theory influenced by mathematical model predictions of cooperation and defection,
assume that strategic decisions and tactics of parties in a negotiation will depend on a number of factors, particularly the parties’ conception of a problem as being a zero-sum or non-zero sum game (Lewicki et al., 2010). If the bargaining parties view the problem as a zero sum or win lose game, then their goal will be to claim as large a share of the resource as possible. To do so, they will engage in competitive tactics involving the leverage of power in an effort to achieve a favourable outcome for themselves at the expense of the other party. Thus, the outcome is the result of a trial of strength by the parties. In contrast, if the parties conceive of a problem as a non-zero sum game, then they do not view their goals as mutually exclusive and try to find a solution which satisfies both parties’ sets of interests. If both parties work together towards their common interests, then an optimal outcome in which both sides create value is possible. Thus, in a public policy context where the issue is the setting of minimum pay and conditions, the social partners conception of the problem is critical in terms of what the problem to be solved is and how it might be solved.

Research in negotiation has highlighted that a key difficulty in any negotiation is the presence of individual cognitive biases, one of the most commonly cited is where parties conceptualise a problem as zero sum when a non-zero sum game may actually exist (Thompson, 2014). In this scenario, potential integrative outcomes are lost and sub-optimal outcomes are achieved. In the absence of perfect information or external feedback, the parties may not recognise that a mutually beneficial outcome was available and instead they may believe that the tactics chosen and outcome achieved was optimal, even when this is not the case and this can lead to future sub-optimal tactics. We extend this analysis to the policy sphere by arguing that parties in a negotiation may view a problem in zero-sum fashion not because of individual cognitive bias but as a result of the institutional context. The institutional arrangements in place frame the parties conception of the problem to be solved as well as providing the constraints and flexibilities for possible solutions. Thus, it would be expected that employer organisations and trade unions views will be influenced by their experience of the JLC system that was in place, by their views about the behaviour of each other and by their interests.

For trade unions, research suggests that they can conceptualise precarious work in a variety of ways. It could be argued that precarious employment is a significant threat to trade unions because it is a departure from the standard employment contract which was central to union ‘identity, internal structures and strategies’ (Campbell 2010: 118). Precarious jobs present problems for unions in that insider interests of maintaining the standard employment contract with its associated pay and conditions may be threatened. In this context, Bray (1991) has identified four potential responses by unions to non-standard employment: ignore, exclude and oppose, limit numbers and regulate and recruit and integrate. In the Australian context, Burgess (2000) argues that trade unions have been slow to react to the structural changes in employment and therefore to the potential unionisation of non-standard workers. Nevertheless there are instances of trade unions paying greater attention to outsiders and those in precarious employment to resist the segmentation of the labour market and by a need to widen the potential membership base (Campbell, 2010). To achieve these twin interests, there is evidence of unions seeking to regulate precarious employment through collective bargaining, lobbying governments and the EU legislature for increased regulation and to recruit precarious workers through organising campaigns (Fitzgerald and Hardy, 2010; Gumbrell-McCormick, 2011).
Employers in general have a common interest to maximise productive efficiency but they may differ in their conceptualisation of how this may be achieved and this influences their conceptualisation of varying employment types. Collective bargaining often results in wages that are above the market clearing rate (Haucap, Pauly and Wey 1999) and consequently there must be sufficient benefits or incentives for employers to participate in a collective agreement or alternatively sufficiently high costs attached to not participating. Employers support for collective bargaining is based on a number of rational economic reasons. Coordinated higher wages and additional regulatory standards can act to restrict entry to the sector or increase competitors’ costs and force their exit from the industry (Haucap et al. 1999; Williamson 1968). In addition, by coordinating wages through bargaining, this restricts competition on basis of lower wages and provides a ‘cartelising function’ that enhances the control of existing employers in the industry (Barry and Wilkinson 2011: 152). In addition, there are benefits to paying wages above the market clearing rate in terms of maintaining employee morale and productivity (Bewley, 1999). In coordinated market economies, employers can support centralised collective bargaining (Barry and Wilkinson, 2011; Bowman, 1998; Swenson, 1991). However, in liberal market economies, employer coordination is generally weak as competition between them gives rise to individualistic interest perceptions (Streeck 1987). Such perceptions can become more pronounced in precarious employments in which ‘productive systems’ that compete on low cost rather than quality can dominate (McLaughlin, 2009) and research suggests that in such employments, firms can oppose minimum regulation and thus the potential integrative outcomes that might arise are lost (Acemoglu 2001; Bachmann et al. 2012). The low cost productive system in precarious employments means that employers can be strongly resistant to institutional regulation even in traditionally coordinated market economies. Employers can terminate their membership of employer organisations or undermine existing institutional framework like in Germany (Royle, 2002), or form breakaway employer organisations which oppose collective bargaining or minimum wages as fast food employers did in Ireland (O’Sullivan and Royle, 2013).

From a governments perspective, their views of a ‘problem’ may be influenced by their political ideology, political expediency, pressure brought to bear by other social partners and interest groups and external sources such as the EU legislature and these may pull government choices in opposite directions. For example, the NMW was introduced in Ireland in 2000 having being pursued by an unlikely source; the then Progressive Democrat party, known as a pro-business neo-liberal party but which promised the introduction of the NMW as part of an election promise (O’Sullivan and Wallace, 2011). In 2011, the government announced the reduction in the NMW by €1 to €7.65. This would not be expected given that the coalition government’s majority party, Fianna Fail, is considered a populist party but the move came on foot of pressure from the Troika in exchange for the financial aid package.

Sources of Power
Power can be viewed by the parties as something to have over another party (in a zero sum game) or to have with another party (in a non-zero sum game). In either scenario, power is critical to the process and outcome of a negotiation. While power can come from a variety of sources, two key sources relevant to the discussion of public policy
are position based power and alternatives. A party derives position based power from their control over resources, and their ability to reward or punish to gain compliance (Lewicki et al., 2010). Generally a precondition for industry collective bargaining is strong trade unions (Brown, 2008). As noted earlier, strong unions in some Northern European countries have been able to impose improved wages and conditions for employees. However, in many countries unions are often absent or weak in precarious employments and this removes one of the incentives for employers to engage in industry bargaining in those employments. Alternatively, unions may have sufficient strength in other sectors to seek wage gains for precarious employments, as unions in Denmark so. At another level, unions may have sufficient political and lobbying power to influence government to allow for collective bargaining extensions such as in France and the Netherlands, or to improve employment regulations. In the face of more powerful parties, actors can improve their power base by forming coalitions with other groups (Lewicki et al., 2010) and unions frequently engage with community groups and NGOs to campaign for better employee pay and conditions (Wills, 2001).

For employers, depending on their objectives, their power will come from varying sources. As noted, employers are not always unified in their objectives. Some employer organisations are supportive of collective bargaining and minimum wages and historically in some countries, they have promoted coordination (Barry and Wilkinson, 2011). Where there are strong employer organisations which support collective bargaining, they can prevent widespread infringements by employers with a preference for short-term cost containment. The input by strong employer organisations into collective agreements can ensure value creation for them and trade unions as evidenced by McLaughlin’s (2009) study of vocational training in Denmark. It highlights that strong social partners and their involvement in vocational training provisions in collective agreements has resulted in a flexible and better skilled workforce and therefore a competitive strategy based on higher productivity and wages (McLaughlin, 2009). Indeed, it has been argued that countries with more ‘inclusive’ institutions can encourage firms in the direction of ‘high road’ labor-market outcomes (Applebaum and Schmitt, 2009). Where there is weak social dialogue that inhibits the positive sum creation, employers can use political lobbying, media campaigns and legal cases to seek the dilution of regulation or alternatively can draw from the large pooled of often non-unionised labour and offer lower pay and conditions, as is common in precarious employments.

Alternatives
Parties’ choice of a solution to a problem will be influenced by the extent of available alternatives. In a public policy context, it would be expected that a response to a policy problem would be influenced by previous responses to that problem. Past policy decisions can shape subsequent policy ‘by encouraging societal forces to organise along some lines rather than others, to adopt particular identities or to develop interests in policies that are costly to shift’ (Hall and Taylor, 1996: 941). Institutions may be difficult to change as institutional lock-in can derive from habituation, scale economies and popularity (Barnes et al., 2004; Levi, 1997; Pierson, 2000; Ebbinghaus, 2005).
Social partner strategies will also likely be conditioned by the reactions of other parties to potential alternative solutions. Thus, trade unions, employers and government may view an alternative response to a policy problem as preferable to their interests but may not pursue it if they believe it will be rejected by other parties and is therefore unachievable. For example, trade unions in Ireland have been criticised for not achieving compulsory union recognition during a period of national social partnership from 1987-2008 (Turner and D’Art, 2011). Employer organisations have always strongly opposed such a move and trade unions never made the issue a ‘deal breaker’ in social partnership negotiations. Government too will be mindful of social partners interests when making policy choices. In the industrial relations sphere, successive governments in Ireland have generally sought the viewpoints of trade unions and employer organisations before making significant decisions and introducing legislation both in times of social partnership and outside it (Wallace et al., 2013).

Methodology
A mixed methodology was used incorporating qualitative interviews with industry representatives and quantitative analysis of JLC orders. Semi-structured interviews and email correspondence were undertaken with 17 key informants. Six informants were trade union officials with Ireland’s largest union, the Services, Industrial, Professional and Technical Union (SIPTU). It accounts for 34 per cent of union members and is the primary employee representative organisation in the system of Joint Labour Committees (Wallace et al., 2013). Ten informants were employer association representatives from The Irish Contract Cleaning Association (ICCA) and the Irish Security Industry Association (ISIA) is the primary employer body in the security industry. Employer association informants were either full-time employees of the associations or employers (the owner, CEO or HR Manager). Firms interviewed ranged in size from 28 to over 1000 employees. Interviews lasted between 40 minutes and one hour 20 minutes and all face to face interviews were recorded and notes were taken for the telephone interview. The interview and email data was analysed through content analysis, which is defined as ‘the subjective interpretation of the content of text data through the systematic classification process of coding and identifying themes or patterns’ (Hsiu-Fang Hsieh and Shannon, 2005: 1278).

Findings
Why the JLC System was Re-established
Two significant events which occurred within 6 months of each other framed the subsequent debate amongst social partners about JLCs. The first was a commitment made by the government to review the JLC system in the National Recovery Plan 2011-2014 and the EU/IMF Programme for Financial Support. The government stated the regulations made by JLCs ‘constitute another form of labour market rigidity by preventing wage levels from adjusting’ and it sought a ‘more streamlined, transparent and flexible model of wage setting’ (Government Publications, 2010: 37). The commitment to review JLCs was subsequently continued by the newly elected government in February 2011 and an independent review body was established. The second event was the High Court judgement in July 2011 which decided that the JLC for catering was unconstitutional, effectively collapsing the entire system. The legal case has been taken be the newly formed fast food employer organisation, the Quick
Service Food Alliance, as a way of resisting what they viewed as excessive regulations set by the JLC (O’Sullivan and Royle, 2013). As the JLC system is established in legislation, the onus fell on government to decide whether to retain the system or not. The independent review body was required to make recommendations on the continued relevance, fairness and efficiency of the regulations produced by JLCs and on possible legislative changes the JLC framework ‘to move to a more streamlined, transparent and flexible wage setting model’ (Duffy and Walsh, 2011: 10). The review was to take account of a range of factors including the orderly conduct of industrial relations, the protection of employee rights and interests, domestic competition and international competitiveness of the sectors covered by JLCs, price and wage movements in the economy and in major trading partners; the impact on labour market flexibility and sustainable employment across the economy (Duffy and Walsh, 2011). Thus, in the context of pressures from the Troika and the legal case, the government sought to determine the fate of a particular institution. The agenda set by the government for the review of JLCs framed the nature of the subsequent debate to focus on the employment, wage flexibility and competitiveness effects of JLC regulations. While the review was to take into consideration employee rights and interests, it was not a term of reference for the review body to examine the effectiveness of JLCs in regulating employments with low pay or weak collective bargaining – the original reasons for the establishment of JLCs. Thus, the agenda set by the government narrowed the debate between social partners so that the problem was defined as an institutional one rather than a wider policy problem of how to address precarious employment.

Unsurprisingly, trade unions argued in favour of the retention of JLCs. The Irish Congress of Trade Unions (ICTU) (2013: 19) argued that JLCs protect workers during the worse times of recession and ‘are versatile enough to allow for reductions in hard times as well as improvements in good times’. It argued that if the government removed very basic protections from vulnerable workers, ‘then all the talk during the Lisbon debate by the EU Commission and the Government about respecting workers rights will be to have been nothing but an exercise in deceit’ (ICTU, 2013: 19). Ireland’s largest employer organisation, the Irish Business and Employers Confederation (IBEC), argued against the re-introduction of the JLC system because it would put firms in jeopardy, push up costs and prices and reduce employment (Sweeney and O’Brien 2011; Wall 2011; IBEC, 2012). Similarly, other industry bodies argued for non-retention of the JLCs including the Irish Tourist Industry Confederation, the Irish Farmers Association, the Restaurant Association of Ireland and the Irish Hotels Federation.

The report produced by review body recommended the retention of the JLC system because it stated there was no significant evidence of negative employment or wage flexibility effects and because the current body of employment rights does not cover all the issues addressed by JLCs. However, the report recommended ‘a radical overhaul so as to make it fairer and more responsive to changing economic circumstances and labour market conditions’ (Duffy and Walsh, 2011: 2). The government subsequently introduced legislation to re-establish the JLC system in a reformed manner because ‘we need a robust system to protect vulnerable workers, we also need a system that is sufficiently flexible to maximise job opportunities’ (Bruton, 2012). To increase the ‘flexibility’ of the system, the range of regulations it can set have been reduced, members must consider a list of economic factors before deciding
on regulations and individual employers can apply to be exempt from the regulations for a period of time.

Why Sectoral Bargaining Emerged
While employer organisations in most of the sectors covered by JLCs welcomed their collapse, organisations in security and contract cleaning viewed the collapse negatively. In some respects, it is surprising that employer organisations in these sectors would favour regulation given the level of non-compliance levels with previous JLC regulations and other employment legislation. Labour inspection data show that in 2010, there was a 57 per cent non-compliance rate in contract cleaning employments and a 42 per cent non-compliance rate amongst security employments with legal regulations (NERA, 2011). Interviews for this study indicate that employer organisations conceived of the problem which arose following the collapse of JLCs differently to employer organisations in other sectors and the market structure of the contract cleaning and security contributed to an alternative viewpoint. The market for cleaning and security firms is loosely segmented where the largest firms mostly compete with each other for contracts while smaller/medium sized employers see their competition as both larger firms and ‘fly by night’ operators. Both sectors are characterised by subcontractors tendering for work from clients based on a specified number of hours for a price and competition for tenders between contractors is perceived as “cutthroat”. In the absence of JLCs, interviews indicated a number of likely negative effects of not having industry wide wage regulation. The most significant impact would be market uncertainty arising from the differences in labour costs across firms. This is because existing firms would have to pay staff their contractually entitled rate of pay, based on former JLC rates, while new firms entering the market could pay their new employees the lower NMW and conditions set in employment legislation only and win business on this basis. Unions’ believed that without an industry agreement, there be “no deterrent for race to the bottom” (TU1) because “workers in these sectors are more prone to exploitation and abuse” (TU4). This uncertainty would be exacerbated by the application of the Transfer of Undertakings legislation in Ireland. The legislation was introduced, on foot of an EU Directive, to protect employees’ rights where a business or part of a business or undertaking is transferred from one employer to another. If the Transfer of Undertakings Regulations apply to a transfer situation, the new employer is obliged to employ the previous business’ employees on the same terms and conditions as they had previously. While the Irish legislation applying the EU Directive is explicit in applying to a transfer of a business entity, it is silent on its applicability to service provision (Fawsitt, 2010). This means that when a client company changes its cleaning or security contractor, there is a lack of clarity of whether or not the transfer regulations should apply and therefore whether employees are transferred to the new contractor or not (Fawsitt, 2010). Consequently there have been significant disputes in both sectors arising from this lack of legal clarity (all interviews). The client which engages the cleaning or security contractor may claim that transfer of undertakings law will not apply because they do not want the same employees servicing the contract on site or the new contractor may decide to refuse to accept that the law is relevant. Overall, the Transfer of Undertakings law ‘leaves the landscape for tender process and outsourcing rearrangements unpredictable and liable to escalated costs to deal with the uncertain employee issues’ (Fawsitt, 2010: 47). If some firms paid lower wages, because of the absence of JLC rates and refusal to recognise obligations under Transfer of Undertakings, the result would be pressure to drive down costs and
deteriorating standards. Employers and union officials believed this would disintegrate the investment employee training and product quality in both sectors and would lower the status of jobs, creating recruitment and retention problems for employers. Lastly, a reduction in pay rates to the NMW would lead to even tighter profit margins for existing companies because the contractors’ profit margin is calculated as a percentage of total costs. As labour costs account for most of total costs, any reduction in wages essentially translates into a reduced profit margin. Due to employer concerns over market uncertainty and union concerns over pay and conditions, the social partners sought to agree a legally binding industry agreement known as a Registered Employment Agreement (REA).

Power and Strategies
There was no move to transfer any sectors under JLC regulation to voluntary collective bargaining through REAs until JLCs collapsed. It could be argued that it was not feasible to initiate voluntary collective bargaining in contract cleaning and security when JLCs for those sectors were first established as employers in those sectors were poorly organised. However, there was no move to REAs even after employers became organised in those sectors. It was the crisis of uncertainty – market uncertainty for employers and income uncertainty for employees – following the collapse of JLCs that forced the social partners to seek alternative institutional solutions. Trade union interviewees suggested that trade union power partly accounted for employers’ cooperation in moving towards REAs. Official statistics do not provide unionisation data for the contract cleaning and security sectors. Interviewees estimated that union density in security is 40 to 60 per cent, making it one of the more highly unionised sectors formerly covered by JLCs and interviewees argued that many of the larger companies in the industry recognise unions. Union officials stated that they informed employers they would initiate hundreds of legal actions if an REA was not introduced. Unionisation is much lower in contract cleaning, estimated at between 20 and 27 per cent in contract cleaning with larger companies also recognising a trade union. Union officials argued that employers feared that significant industrial conflict would arise without industry regulation as employers sought to lower wages in order to win contracts. The largest trade union, the Services, Industrial, Professional and Technical Union (SIPTU), collaborated with NGOs such as the Migrant Rights Centre of Ireland to campaign the reduction in the NMW in 2011 and the collapse of JLCs. SIPTU also heavily invested in organising and mobilising contract cleaners to lobby the government for re-regulation of the cleaning sector. The organising drive in cleaning follows some successful campaigns internationally (Savage, 2006) and Wills (2008: 306) argues that cleaners have become an ‘unlikely vanguard in a transnationalizing urban labour movement’. Union officials believed that the cleaners organising campaign signalled to employers a more proactive and militant union in the industry. While employers acknowledged that industrial disputes would likely arise, there was a strong economic rationale for larger employers to support voluntary sectoral bargaining. In other sectors covered by the JLCs, there was no appetite amongst employer organisations for a sectoral agreement and therefore none has emerged. There has been no indication that unions had the strength to force employers into collective bargaining given low union density and the absence of compulsory union recognition mechanisms in Ireland. The exception is the retail union Mandate, which has pursued an aggressive strategy of firm level collective bargaining, negotiating ten agreements with eight major retailers including Tesco, Marks and Spencer, Boots, Argos and Pennys since 2012 (Prendergast, 2014).
Not all employers favoured the re-regulation of the security and contract cleaning sectors. Some employer interviewees in contract cleaning were dissatisfied with some elements of the sectoral agreement such as the maintenance of the sick pay scheme and overtime and premium payments but overall they believed the benefit of re-regulation outweighed the costs. Union officials noted that employers of different sizes have participated in supporting the REA “because there’s a recognition that if you can create a level playing field, there’s enough market share for most” and that “they see the REA as a mechanism to protect themselves from fly by night operators”.

Thus employer preferences for ‘some cooperative outcome could go hand in hand with opposition to a particular cooperative outcome’ (Bowman 1998: 208). However, resistance amongst some employers to the sectoral agreement was stronger in security than contract cleaning. When employer organisations and trade unions proposed an REA for the sector, 26 objections were received by the Labour Court. Before a decision was made by the Labour Court on the REA, a separate legal case in the Supreme Court resulted in the system of REAs being found unconstitutional, similar to that taken by fast food employers against JLCs. The REA system will be re-introduced in legislation by government.

**Conclusion**

We argue that the institutional context and exogenous factors significantly influenced trade unions, employers and governments’ conception of the problem. The government had to examine the JLC system as a result of the terms of the financial aid package and the High Court case which left the JLC system inoperable. Thus, key problem they sought to resolve was whether or not the JLC system, as an institution, should be retained or not. This meant a diversion away from the key public policy question of how to protect precarious work. This is reflected in the terms of reference set by the government, in conjunction with the European Commission, for the independent review of JLCs. There was a significant emphasis in the terms of reference for the review body to analyse the wage flexibility and competitiveness impact of JLCs rather than their effectiveness in regulating precarious employment. Thus the debate over JLCs was defined in a zero-sum fashion and the outcome was a mini-win, mini-lose for all parties. The ‘win-lose’ for trade unions has been the retention of the system but, in its reformed state, its powers and scope have been diluted significantly. For employer organisations in most JLC sectors, the ‘lose-win’ has been the lack of success in demolishing the JLC system but, with its reduced powers and increased decision-making bureaucracy, this has addressed some of employers objections to the system. Due to the narrowed nature of the debate on JLCs, there was little consideration of alternative mechanisms by government or most employer organisations/trade unions, reinforcing the ‘institutional stickiness’ of the JLC system noted in previous research (O’Sullivan and Royle, 2013).

Given the difficulty the sectors had in fully complying with JLC minimum standards previously, it would have seemed unlikely that employer associations would engage in collective bargaining that would, at a minimum, maintain existing wages and working conditions. Unlike many other European countries, Ireland has a weak industry level bargaining system. A weak regulatory system combined with employer pressure to remove wage setting mechanisms in precarious employments would seem a hostile environment for voluntary industry bargaining. Contract cleaning and
security would appear to be ‘deviant cases’ in the bargaining structure (Gospel and Druker, 1998). Research has pointed to the importance of a strong trade union as a condition of industry collective bargaining (Brown, 1998; Gospel and Druker, 1998; Laroche and Murray, 2012). Union density is relatively high in the security sector but is not as extensive across contract cleaning. The findings from this paper suggest that union influence amongst the largest employers in both sectors is a more important factor than the extent of unionisation across the product market. Many of the largest employers are unionised and would be the mostly likely targets of industrial disputes if working conditions deteriorated. Moreover these employers have most to lose in a deregulated labour market because they hold a majority of the high value contracts. Employer organisations in contract cleaning and security were concerned that the collapse of the JLCs would result in market uncertainty as a consequence of the intense level of competition between firms for contracted hours business and the low capital requirements to enter contract cleaning and security guarding services. In addition, the legal framework for sectors based on tendering business differs from other sectors and interviews noted that the legislation on the transfer of businesses in Ireland creates further uncertainty. The need for stability and predictability arising from competition amongst a large number of firms has been highlighted as important factors leading to coordinated collective bargaining (Brown, 2008; Gospel and Druker, 1998). Employers continued support though is not guaranteed indefinitely and may depend on the outcomes of future REA negotiations when the system becomes operable again. Employers are in favour of maintaining standards but at the lowest acceptable wages costs. If a majority of smaller employers’ believe that the REA provisions are raising wages and prices so high as to force their exit from the market, then they more likely to present challenges for the system.
Bibliography


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Roberts, Y. (2012), ‘Cleaners see a future with the living wage as campaign gathers pace’, *The Guardian*, 15 December. [www.guardian.co.uk](http://www.guardian.co.uk).


Table 1 Data Collection

<table>
<thead>
<tr>
<th>Informants</th>
<th>Number</th>
<th>Sector</th>
<th>Data collection method</th>
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<tr>
<td>Trade union officials (referenced as TU1-6)</td>
<td>6</td>
<td>1 Security</td>
<td>Face to face interviews</td>
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<td></td>
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<td>3 Cleaning</td>
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<td>2 Cleaning &amp; Security</td>
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<td>Employer representatives (referenced as ER1-10)</td>
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<td>1 Security</td>
<td>8 Face to face interviews; 1 Telephone interview; 1 Emails</td>
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<tr>
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<td>6 Cleaning</td>
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<tr>
<td></td>
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<td>3 Cleaning &amp; Security</td>
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<tr>
<td>Private Security Authority (PSA) (referenced as PSA)</td>
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